CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

H.R. 3136

PUBLIC LAW 104-121
104TH CONGRESS

REPORTS, BILLS, DEBATES, AND ACT

SOCIAL SECURITY ADMINISTRATION

CONTRACT WITH AMERICA ADVANCEMENT ACT ACT OF 1996

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REPORTS, BILLS, DEBATES, AND ACT

Social Security Administration

Office of the Deputy Commissioner for Legislation and Congressional Affairs

PREFACE

This 1-volume compilation contains historical documents pertaining to P.L. 104-121, the "Contract With America Advancement Act of 1996." The book contains congressional debates, a chronological compilation of documents pertinent to the legislative history of the public law and listings of relevant reference materials.

Pertinent documents include:

- Differing versions of key bills
- Committee reports
- Excerpts from the Congressional Record
- The Public Law

This history is prepared by the Office of the Deputy Commissioner for Legislation and Congressional Affairs and is designed to serve as a helpful resource tool for those charged with interpreting laws administered by the Social Security Administration.

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104TH CONGRESS
2D SESSION

H. R. 3136

To provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1996

Mr. ARCHER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Budget, Rules, the Judiciary, Small Business, and Government Reform and Oversight, 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

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A BILL

To provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Contract with America Advancement Act of 1996".

TITLE I—SOCIAL SECURITY EARNINGS LIMITATION AMENDMENTS

SEC. 101. SHORT TITLE OF TITLE.

This title may be cited as the "Senior Citizens' Right to Work Act of 1996".

SEC. 102. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 103. CONTINUING DISABILITY REVIEWS.

(a) AUTHORIZATION FOR APPROPRIATIONS FOR CONTINUING DISABILITY REVIEWS.—Section 201(g)(1)(A) of the Social Security Act (42 U.S.C. 401(g)(1)(A)) is amended by adding at the end the following: "Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the pre-

ceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

"(i) for fiscal year 1996, $260,000,000;

"(ii) for fiscal year 1997, $360,000,000;

"(iii) for fiscal year 1998, $570,000,000;

"(iv) for fiscal year 1999, $720,000,000;

"(v) for fiscal year 2000, $720,000,000;

"(vi) for fiscal year 2001, $720,000,000; and

"(viii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 221(i) and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under title XVI, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296).".

(b) ADJUSTMENT TO DISCRETIONARY SPENDING LIMITS.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding the following new subparagraph:

"(H) CONTINUING DISABILITY REVIEWS.—(i) Whenever a bill or joint resolution making appropriations for fiscal year 1996, 1997, 1998, 1999, 2000, 2001, or 2002 is enacted that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such reviews for that fiscal year and the additional outlays flowing from such amounts, but shall not exceed—

"(I) for fiscal year 1996, $15,000,000 in additional new budget authority and $60,000,000 in additional outlays;

"(II) for fiscal year 1997, $25,000,000 in additional new budget authority and $160,000,000 in additional outlays;

"(III) for fiscal year 1998, $145,000,000 in additional new budget authority and $370,000,000 in additional outlays;

"(IV) for fiscal year 1999, $280,000,000 in additional new budget au-

thority and $520,000,000 in additional outlays;

"(V) for fiscal year 2000, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays;

"(VI) for fiscal year 2001, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays; and

"(VII) for fiscal year 2002, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays.

"(ii) As used in this subparagraph—

"(I) the term 'continuing disability reviews' has the meaning given such term by section 201(g)(1)(A) of the Social Security Act;

"(II) the term 'additional new budget authority' means new budget authority provided for a fiscal year, in excess of $100,000,000, for the Supplemental Security Income program and specified to pay for the costs of continuing disability re-

views attributable to the Supplemental Security Income program; and

"(III) the term 'additional outlays' means outlays, in excess of $200,000,000 in a fiscal year, flowing from the amounts specified for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, including outlays in that fiscal year flowing from amounts specified in Acts enacted for prior fiscal years (but not before 1996).".

(c) BUDGET ALLOCATION ADJUSTMENT BY BUDGET COMMITTEE.—Section 606 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding the following new subsection:

"(e) CONTINUING DISABILITY REVIEW ADJUSTMENT.—

"(1) IN GENERAL.—(A) For fiscal year 1996, upon the enactment of the Contract with America Advancement Act of 1996, the Chairmen of the Committees on the Budget of the Senate and House of Representatives shall make the adjustments referred to in subparagraph (C) to reflect $15,000,000 in additional new budget authority and $60,000,000

in additional outlays for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act).

"(B) When the Committee on Appropriations reports an appropriations measure for fiscal year 1997, 1998, 1999, 2000, 2001, or 2002 that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, or when a conference committee submits a conference report thereon, the Chairman of the Committee on the Budget of the Senate or House of Representatives (whichever is appropriate) shall make the adjustments referred to in subparagraph (C) to reflect the additional new budget authority for continuing disability reviews provided in that measure or conference report and the additional outlays flowing from such amounts for continuing disability reviews.

"(C) The adjustments referred to in this subparagraph consist of adjustments to—

"(i) the discretionary spending limits for that fiscal year as set forth in the most recently adopted concurrent resolution on the budget;

"(ii) the allocations to the Committees on Appropriations of the Senate and the House of

Representatives for that fiscal year under sections 302(a) and 602(a); and

"(iii) the appropriate budgetary aggregates for that fiscal year in the most recently adopted concurrent resolution on the budget.

"(D) The adjustments under this paragraph for any fiscal year shall not exceed the levels set forth in section 251(b)(2)(H) of the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year. The adjusted discretionary spending limits, allocations, and aggregates under this paragraph shall be considered the appropriate limits, allocations, and aggregates for purposes of congressional enforcement of this Act and concurrent budget resolutions under this Act.

"(2) REPORTING REVISED SUBALLOCATIONS.—Following the adjustments made under paragraph (1), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to sections 302(b) and 602(b) of this Act to carry out this subsection.

"(3) DEFINITIONS.—As used in this section, the terms 'continuing disability reviews', 'additional new budget authority', and 'additional outlays' shall

have the same meanings as provided in section 251(b)(2)(H)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(d) USE OF FUNDS AND REPORTS.—

(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, medicare, and medicaid programs.

(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.

(e) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of the Social Security Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional stand-

ards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 104. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 105. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) of such Act (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is

amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the

Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a

new medical determination) with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction

condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pur-

suant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply

only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such in-

dividual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments

under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 106. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be

of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the

end of the last calendar year preceding the issuance of the statement for which complete information is available.

(c) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(d) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

SEC. 107. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS

"SEC. 1145. (a) IN GENERAL.—No officer or employee of the United States shall—

"(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund

or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

"(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

"(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

"(b) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term 'public debt obligation' means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

"(c) FEDERAL FUND.—For purposes of this section, the term 'Federal fund' means—

"(1) the Federal Old-Age and Survivors Insurance Trust Fund;

"(2) the Federal Disability Insurance Trust Fund;

"(3) the Federal Hospital Insurance Trust Fund; and

"(4) the Federal Supplementary Medical Insurance Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 108. PROFESSIONAL STAFF FOR THE SOCIAL SECURITY ADVISORY BOARD.

Section 703(i) of the Social Security Act (42 U.S.C. 903(i)) is amended in the first sentence by inserting after "Staff Director" the following: ", and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,".

TITLE II—LINE ITEM VETO

SEC. 201. SHORT TITLE.

This title may be cited as the "Line Item Veto Act".

SEC. 202. LINE ITEM VETO AUTHORITY.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.) is amended by adding at the end the following new part:

"PART C—LINE ITEM VETO

"LINE ITEM VETO AUTHORITY

"SEC. 1021. (a) IN GENERAL.—Notwithstanding the provisions of parts A and B, and subject to the provisions of this part, the President may, with respect to any bill

or joint resolution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States, cancel in whole—

"(1) any dollar amount of discretionary budget authority;

"(2) any item of new direct spending; or

"(3) any limited tax benefit;

if the President—

"(A) determines that such cancellation will—

"(i) reduce the Federal budget deficit;

"(ii) not impair any essential Government functions; and

"(iii) not harm the national interest; and

"(B) notifies the Congress of such cancellation by transmitting a special message, in accordance with section 1022, within five calendar days (excluding Sundays) after the enactment of the law providing the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.

"(b) IDENTIFICATION OF CANCELLATIONS.—In identifying dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits for cancellation, the President shall—

"(1) consider the legislative history, construction, and purposes of the law which contains such dollar amounts, items, or benefits;

"(2) consider any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information; and

"(3) use the definitions contained in section 1026 in applying this part to the specific provisions of such law.

"(c) EXCEPTION FOR DISAPPROVAL BILLS.—The authority granted by subsection (a) shall not apply to any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any law that is a disapproval bill as defined in section 1026.

"SPECIAL MESSAGES

"SEC. 1022. (a) IN GENERAL.—For each law from which a cancellation has been made under this part, the President shall transmit a single special message to the Congress.

"(b) CONTENTS.—

"(1) The special message shall specify—

"(A) the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit which has been canceled,

and provide a corresponding reference number for each cancellation;

"(B) the determinations required under section 1021(a), together with any supporting material;

"(C) the reasons for the cancellation;

"(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the cancellation;

"(E) all facts, circumstances and considerations relating to or bearing upon the cancellation, and to the maximum extent practicable, the estimated effect of the cancellation upon the objects, purposes and programs for which the canceled authority was provided; and

"(F) include the adjustments that will be made pursuant to section 1024 to the discretionary spending limits under section 601 and an evaluation of the effects of those adjustments upon the sequestration procedures of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(2) In the case of a cancellation of any dollar amount of discretionary budget authority or item of

new direct spending, the special message shall also include, if applicable-

"(A) any account, department, or establishment of the Government for which such budget authority was to have been available for obligation and the specific project or governmental functions involved;

"(B) the specific States and congressional districts, if any, affected by the cancellation; and

"(C) the total number of cancellations imposed during the current session of Congress on States and congressional districts identified in subparagraph (B).

"(c) TRANSMISSION OF SPECIAL MESSAGES TO HOUSE AND SENATE.—

"(1) The President shall transmit to the Congress each special message under this part within five calendar days (excluding Sundays) after enactment of the law to which the cancellation applies. Each special message shall be transmitted to the House of Representatives and the Senate on the same calendar day. Such special message shall be delivered to the Clerk of the House of Representa-

tives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session.

"(2) Any special message transmitted under this part shall be printed in the first issue of the Federal Register published after such transmittal.

"CANCELLATION EFFECTIVE UNLESS DISAPPROVED

"SEC. 1023. (a) IN GENERAL.—The cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect upon receipt in the House of Representatives and the Senate of the special message notifying the Congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law shall be null and void and any such dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall be effective as of the original date provided in the law to which the cancellation applied.

"(b) COMMENSURATE REDUCTIONS IN DISCRETIONARY BUDGET AUTHORITY.—Upon the cancellation of a dollar amount of discretionary budget authority under subsection (a), the total appropriation for each relevant account of which that dollar amount is a part shall be simultaneously reduced by the dollar amount of that cancellation.

"DEFICIT REDUCTION

"SEC. 1024. (a) IN GENERAL.—

"(1) DISCRETIONARY BUDGET AUTHORITY.—OMB shall, for each dollar amount of discretionary budget authority and for each item of new direct spending canceled from an appropriation law under section 1021(a)—

"(A) reflect the reduction that results from such cancellation in the estimates required by section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 in accordance with that Act, including an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear; and

"(B) include a reduction to the discretionary spending limits for budget authority and outlays in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 for each applicable fiscal year set forth in section 601(a)(2) by amounts equal to the amounts for each fiscal year estimated pursuant to subparagraph (A).

"(2) DIRECT SPENDING AND LIMITED TAX BENEFITS.—(A) OMB shall, for each item of new

direct spending or limited tax benefit canceled from a law under section 1021(a), estimate the deficit decrease caused by the cancellation of such item or benefit in that law and include such estimate as a separate entry in the report prepared pursuant to section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(B) OMB shall not include any change in the deficit resulting from a cancellation of any item of new direct spending or limited tax benefit, or the enactment of a disapproval bill for any such cancellation, under this part in the estimates and reports required by sections 252(b) and 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) ADJUSTMENTS TO SPENDING LIMITS.—After ten calendar days (excluding Sundays) after the expiration of the time period in section 1025(b)(1) for expedited congressional consideration of a disapproval bill for a special message containing a cancellation of discretionary budget authority, OMB shall make the reduction included in subsection (a)(1)(B) as part of the next sequester report required by section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(c) EXCEPTION.—Subsection (b) shall not apply to a cancellation if a disapproval bill or other law that dis-

approves that cancellation is enacted into law prior to 10 calendar days (excluding Sundays) after the expiration of the time period set forth in section 1025(b)(1).

"(d) CONGRESSIONAL BUDGET OFFICE ESTIMATES.—As soon as practicable after the President makes a cancellation from a law under section 1021(a), the Director of the Congressional Budget Office shall provide the Committees on the Budget of the House of Representatives and the Senate with an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear.

"EXPEDITED CONGRESSIONAL CONSIDERATION OF DISAPPROVAL BILLS

"SEC. 1025. (a) RECEIPT AND REFERRAL OF SPECIAL MESSAGE.—Each special message transmitted under this part shall be referred to the Committee on the Budget and the appropriate committee or committees of the Senate and the Committee on the Budget and the appropriate committee or committees of the House of Representatives. Each such message shall be printed as a document of the House of Representatives.

"(b) TIME PERIOD FOR EXPEDITED PROCEDURES.—

"(1) There shall be a congressional review period of 30 calendar days of session, beginning on the first calendar day of session after the date on which the special message is received in the House of Rep-

resentatives and the Senate, during which the procedures contained in this section shall apply to both Houses of Congress.

"(2) In the House of Representatives the procedures set forth in this section shall not apply after the end of the period described in paragraph (1).

"(3) If Congress adjourns at the end of a Congress prior to the expiration of the period described in paragraph (1) and a disapproval bill was then pending in either House of Congress or a committee thereof (including a conference committee of the two Houses of Congress), or was pending before the President, a disapproval bill for the same special message may be introduced within the first five calendar days of session of the next Congress and shall be treated as a disapproval bill under this part, and the time period described in paragraph (1) shall commence on the day of introduction of that disapproval bill.

"(c) INTRODUCTION OF DISAPPROVAL BILLS.—(1) In order for a disapproval bill to be considered under the procedures set forth in this section, the bill must meet the definition of a disapproval bill and must be introduced no later than the fifth calendar day of session following the beginning of the period described in subsection (b)(1).

"(2) In the case of a disapproval bill introduced in the House of Representatives, such bill shall include in the first blank space referred to in section 1026(6)(C) a list of the reference numbers for all cancellations made by the President in the special message to which such disapproval bill relates.

"(d) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—(1) Any committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill, except that such a motion may not be made after the committee has reported a disapproval bill with respect to the same special message. A motion to discharge may be made only by a Member favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a pro-

ponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

"(2) After a disapproval bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order, except any Member if

supported by 49 other Members (a quorum being present) may offer an amendment striking the reference number or numbers of a cancellation or cancellations from the bill. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

"(3) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a disapproval bill shall be decided without debate.

"(4) It shall not be in order to consider under this subsection more than one disapproval bill for the same special message except for consideration of a similar Senate bill (unless the House has already rejected a disapproval bill for the same special message) or more than one motion to discharge described in paragraph (1) with respect to a disapproval bill for that special message.

"(e) CONSIDERATION IN THE SENATE.—

"(1) REFERRAL AND REPORTING.—Any disapproval bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a disapproval bill has been referred shall report the bill not later than the seventh day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the Calendar.

"(2) DISAPPROVAL BILL FROM HOUSE.—When the Senate receives from the House of Representatives a disapproval bill, such bill shall not be referred to committee and shall be placed on the Calendar.

"(3) CONSIDERATION OF SINGLE DISAPPROVAL BILL.—After the Senate has proceeded to the consideration of a disapproval bill for a special message, then no other disapproval bill originating in that same House relating to that same message shall be subject to the procedures set forth in this subsection.

"(4) AMENDMENTS.—

"(A) AMENDMENTS IN ORDER.—The only amendments in order to a disapproval bill are—

"(i) an amendment that strikes the reference number of a cancellation from the disapproval bill; and

"(ii) an amendment that only inserts the reference number of a cancellation included in the special message to which the disapproval bill relates that is not already contained in such bill.

"(B) WAIVER OR APPEAL.—An affirmative vote of three-fifths of the Senators, duly chosen and sworn, shall be required in the Senate—

"(i) to waive or suspend this paragraph; or

"(ii) to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

"(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of a disapproval bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

"(6) LIMIT ON CONSIDERATION.— (A) After no more than 10 hours of consideration of a dis-

approval bill, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or to table.

"(B) A single motion to extend the time for consideration under subparagraph (A) for no more than an additional five hours is in order prior to the expiration of such time and shall be decided without debate.

"(C) The time for debate on the disapproval bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.

"(7) DEBATE ON AMENDMENTS.—Debate on any amendment to a disapproval bill shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

"(8) NO MOTION TO RECOMMIT.—A motion to recommit a disapproval bill shall not be in order.

"(9) DISPOSITION OF SENATE DISAPPROVAL BILL.—If the Senate has read for the third time a

disapproval bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a disapproval bill for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate disapproval bill, agree to the Senate amendment, and vote on final disposition of the House disapproval bill, all without any intervening action or debate.

"(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a disapproval bill shall be limited to not more than four hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point

of order, in which case the minority manager shall be in control of the time in opposition.

"(f) CONSIDERATION IN CONFERENCE—

"(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

"(2) HOUSE CONSIDERATION.—(A) Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to a disapproval bill provided such report has been available for one calendar day (excluding Saturdays, Sundays, or legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.

"(B) Debate in the House of Representatives on the conference report and any amendments in disagreement on any disapproval bill shall each be limited to not more than one hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in

order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

"(3) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on a disapproval bill shall be limited to not more than four hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

"(4) LIMITS ON SCOPE.—(A) When a disagreement to an amendment in the nature of a substitute has been referred to a conference, the conferees shall report those cancellations that were included in both the bill and the amendment, and may report a cancellation included in either the bill or the amendment, but shall not include any other matter.

"(B) When a disagreement on an amendment or amendments of one House to the disapproval bill of the other House has been referred to a committee of conference, the conferees shall report those cancellations upon which both Houses agree and may report any or all of those cancellations upon which there is disagreement, but shall not include any other matter.

"DEFINITIONS

"SEC. 1026. As used in this part:

"(1) APPROPRIATION LAW.—The term 'appropriation law' means an Act referred to in section 105 of title 1, United States Code, including any general or special appropriation Act, or any Act making supplemental, deficiency, or continuing appropriations, that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States.

"(2) CALENDAR DAY.—The term 'calendar day' means a standard 24-hour period beginning at midnight.

"(3) CALENDAR DAYS OF SESSION.—The term 'calendar days of session' shall mean only those days on which both Houses of Congress are in session.

"(4) CANCEL.—The term 'cancel' or 'cancellation' means—

"(A) with respect to any dollar amount of discretionary budget authority, to rescind;

"(B) with respect to any item of new direct spending—

"(i) that is budget authority provided by law (other than an appropriation law),

to prevent such budget authority from having legal force or effect;

"(ii) that is entitlement authority, to prevent the specific legal obligation of the United States from having legal force or effect; or

"(iii) through the food stamp program, to prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect; and

"(C) with respect to a limited tax benefit, to prevent the specific provision of law that provides such benefit from having legal force or effect.

"(5) DIRECT SPENDING.—The term 'direct spending' means—

"(A) budget authority provided by law (other than an appropriation law);

"(B) entitlement authority; and

"(C) the food stamp program.

"(6) DISAPPROVAL BILL.—The term 'disapproval bill' means a bill or joint resolution which only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of

new direct spending, or limited tax benefits in a special message transmitted by the President under this part and—

"(A) the title of which is as follows: 'A bill disapproving the cancellations transmitted by the President on _____', the blank space being filled in with the date of transmission of the relevant special message and the public law number to which the message relates;

"(B) which does not have a preamble; and

"(C) which provides only the following after the enacting clause: 'That Congress disapproves of cancellations _____', the blank space being filled in with a list by reference number of one or more cancellations contained in the President's special message, 'as transmitted by the President in a special message on _____', the blank space being filled in with the appropriate date, 'regarding _____.', the blank space being filled in with the public law number to which the special message relates.

"(7) DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY.—(A) Except as provided in subparagraph (B), the term 'dollar amount of dis-

cretionary budget authority' means the entire dollar amount of budget authority—

"(i) specified in an appropriation law, or the entire dollar amount of budget authority required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included;

"(ii) represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompanying such law;

"(iii) required to be allocated for a specific program, project, or activity in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law;

"(iv) represented by the product of the estimated procurement cost and the total quantity of items specified in an appropriation law or included in the statement of managers or the governing committee report accompanying such law; and

"(v) represented by the product of the estimated procurement cost and the total quantity

of items required to be provided in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law.

"(B) The term 'dollar amount of discretionary budget authority' does not include—

"(i) direct spending;

"(ii) budget authority in an appropriation law which funds direct spending provided for in other law;

"(iii) any existing budget authority rescinded or canceled in an appropriation law; or

"(iv) any restriction, condition, or limitation in an appropriation law or the accompanying statement of managers or committee reports on the expenditure of budget authority for an account, program, project, or activity, or on activities involving such expenditure.

"(8) ITEM OF NEW DIRECT SPENDING.—The term 'item of new direct spending' means any specific provision of law that is estimated to result in an increase in budget authority or outlays for direct spending relative to the most recent levels calculated

pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(9) LIMITED TAX BENEFIT.—(A) The term 'limited tax benefit' means—

"(i) any revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; and

"(ii) any Federal tax provision which provides temporary or permanent transitional relief for 10 or fewer beneficiaries in any fiscal year from a change to the Internal Revenue Code of 1986.

"(B) A provision shall not be treated as described in subparagraph (A)(i) if the effect of that provision is that—

"(i) all persons in the same industry or engaged in the same type of activity receive the same treatment;

"(ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment; or

"(iii) any difference in the treatment of persons is based solely on—

"(I) in the case of businesses and associations, the size or form of the business or association involved;

"(II) in the case of individuals, general demographic conditions, such as income, marital status, number of dependents, or tax return filing status;

"(III) the amount involved; or

"(IV) a generally-available election under the Internal Revenue Code of 1986.

"(C) A provision shall not be treated as described in subparagraph (A)(ii) if—

"(i) it provides for the retention of prior law with respect to all binding contracts or other legally enforceable obligations in existence on a date contemporaneous with congressional action specifying such date; or

"(ii) it is a technical correction to previously enacted legislation that is estimated to have no revenue effect.

"(D) For purposes of subparagraph (A)—

"(i) all businesses and associations which are related within the meaning of sections

707(b) and 1563(a) of the Internal Revenue Code of 1986 shall be treated as a single beneficiary;

"(ii) all qualified plans of an employer shall be treated as a single beneficiary;

"(iii) all holders of the same bond issue shall be treated as a single beneficiary; and

"(iv) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision.

"(E) For purposes of this paragraph, the term 'revenue-losing provision' means any provision which results in a reduction in Federal tax revenues for any one of the two following periods—

"(i) the first fiscal year for which the provision is effective; or

"(ii) the period of the 5 fiscal years beginning with the first fiscal year for which the provision is effective.

"(F) The terms used in this paragraph shall have the same meaning as those terms have gen-

erally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

"(10) OMB.—The term 'OMB' means the Director of the Office of Management and Budget.

"IDENTIFICATION OF LIMITED TAX BENEFITS

"SEC. 1027. (a) STATEMENT BY JOINT TAX COMMITTEE.—The Joint Committee on Taxation shall review any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 that is being prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill or joint resolution contains any limited tax benefits. The Joint Committee on Taxation shall provide to the committee of conference a statement identifying any such limited tax benefits or declaring that the bill or joint resolution does not contain any limited tax benefits. Any such statement shall be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

"(b) STATEMENT INCLUDED IN LEGISLATION.—(1) Notwithstanding any other rule of the House of Representatives or any rule or precedent of the Senate, any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 reported by a committee of conference of the two Houses may include, as a separate section of such bill or

joint resolution, the information contained in the statement of the Joint Committee on Taxation, but only in the manner set forth in paragraph (2).

"(2) The separate section permitted under paragraph (1) shall read as follows: 'Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall _____ apply to _____.', with the blank spaces being filled in with —

"(A) in any case in which the Joint Committee on Taxation identifies limited tax benefits in the statement required under subsection (a), the word 'only' in the first blank space and a list of all of the specific provisions of the bill or joint resolution identified by the Joint Committee on Taxation in such statement in the second blank space; or

"(B) in any case in which the Joint Committee on Taxation declares that there are no limited tax benefits in the statement required under subsection (a), the word 'not' in the first blank space and the phrase 'any provision of this Act' in the second blank space.

"(c) PRESIDENT'S AUTHORITY.—If any revenue or reconciliation bill or joint resolution is signed into law pursuant to Article I, section 7, of the Constitution of the United States—

"(1) with a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) only to cancel any limited tax benefit in that law, if any, identified in such separate section; or

"(2) without a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) to cancel any limited tax benefit in that law that meets the definition in section 1026.

"(d) CONGRESSIONAL IDENTIFICATIONS OF LIMITED TAX BENEFITS.—There shall be no judicial review of the congressional identification under subsections (a) and (b) of a limited tax benefit in a conference report.".

SEC. 203. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress or any individual adversely affected by part C of title X of the Congressional Budget and Impoundment Control Act of 1974 may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this part violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

SEC. 204. CONFORMING AMENDMENTS.

(a) SHORT TITLES.—Section 1(a) of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking "and" before "title X" and inserting a period;

(2) inserting "Parts A and B of" before "title X"; and

(3) inserting at the end the following new sentence: "Part C of title X may be cited as the 'Line Item Veto Act of 1996'.".

(b) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end the following:

"PART C—LINE ITEM VETO

"Sec. 1021. Line item veto authority.
"Sec. 1022. Special messages.
"Sec. 1023. Cancellation effective unless disapproved.
"Sec. 1024. Deficit reduction.
"Sec. 1025. Expedited congressional consideration of disapproval bills.
"Sec. 1026. Definitions.
"Sec. 1027. Identification of limited tax benefits.".

(c) EXERCISE OF RULEMAKING POWERS.—Section 904(a) of the Congressional Budget Act of 1974 is amended by striking "and 1017" and inserting ", 1017, 1025, and 1027".

SEC. 205. EFFECTIVE DATES.

This Act and the amendments made by it shall take effect and apply to measures enacted on the earlier of—

(1) the day after the enactment into law, pursuant to Article I, section 7, of the Constitution of the United States, of an Act entitled "An Act to provide for a seven-year plan for deficit reduction and achieve a balanced Federal budget."; or

(2) January 1, 1997;

and shall have no force or effect on or after January 1, 2005.

TITLE III—SMALL BUSINESS REGULATORY FAIRNESS

SEC. 301. SHORT TITLE.

This title may be cited as the "Small Business Growth and Fairness Act of 1996".

Subtitle A—Regulatory Compliance Simplification

SEC. 311. DEFINITIONS.

For purposes of this subtitle and subtitle B—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 312. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 313. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the rea-

sonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 314. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Growth and Fairness Act of 1996.".

SEC. 315. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the states, develop guides that fully integrate requirements of both Federal and state regulations where regulations within an agency's area of interest at the Federal and state levels impact small businesses. Where regulations vary among the states, separate guides may be created for separate states in cooperation with State agencies.

Subtitle B—Regulatory Enforcement Reforms

SEC. 321. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C.App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administration and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C) and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommenda-

tions of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members appointed by the Administration, who are owners, operators, or officers of small business concerns, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve for terms of three years or less.

"(5) The Administration shall select a chair from among the members of the Board who shall serve for not more than 2 years as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 322. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for

the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a state;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to Congress no later than 2 years from the effective date on the scope

of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

Subtitle C—Strengthening Regulatory Flexibility

SEC. 331. JUDICIAL REVIEW.

(a) AMENDMENT.—Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) Not later than one year, notwithstanding any other provision of law, after the effective date of a final rule with respect to which an agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

"(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with the terms of this subsection. A court having jurisdiction to review such rule for compliance with the provisions of section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis. In the case where an agency delays the issuance of a final regu-

latory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than one year, notwithstanding any other provision of law, after the date the analysis is made available to the public.

"(2) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

"(3) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(4)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(B) In the case where the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with the requirements of section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory

flexibility analysis was prepared by the agency without observance of procedure required by section 604.

"(5) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (4) (or such longer period as the court may provide), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with the requirements of section 604,

the court may stay the rule or grant such other relief as it deems appropriate.

"(6) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(4)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to final agency rules issued after the date of enactment of this Act.

SEC. 332. RULES COMMENTED ON BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) ACTION BY THE SBA CHIEF COUNSEL FOR ADVOCACY.—

"(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) a copy of the proposed rule; and

"(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not re-

quired for the proposed rule under section 603 and an explanation for the determination.

"(2) STATEMENT OF EFFECT.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of the effect of the proposed rule on small entities.

"(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of effect on a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.

"(4) SPECIAL RULE.—Any proposed rules issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such an institution, credit unions, or government sponsored hous-

ing enterprises or to protect the Federal deposit insurance funds shall not be subject to the requirements of this subsection.".

(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

SEC. 333. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

Subtitle D—Congressional Review

SEC. 341. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.
"808. Effective date of certain rules.

"§ 801. Congressional review

"(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) The Federal agency promulgating the rule shall make available to the Comptroller General, and, upon request, to each House of Congress—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

"(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each standing committee with jurisdiction under the rules of the House

of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

"(A) the later of the date occurring 60 days (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress) after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register;

"(B) if the Congress passes a joint resolution of disapproval described under section 802 relating to

the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b)(1) A rule or proposed rule shall not take effect (or continue) as a final rule, if the Congress enacts a joint resolution of disapproval described under section 802.

"(2) A rule or proposed rule that does not take effect (or does not continue) under paragraph (1) may not be

reissued in substantially the same form, and a new rule that is substantially the same as such a rule or proposed rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this chapter may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to a statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a final rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

"(e)(1) Section 802 shall apply in accordance with its terms to any major rule that was published in the Federal Register (as a rule that shall take effect as a final rule) in the period beginning on November 20, 1994, through the date of enactment of this title.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of enactment of this title; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(4) The Comptroller General shall not be required to report on a rule described in paragraph (1) unless so requested by a committee of jurisdiction of either House of Congress.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) JOINT RESOLUTION DEFINED.—For purposes of this section, the term 'joint resolution' means only—

"(1) a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in); or

"(2) a joint resolution the matter after the resolving clause of which is as follows: 'That the Congress disapproves the proposed rule published by the _____ relating to _____, and such proposed rule shall not be issued or take effect as a final rule.' (the blank spaces being appropriately filled in)

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means—

"(A) in the case of a joint resolution described in subsection (a)(1) the later of the date on which—

"(i) the Congress receives the report submitted under section 801(a)(1); or

"(ii) the rule is published in the Federal Register; or

"(B) in the case of a joint resolution described in subsection (a)(2), the date of introduction of the joint resolution.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the appropriate calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to

the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(f) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed

to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"(a) For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure).

"(2) The term "major rule" means any rule subject to section 553(c) that has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-

based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'final rule' means any final rule or interim final rule.

"(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

"§ 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or cir-

cumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 808. Effective date of certain rules

"Notwithstanding section 801, any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping may take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 342. EFFECTIVE DATE.

The amendment made by section 341 shall take effect on the date of enactment of this Act.

SEC. 343. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

TITLE IV—PUBLIC DEBT LIMIT

SEC. 401. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$5,500,000,000,000".

○

H.R. 3136

OFFERED BY: MR. HYDE

AMENDMENT No. 2. Strike title III and insert the following:

TITLE III—SMALL BUSINESS REGULATORY FAIRNESS

SEC. 301. SHORT TITLE.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 302. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

SEC. 303. PURPOSES.

The purposes of this title are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of chapter 6 of title 5, United States Code;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

Subtitle A—Regulatory Compliance Simplification

SECTION 311. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 312. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 313. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

SEC. 314. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing information to small business concerns regarding compliance with regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996.".

(b) Nothing in this Act in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 315. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the states, develop guides that fully integrate requirements of both Federal and state regulations where regulations within an agency's area of interest at the Federal and state levels impact small entities. Where regulations vary among the states, separate guides may be created for separate states in cooperation with State agencies.

SEC. 316. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle B—Regulatory Enforcement Reforms

SECTION 321. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 322. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and

Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C.App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 323. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a state;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 324. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle C—Equal Access to Justice Act Amendments

SECTION 331. ADMINISTRATIVE PROCEEDINGS.

(a) Section 504(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) If, in an adversary adjudication brought by an agency, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.".

(b) Section 504(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (1)(B), by inserting before the semicolon "or for purposes of subsection (a)(4), a small entity as defined in section 601";

(3) at the end of paragraph (1)(D), by striking "and";

(4) at the end of paragraph (1)(E), by striking the period and inserting "; and"; and

(5) at the end of paragraph (1), by adding the following new subparagraph:

"(F) 'demand' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 332. JUDICIAL PROCEEDINGS.

(a) Section 2412(d)(1) of title 28, United States Code, is amended by adding at the end the following new subparagraph:

"(D) If, in a civil action brought by the United States, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.".

(b) Section 2412(d) of title 28, United States Code, is amended—

(1) in paragraph (2)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (2)(B), by inserting before the semicolon "or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5";

(3) at the end of paragraph (2)(G), by striking "and";

(4) at the end of paragraph (2)(H), by striking the period and inserting "; and"; and

(5) at the end of paragraph (2), by adding the following new subparagraph:

"(I) 'demand' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 333. EFFECTIVE DATE.

The amendments made by sections 331 and 332 shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle.

Subtitle D—Regulatory Flexibility Act Amendments

SEC. 341. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) SECTION 603.—Section 603(a) of title 5, United States Code, is amended—

(A) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretative rule of general applicability involving the internal revenue laws of the United States"; and

(B) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.".

(2) SECTION 601.—Section 601 of title 5, United States Code, is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; and", and by adding at the end the following:

"(7) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

"(8) RECORDKEEPING REQUIREMENT.—The term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 342. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to—

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 343. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 344. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.— Section 609 of title 5, United States Code is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities" by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3),

(4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(d) For purposed of this section, the term covered agency means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

"(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

"(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration; 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) Special circumstances requiring prompt issuance of the rule.

"(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

SEC. 345. EFFECTIVE DATE.

This subtitle shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.

Subtitle E—Congressional Review

SEC. 351. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.
"808. Effective date of certain rules.

"§ 801. Congressional review

"(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the Chairman and Ranking Member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

"(A) the later of the date occurring 60 days after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register, if so published;

"(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

"(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive Order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise

provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register, if so published.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(g) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'rule' has the meaning given such term in section 551, except that such term does not include—

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non agency parties.

"§ 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 808. Effective date of certain rules

"Notwithstanding section 801—

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

"(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 352. EFFECTIVE DATE.

The amendment made by section 351 shall take effect on the date of enactment of this Act.

SEC. 353. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

WAIVING CERTAIN ENROLLMENT REQUIREMENTS OF TWO BILLS OF THE 104TH CONGRESS

Mr. NEY. Mr. Speaker, I ask unanimous consent that the Committee on House Oversight be discharged from further consideration of the joint resolution (H.J. Res. 168) waiving certain enrollment requirements with respect to two bills of the 104th Congress, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 168

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of sections 106 and 107 of title 1, United States Code, are waived with respect to the printing (on parchment or otherwise) of the enrollment of H.R. 3019 and the enrollment of H.R. 3136, each of the One Hundred Fourth Congress. The enrollment of either such bill shall be in such form as the Committee on House Oversight of the House of Representatives certifies to be a true enrollment.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

104TH CONGRESS
2D SESSION

H. J. RES. 168

Waiving certain enrollment requirements with respect to two bills of the One Hundred Fourth Congress.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1996

Mr. NEY introduced the following joint resolution; which was referred to the Committee on House Oversight

MARCH 26, 1996

The Committee on House Oversight discharged; considered and passed

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JOINT RESOLUTION

Waiving certain enrollment requirements with respect to two bills of the One Hundred Fourth Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of sections 106 and 107 of title 1, United States Code, are waived with respect to the printing (on parchment or otherwise) of the enrollment of H.R. 3019 and the enrollment of H.R. 3136, each of the One Hundred Fourth Congress. The enrollment of either such bill shall be in such form as the Committee on House

Oversight of the House of Representatives certifies to be a true enrollment.

○

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

Mr. SOLOMON. Mr. Chairman, by direction of the Committee on Rules, I call up House Resolution 391 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 391

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order (except those arising under section 425(a) of the Congressional Budget Act of 1974) to consider in the House the bill (H.R. 3136) to provide for the enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit. The amendments specified in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and

ranking minority member of the Committee on Ways and Means; (2) a further amendment, if offered by the chairman of the Committee on Ways and Means, which shall be in order without intervention of any point of order (except those arising under section 425(a) of the Congressional Budget Act of 1974) or demand for division of the question, shall be considered as read, and shall be separately debatable for 10 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit, which may include instructions only if offered by the Minority Leader or his designee.

SEC. 2. If, before March 30, 1996, the House has received a message informing it that the Senate has adopted the conference report to accompany the bill (S. 4) to grant the power to the President to reduce budget authority, and for other purposes, then—

(a) in the engrossment of H.R. 3136 the Clerk shall strike title II (unless it has been amended) and redesignate the subsequent titles accordingly; and

(b) the House shall be considered to have adopted that conference report.

□ 1045

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. BEILENSON], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. SOLOMON asked and was given permission to include extraneous material.)

AMENDMENT OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLOMON:

Page 2, line 9, strike "one hour" and all that follows through "Means" on line 12, and insert in lieu thereof the following:

"80 minutes of debate on the bill, as amended, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Government Reform and Oversight or their designees".

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that the amendment be agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from California [Mr. BEILENSON]. He is one of the most understanding Members of this body. He is going to be leaving us at the end of this year and we are going to miss him. We do not always agree, but he is one fine gentleman.

Mr. Speaker, House Resolution 391 provides for consideration of the bill H.R. 3136, the Contract With America Advancement Act of 1996. That is important. This bill contains the Senior Citizens Right to Work Act of 1996. It contains the Line-Item Veto Act, the Small Business Growth and Fairness Act of 1996, and a permanent increase in the public debt limit.

Believe me, if it were not for these other issues I just read off, I would not be standing up here supporting the increase in the debt limit for this Government. Not only does this bill represent the completion of three major contract promises, but it represents the product of bipartisan, bicameral and dual-branch negotiations. Think about that, ladies and gentlemen. That is cooperation. The bill before us today addresses concerns of both houses of Congress and the Clinton administration as well.

Mr. Speaker, this rule provides for consideration in the House of H.R. 3136, as modified by the amendments designated in the Committee on Rules report on this resolution. The rule provides for the adoption of two amendments. The first amendment is to title III of the bill relating to regulatory reform, and the second amendment is to title I of this bill relating to the Social Security earnings test limit. Both amendments address specific concerns of the administration and have been included in the bill in the spirit of bipartisan cooperation. It is hoped that the final product will meet the concerns of all parties involved.

The rule waives all points of order against consideration of the bill except those arising under section 425(a) of the Budget Act relating to unfunded mandates. The rule provides for 1 hour of debate equally divided between the chairman and ranking member of the Committee on Ways and Means, and of course we have just enacted an addendum to that, an amendment giving the gentleman from Pennsylvania [Mr. CLINGER] and his committee an additional 20 minutes, equally divided between the chairman and the ranking member.

The rule further provides for the consideration of an amendment to be offered by the gentleman from Texas [Mr. ARCHER] or his designee, which is debatable for 10 minutes. This further amendment was provided to the manager of the bill in order to accommodate any further negotiations between Congress and the administration that occurred last night after the Committee on Rules reported this bill. It is my understanding now, however, that the use of this authority will not be necessary. Upon completion of debate, the rule provides for one motion to recommit which, if containing instructions, may only be offered by the minority leader or his designee.

Finally, Mr. Speaker, the rule provides that if before March 30, 1996, the House has received a Senate message stating that the Senate has adopted the conference report on S. 4, which is the Line-Item Veto Act, then following House passage and engrossment of H.R. 3136, the Clerk shall be instructed to strike title II unless amended from this bill. This title contains the exact text of the conference report of Senate bill 4.

Furthermore, upon the actions of the House, it will be deemed to have adopted the conference report on S. 4, which is the line-item veto conference report. This final procedure has been included in the rule as part of our continuing efforts to expedite the consideration of this terribly, terribly important piece of legislation.

Mr. Speaker, as to the text of H.R. 3136, let me express my strong support for these Contract With America measures. Title I, the Senior Citizens Right to Work Act of 1996, is crucial legislation which will lift the current impediments seniors throughout my district and yours and throughout this entire country face as they try to increase their income by working in their later years.

It is the most ridiculous thing when you have paid into Social Security with your own money, over all of these years, 30, 40, 50, 60, whatever it might be, that money is yours. It is being paid back to you from a trust, and yet you are penalized if you earn more than $11,000, three to one; you have to give back one dollar for every three you earn over $11,000. That is about the most undemocratic thing that I have ever seen. This bill is going to correct that.

It also provides relief that was made in 1994 and is a promise that is going to be kept today. Title III, the Small Business Growth and Fairness Act of 1996, will provide needed regulatory relief and flexibility to millions of small business owners, to farmers and families across this country, enabling these job creators, and these kind of businesses create 75 percent of every new job in America every single year. It allows them to expand employment in the marketplace and to grow our Nation's economy and grow jobs for high school students graduating and college students, as well.

Now, while this regulatory reform does not go as far as I would like to see it, it still represents a dramatic shift in the direction of regulatory relief that was promised in the contract for America. Mr. Speaker, this was another promise Republicans made, and this is another promise Republicans are going to keep here today.

Mr. Speaker, title II of the bill represents legislation that is near and dear to my personal heart, legislation that I have worked to pass for more than 18 years here in this Congress. Title II is the Line-Item Veto Act. It represents fundamental budget process reform, and I never thought it would happen. After many hearings, three committee markups, 2 days of floor consideration in the House, 1 week of floor consideration in the Senate, and more than a year of debate in a committee on conference, a thoroughly researched, extensively debated and well drafted bill has finally been produced.

The conferees, led by the gentleman from Pennsylvania, Chairman CLINGER, sitting next to me over here, are to be commended for bringing the House such thorough and historic budget process reform and getting it through the Senate.

Mr. Speaker, as you well know, I have been an ardent supporter of the line-item veto all these years. Nevertheless, I believe the conference report language before us today will provide the President, any President, regardless of political party, with an even more effective, yet limited line-item veto authority that I ever thought could be possible.

Without question, it will result in lower, more responsible Government spending. Under the bill, the President is delegated the constitutional authority to cancel dollar amounts of discretionary appropriations. He is granted the ability to limit tax benefits or increases in direct spending, and these cancellations must be transmitted by special message to the Congress within 5 days of signing the original bill into law.

With report to dollar amounts of discretionary appropriations, the President is permitted to cancel specific items in appropriations bills, any governing committee reports or joint explanatory statements to accompany a conference report. What that means is the bill will also allow the President to cancel any increase in direct spending, which includes entitlements and the Food Stamp Program. Believe me, that is going to make a difference, since that takes up almost all of the budget, these entitlement programs.

This delegated authority will allow the President to cancel any new expansions of direct spending.

Now, with regard to tax benefits, the President is permitted to cancel any limited tax benefits identified by the nonpartisan Joint Committee on Taxation in any revenue or reconciliation law. In an effort to limit this delegated cancellation authority, the line-item veto requires that the cancellations may be made if the President can determine that such cancellation would reduce the Federal budget deficit.

Most importantly, Mr. Speaker, in order to ensure reductions the deficit, a lot of people ought to listen to this because this is something we have been fighting for years, the bill has established a lock bloc mechanism lowering the statutory spending caps, locking in any savings gained through the use of the line-item veto.

How many times have we offered amendments on this floor and we have cut out spending on a project only to find the money was reinstated for another project later on? That is going to stop right now when the President signs this bill.

The bill also provides for expedited procedures in both the House and the Senate for consideration of a bill to disapprove any cancellation by the President. That disapproval bill would then be subject to a veto by the President, which would then have to be overriden by a two-thirds vote of both houses in order for the money, intended to be canceled, to be spent or to take effect. I intend to discuss the specifics of these expedited procedures later on in the debate, as will my good friend, the gentleman from Pennsylvania [Mr. CLINGER], the chairman of the conference on line-item veto. However, I will say now that these expedited procedures were intentionally drafted to allow any Member, majority or minority, who can muster sufficient support to receive a vote to disapprove on the floor of this House any particular veto.

The bill also provides for expedited judicial review of any challenge to the constitutionality of the act. No severability or nonseverability provisions were included in the bill, but it is the intention of the conferees that any judicial determinations regarding the constitutionality of the bill be applied severably to the legislation. This is consistent with the current rule of thumb regarding constitutional challenges to any law that is silent on the issue of severability.

Finally, the line-item veto authority becomes effective on the date of the earlier of these two: enactment of a 7-year balanced budget plan, or January 1, 1997. This authority would sunset on January 1, 2005.

Now, there has been some discussion whether the delay in the effective date has been motivated by partisan politics, but let us set the record straight here and now. As was stated in the Committee on Rules yesterday, this effective date has been agreed to by the signers of the conference report on both sides of the aisle, which were bipartisan. The Senate majority leader and Republican nominee for President, BOB DOLE, and President Clinton himself, after a conversation between Majority Leader DOLE and the President, both agreed to this effective date publicly in press conferences. Furthermore, the effective date was also chosen in part to take away any partisan games involving the line-item veto, take it out of the picture during the presidential election year.

Mr. Speaker, with that discussion of the rule and the major provisions of the line-item veto, I urge support of the rule and the bill for this historic occasion.

I include the following material for the RECORD:

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTEO BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of March 27, 1996]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open[2]	46	44	59	59
Modified Closed[3]	49	47	25	25
Closed[4]	9	9	16	16
Total	104	100	100	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTEO BY THE RULES COMMITTEE, 104TH CONGRESS

[As of March 27, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	O	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	O	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	O	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	O	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	O	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/13/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: voice vote (2/22/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS—Continued

[As of March 27, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	A: 271–151 (3/2/95).
H. Res. 103 (3/3/95)	MO	H.R. 1058	Securities Litigation Reform	
H. Res. 104 (3/3/95)	MO	H.R. 988	Attorney Accountability Act	A: voice vote (3/6/95).
H. Res. 105 (3/6/95)	MO			A: 257–155 (3/7/95).
H. Res. 108 (3/7/95)	Debate	H.R. 956	Product Liability Reform	A: voice vote (3/8/95).
H. Res. 109 (3/8/95)	MC			PQ: 234–191 A: 247–181 (3/9/95).
H. Res. 115 (3/14/95)	MO	H.R. 1159	Making Emergency Supp. Approps	A: 242–190 (3/15/95).
H. Res. 116 (3/15/95)	MC	H.J. Res. 73	Term Limits Const. Amdt	A: voice vote (3/28/95).
H. Res. 117 (3/16/95)	Debate	H.R. 4	Personal Responsibility Act of 1995	A: voice vote (3/21/95).
H. Res. 119 (3/21/95)	MC			A: 217–211 (3/22/95).
H. Res. 125 (4/3/95)	O	H.R. 1271	Family Privacy Protection Act	A: 423–1 (4/4/95).
H. Res. 126 (4/3/95)	O	H.R. 660	Older Persons Housing Act	A: voice vote (4/6/95).
H. Res. 128 (4/4/95)	MC	H.R. 1215	Contract With America Tax Relief Act of 1995	A: 228–204 (4/5/95).
H. Res. 130 (4/5/95)	MC	H.R. 483	Medicare Select Expansion	A: 253–172 (4/6/95).
H. Res. 136 (5/1/95)	O	H.R. 655	Hydrogen Future Act of 1995	A: voice vote (5/2/95).
H. Res. 139 (5/3/95)	O	H.R. 1361	Coast Guard Auth. FY 1996	A: voice vote (5/9/95).
H. Res. 140 (5/9/95)	O	H.R. 961	Clean Water Amendments	A: 414–4 (5/10/95).
H. Res. 144 (5/11/95)	O	H.R. 535	Fish Hatchery—Arkansas	A: voice vote (5/15/95).
H. Res. 145 (5/11/95)	O	H.R. 584	Fish Hatchery—Iowa	A: voice vote (5/15/95).
H. Res. 146 (5/11/95)	O	H.R. 614	Fish Hatchery—Minnesota	A: voice vote (5/15/95).
H. Res. 149 (5/16/95)	MC	H. Con. Res. 67	Budget Resolution FY 1996	PQ: 252–170 A: 255–168 (5/17/95).
H. Res. 155 (5/22/95)	MO	H.R. 1561	American Overseas Interests Act	A: 233–176 (5/23/95).
H. Res. 164 (6/8/95)	MC	H.R. 1530	Nat. Defense Auth. FY 1996	PQ: 225–191 A: 233–183 (6/13/95).
H. Res. 167 (6/15/95)	O	H.R. 1817	MilCon Appropriations FY 1996	PQ: 223–180 A: 245–155 (6/16/95).
H. Res. 169 (6/19/95)	MC	H.R. 1854	Leg. Branch Approps. FY 1996	PQ: 232–196 A: 236–191 (6/20/95).
H. Res. 170 (6/20/95)	O	H.R. 1868	For. Ops. Approps. FY 1996	PQ: 221–178 A: 217–175 (6/22/95).
H. Res. 171 (6/22/95)	O	H.R. 1905	Energy & Water Approps. FY 1996	A: voice vote (7/12/95).
H. Res. 173 (6/27/95)	C	H.J. Res. 79	Flag Constitutional Amendment	PQ: 258–170 A: 271–152 (6/28/95).
H. Res. 176 (6/28/95)	MC	H.R. 1944	Emer. Supp. Approps	PQ: 236–194 A: 234–192 (6/29/95).
H. Res. 185 (7/11/95)	O	H.R. 1977	Interior Approps. FY 1996	PQ: 235–193 D: 192–238 (7/12/95).
H. Res. 187 (7/12/95)	O	H.R. 1977	Interior Approps. FY 1996 #2	PQ: 230–194 A: 229–195 (7/13/95).
H. Res. 188 (7/12/95)	O	H.R. 1976	Agriculture Approps. FY 1996	PQ: 242–185 A: voice vote (7/18/95).
H. Res. 190 (7/17/95)	O	H.R. 2020	Treasury/Postal Approps. FY 1996	PQ: 232–192 A: voice vote (7/18/95).
H. Res. 193 (7/19/95)	C	H.J. Res. 96	Disapproval of MFN to China	A: voice vote (7/20/95).
H. Res. 194 (7/19/95)	O	H.R. 2002	Transportation Approps. FY 1996	PQ: 217–202 (7/21/95).
H. Res. 197 (7/21/95)	O	H.R. 70	Exports of Alaskan Crude Oil	A: voice vote (7/24/95).
H. Res. 198 (7/21/95)	O	H.R. 2076	Commerce, State Approps. FY 1996	A: voice vote (7/25/95).
H. Res. 201 (7/25/95)	O	H.R. 2099	VA/HUD Approps. FY 1996	A: 230–189 (7/25/95).
H. Res. 204 (7/28/95)	MC	S. 21	Terminating U.S. Arms Embargo on Bosnia	A: voice vote (8/1/95).
H. Res. 205 (7/28/95)	O	H.R. 2126	Defense Approps. FY 1996	A: 409–1 (7/31/95).
H. Res. 207 (8/1/95)	MC	H.R. 1555	Communications Act of 1995	A: 255–156 (8/2/95).
H. Res. 208 (8/1/95)	O	H.R. 2127	Labor, HHS Approps. FY 1996	A: 323–104 (8/2/95).
H. Res. 215 (9/7/95)	O	H.R. 1594	Economically Targeted Investments	A: voice vote (9/12/95).
H. Res. 216 (9/7/95)	MO	H.R. 1655	Intelligence Authorization FY 1996	A: voice vote (9/12/95).
H. Res. 218 (9/12/95)	O	H.R. 1162	Deficit Reduction Lockbox	A: voice vote (9/13/95).
H. Res. 219 (9/12/95)	O	H.R. 1670	Federal Acquisition Reform Act	A: 414–0 (9/13/95).
H. Res. 222 (9/18/95)	O	H.R. 1617	CAREERS Act	A: 388–2 (9/19/95).
H. Res. 224 (9/19/95)	O	H.R. 2274	Natl. Highway System	PQ: 241–173 A: 375–39–1 (9/20/95).
H. Res. 225 (9/19/95)	MC	H.R. 927	Cuban Liberty & Dem. Solidarity	A: 304–118 (9/20/95).
H. Res. 226 (9/21/95)	O	H.R. 743	Team Act	A: 344–66–1 (9/27/95).
H. Res. 227 (9/21/95)	O	H.R. 1170	3-Judge Court	A: voice vote (9/28/95).
H. Res. 228 (9/21/95)	O	H.R. 1601	Internatl. Space Station	A: voice vote (9/27/95).
H. Res. 230 (9/27/95)	C	H.J. Res. 108	Continuing Resolution FY 1996	A: voice vote (9/28/95).
H. Res. 234 (9/29/95)	O	H.R. 2405	Omnibus Science Auth.	A: voice vote (10/11/95).
H. Res. 237 (10/17/95)	MC	H.R. 2259	Disapprove Sentencing Guidelines	A: voice vote (10/18/95).
H. Res. 238 (10/18/95)	MC	H.R. 2425	Medicare Preservation Act	PQ: 231–194 A: 227–192 (10/19/95).
H. Res. 239 (10/19/95)	C	H.R. 2492	Leg. Branch Approps	PQ: 235–184 A: voice vote (10/31/95).
H. Res. 245 (10/25/95)	MC	H. Con. Res. 109	Social Security Earnings Reform	PQ: 228–191 A: 235–185 (10/26/95).
		H.R. 2491	Seven-Year Balanced Budget	
H. Res. 251 (10/31/95)	C	H.R. 1833	Partial Birth Abortion Ban	A: 237–190 (11/1/95).
H. Res. 252 (10/31/95)	MO	H.R. 2546	D.C. Approps.	A: 241–181 (11/1/95).
H. Res. 257 (11/7/95)	C	H.J. Res. 115	Cont. Res. FY 1996	A: 216–210 (11/8/95).
H. Res. 258 (11/8/95)	MC	H.R. 2586	Debt Limit	A: 220–200 (11/10/95).
H. Res. 259 (11/9/95)	O	H.R. 2539	ICC Termination Act	A: voice vote (11/14/95).
H. Res. 261 (11/9/95)	C	H.J. Res. 115	Cont. Resolution	A: 223–182 (11/10/95).
H. Res. 262 (11/9/95)	C	H.R. 2586	Increase Debt Limit	A: 220–185 (11/10/95).
H. Res. 269 (11/15/95)	O	H.R. 2564	Lobbying Reform	A: voice vote (11/16/95).
H. Res. 270 (11/15/95)	C	H.J. Res. 122	Further Cont. Resolution	A: 229–176 (11/15/95).
H. Res. 273 (11/16/95)	MC	H.R. 2606	Prohibition on Funds for Bosnia	A: 239–181 (11/17/95).
H. Res. 284 (11/29/95)	O	H.R. 1788	Amtrak Reform	A: voice vote (11/30/95).
H. Res. 287 (11/30/95)	O	H.R. 1350	Maritime Security Act	A: voice vote (12/6/95).
H. Res. 293 (12/7/95)	C	H.R. 2621	Protect Federal Trust Funds	PQ: 223–183 A: 228–184 (12/14/95).
H. Res. 303 (12/13/95)	O	H.R. 1745	Utah Public Lands.	
H. Res. 309 (12/18/95)	C	H. Con. Res. 122	Budget Res. W/President	PQ: 230–188 A: 229–189 (12/19/95).
H. Res. 313 (12/19/95)	O	H.R. 558	Texas Low-Level Radioactive	A: voice vote (12/20/95).
H. Res. 323 (12/21/95)	C	H.R. 2677	Natl. Parks & Wildlife Refuge	Tabled (2/28/96).
H. Res. 366 (2/27/96)	MC	H.R. 2854	Farm Bill	PQ: 228–182 A: 244–168 (2/28/96).
H. Res. 368 (2/28/96)	O	H.R. 994	Small Business Growth	
H. Res. 371 (3/6/96)	C	H.R. 3021	Debt Limit Increase	A: voice vote (3/7/96).
H. Res. 372 (3/6/96)	MC	H.R. 3019	Cont. Approps. FY 1996	PQ: voice vote A: 235–175 (3/7/96).
H. Res. 380 (3/12/96)	MC	H.R. 2703	Effective Death Penalty	A: 251–157 (3/13/96).
H. Res. 384 (3/14/96)	MC	H.R. 2202	Immigration	PQ: 233–152 A: voice vote (3/21/96).
H. Res. 386 (3/20/96)	C	H.J. Res. 165	Further Cont. Approps	PQ: 234–187 A: 237–183 (3/21/96).
H. Res. 388 (3/20/96)	C	H.R. 125	Gun Crime Enforcement	A: 244–166 (3/22/96).
H. Res. 391 (3/27/96)	C	H.R. 3136	Contract w/America Advancement	
H. Res. 392 (3/27/96)	MC	H.R. 3103	Health Coverage Affordability	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; D-defeated; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from New York, my chairman and my good friend, for his kind words.

Mr. Speaker, we have very serious concerns about this rule and about the bill that makes in order the so-called Contract With America Advancement Act. This legislation provides for an increase in the public debt limit to $5.5 trillion, but it also includes three measures that are completely unrelated to the debt limit: a bill increasing the Social Security earnings limit, a conference report on the so-called Line Item Veto Act, and a new version of regulatory reform legislation entitled the Small Business Growth and Fairness Act.

The rule before us continues the disturbing trend under the Republican majority of disregarding normal legislative procedures and unreasonably restricting debate. This is a closed rule. No amendments are in order except one that the gentleman from Texas [Mr. ARCHER] is permitted to offer. When the Committee on Rules met last night on this matter, the committee allowed this amendment without knowing what

it would be. We hope it is a good amendment.

The rule also sets up a highly unusual procedure, which the gentleman from New York [Mr. SOLOMON] described a few minutes ago, for disposing of the Line Item Veto Act. The rule provides that if the other body approves the conference report on this bill before Saturday and the House passes H.R. 3136, the conference report shall be sent to the President as a free-standing bill.

Because the Senate approved the conference report last night, that part of this bill will in fact be separated upon passage of this legislation. We believe it is unnecessary and unwise to construct final action on the Line Item Veto Act in this convoluted manner. There is no good reason why this matter should not be considered in the same way other conference reports are normally considered; that is, as free-standing legislation and without reference to action by the other body. For that matter, there is no good reason why any of the extraneous legislation included in this increase in the debt limit must be included.

□ 1100

While we understand that the inclusion of the three bills here reflects an agreement, reached between the President and the Republican leadership in both Houses of the Congress, we regret that is the case. We think it would have been much more responsible and appropriate for us to consider a simple, straightforward debt limit increase. The raising of the debt limit is an extremely urgent matter, as we all know. We have to do it very soon to prevent a Government default. The fact this very necessary legislation is encumbered with unrelated controversial matters will cause, unfortunately, some of us who otherwise would support raising the debt limit to instead vote against it.

In the Committee on Rules last night, we offered an amendment to make in order a clean debt limit increase. Unfortunately, Mr. Speaker, our amendment was defeated on a party line vote, as were several other amendments we offered that would have given the House more choices in the outcome of this important legislation.

Mr. Speaker, the most troubling portion of this legislation, in my view, is the Line Item Veto Act conference report. While we all agree that reducing Federal budget deficits is one of the most important tasks facing us, many of us do not believe that providing the President with the extraordinary new authority contained in the Line Item Veto Act will do much, if anything, to help us achieve that goal.

What this legislation will do is transfer power from Congress to the President and enhance the power of a minority in Congress to override the will of a majority on matters of spending priorities. Under this legislation, the President's cancellation of line items in appropriations, which includes not only items listed in bills but also in committee reports and joint statements of managers or direct spending or targeted tax benefits, would automatically take effect unless Congress specifically passes a resolution disapproving the cancellation. If Congress overturns the President's action, the President could then veto the disapproval, which, in turn, would have to be overridden by two-thirds of both Houses. Thus the President would be empowered to cancel any such item with the support of only a minority of Members of either House. A one-third plus 1 minority, working with the President, would control spending.

This procedure would result in a dramatic and quite possibly unconstitutional shift in responsibility and power from the legislative branch to the executive branch. This broad shift of powers could easily lead to abuses. The President could target the rescissions against particular legislators or particular regions of the country or against the judicial branch. This power could be used to force Congress to pay for a pet Presidential project that a majority of Members oppose or to agree to a policy that is completely unrelated to budgetary matters.

Furthermore, we would be transferring this unprecedented amount of power to the President with little reason to believe that it would have much of an effect on the Federal budget deficit. This new line item veto would be used primarily for annually appropriated discretionary spending. However, discretionary spending, as Members know, which accounts for less than one-third of the budget, is already the most tightly controlled type of spending, since it is subject to strict caps. It has been declining both as a percentage of the total Federal budget and as a percentage of GDP for the last several years. It will continue to do so into the foreseeable future.

Additional controls in this area of the budget will not accomplish much, if anything, in the way of deficit reduction. In fact, discretionary spending is an area of the budget where Presidents have wanted more spending than Congress has approved. According to the Office of Management and Budget, from 1982 to 1993, Congress appropriated $59 billion less than the President had requested.

In addition, over the last 20 years, Congress has rescinded $20 billion more than the President has requested in rescissions. If those patterns continue and the President is given greater leverage in the appropriations process, it is likely that he will use this new line item veto authority as a threat to secure appropriations for programs he wants funded rather than to reduce total amount of spending.

I would also like to point out that the legislation is unlikely to accomplish what its advocates claim it will in the way of including special-interest targeted tax benefits under this new authority. That is because the bill allows the Joint Tax Committee, which is controlled by the House and Senate tax-writing committees, to determine what provisions in the bill constitute a targeted tax benefit before it is sent to the President. Thus it is highly unlikely that many special-interest tax benefits, if any at all, will be subject to the line item veto authority.

For all of these reasons, Mr. Speaker, if the House moves forward with approval of this line item veto authority, I believe even the measure's most ardent supporter will in time come to regret it.

The other troubling piece of this package, at least in this Member's view, is the increase in the Social Security earnings limits for recipients aged 65 to 69. While this legislation is extremely popular, I believe it moves in the wrong direction in terms of what we need to accomplish to control spending, and perhaps it is more than a little ironic that it is coupled with the line item veto in this piece of legislation. This part of the legislation would increase Social Security benefits, already our Nation's most expensive entitlement program by far, by an estimated $7 billion over the next 7 years alone. Most of that benefit increase also, most, would go to relatively well-off recipients while some of the spending cuts used to pay for those benefit increases would fall on those of more modest means.

In addition, the legislation would take a giant step toward turning Social Security retirement benefits into a reward for turning age 65 rather than insurance against the loss of income that comes with retirement, as the Social Security system was designed to provide. We ought to consider very carefully whether that kind of change is wise, particularly when we know we are facing a huge shortfall in the funds that will be needed to pay existing levels of benefits when the large baby-boom generation reaches retirement age in the early part of the next century.

Finally, Mr. Speaker, although many of us on this side of the aisle would have greatly preferred a rule providing for a straightforward debt limit extension, we believe that if this legislation is going to be encumbered with extraneous matters that are a priority to our Republican Members, then the rule also ought to permit us to at least consider one legislative priority from this side of the aisle as well. One of our highest priorities is increasing the minimum wage,

So, at the end of this debate, we shall move, Mr. Speaker, to defeat the previous question so that we may amend the rule to provide for consideration of an amendment that would raise the minimum wage in two steps to $5.15 an hour.

Mr. Speaker, I reserve the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I would say to my good friend, first of all, this line-item veto does not apply to just the small portion of the budget dealing with discretionary spending. The conference final report expanded that to include all entitlement programs, including food stamps. It includes the entire budget.

Second, the gentleman complains that there are extraneous matters in this bill other than the debt ceiling; namely, Social Security, repeal of penalties and the line-item veto and regulatory relief. And yet, in their trying to defeat the previous question, they will add further extraneous material. That I do not understand.

Mr. Speaker, I yield 3½ minutes to the gentleman from Sanibel, FL [Mr. GOSS], one of the most respected and hardest-working Members of this body. He is a member of the Committee on Rules and also a tremendous help as a conferee on the line-item veto measure.

(Mr. GOSS asked and was given permission to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, this is a fair rule for business at hand that allows the House to approve necessary legislation to preserve the full faith and credit of the United States—while keeping important promises to the American people. I confess, I am extremely uncomfortable voting for an extension of the debt ceiling. An offer of extended credit is a false favor to someone who is having trouble paying the bills. And the same holds true for the national budget—higher debt limits simply postpone and exacerbate the inevitable pain of paying the bill. We have a moral obligation to break the cycle of debt. Of course we know that decades of neglect cannot be reversed overnight. But that does not mean we should not spend every day moving in that direction. Although President Clinton torpedoed our effort to lock in this year a glidepath to balance in 7 years, the drive toward a balanced budget is continuing. Our new majority has already saved billions of dollars in this year's spending cycle alone. We've crafted positive reforms to preserve and strengthen our national safety net—while shrinking the size and reach of the Federal bureaucracy. We've made tough choices to secure our children's future—and we are not going to be sidetracked by President Clinton's overactive veto pen. We all know the pen is filled with red ink, just like his budget pen. Mr. Speaker, I will vote for this debt ceiling increase—but only because we are finally on the right track toward a balanced budget and fiscal sanity. I hope next time we vote on the debt limit we will be voting to lower the ceiling, nor raise it. Thankfully, there is good news in this bill—items that represent promises kept to America. With this bill we will be implementing the line-item veto, a major deficit cutting tool that we are delegating to the President in the interest of saving the taxpayers money. After more than a year of hard work, the conference has completed an agreement to grant the President real, effective and carefully defined line-item veto authority over spending and tax bills.

This historic delegation of power will be a significant new weapon in our arsenal as we fight for deficit reduction. It is not a matter of the President pitted against the Congress. It is a matter of the two branches of government working together to ensure wise management of the Nation's finances. For the first time, the bias will shift away from spending and toward saving. Americans understand that big spending and tax bills often get signed into law, carrying with them provisions of questionable national merit that might not stand on their own. The line-item veto allows the President to zero in on these items and bring them to the light of day. That is just the kind of accountability we so desperately need in the Federal budget process to bring our spending under control. Finally, Mr. Speaker, I am delighted that this legislation includes the Senior Citizens' Right to Work Act, legislation to increase, to restore some fairness to our Tax Code for seniors. I take my hat off to the gentleman from Kentucky [Mr. BUNNING] for the incredible work he has done on that, as well. The Social Security earnings limit is a dinosaur—and it discriminates mightily against those seniors who want to be productive. This is a long-overdue first step toward the ultimate goal of repealing the unfair restriction altogether. Support this rule and the bill.

I take my hat off to the gentleman from New York [Mr. SOLOMON], the chairman, and the gentleman from Pennsylvania [Mr. CLINGER], the chairman, and the gentleman from Massachusetts [Mr. BLUTE], for the extraordinary work they did in prevailing in the conference on this version we are passing today.

Mr. BEILENSON. Mr. Speaker, I yield 2 minutes to the gentlewoman from California [Ms. WOOLSEY].

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I strongly urge my colleagues to reject this unfair rule. If we are going to attach unrelated items to this debt limit extension, then I believe the working people of America deserve to know why the Gingrich Republicans will not allow the House to vote on an amendment that would increase the minimum wage.

What is the majority so afraid of? Why are they in opposition to paying working parents enough, enough to support their families and enough to take care of their kids?

Clearly, Mr. Speaker, the new majority knows that if it came to a vote, it would be next to impossible for Members of this House to deny the fact that the 10 million minimum wage earners in this country deserve a raise.

Mr. Speaker, in light of the fact that April 1 will mark the 5-year anniversary of the last time this House approved an increase in the minimum wage, the truth is the minimum wage has significantly lost its value and it keeps families in poverty.

Mr. Speaker, it is time for this body to do something good for the working families of this country and to make work pay.

To my colleagues who care about working people in this country, I urge you to reject this rule and show the new majority that it is high time for an increase in the minimum wage.

Mr. BEILENSON. Mr. Speaker, I yield 1 minute to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Speaker, I rise in opposition to the rule because it denies a long-overdue opportunity to raise the minimum wage.

Yesterday the Committee on Rules rejected my request to offer an amendment to increase the minimum wage. They have left in the cold families who are working hard and playing by the rules and who are being left behind.

Think about it, the minimum wage today is $4.25 an hour. That means the approximate annual salary for a full-time minimum wage worker is $8,500, barely half the official poverty line for a family of four and below what people make on welfare. They would deny a 90-cent-an-hour increase. Imagine 90 cents. This, from people who make over $130,000 a year.

Members of Congress earned more during the Government shutdown than a full-time minimum wage worker earns in a single year.

America needs a raise. Reject this rule. Help hard-working families by putting more money in their paychecks.

□ 1115

Mr. SOLOMON. Mr. Speaker, I yield myself 30 seconds just to respond to the last two speakers, to say that yes, there is some merit in raising the minimum wage. I believe that it should be raised. But, just to give an example, I met with farmers from all over New York State yesterday, and we discussed that and how it would reflect on them. They said:

JERRY, if you can just give us some regulatory relief, in other words, so we don't have to spend so much of our money meeting all of these regulations, we certainly wouldn't object to a raise in the minimum wage.

Let the regulatory relief bills go through that we pushed for the last 2 years, and I think you would find some support.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. CLINGER], someone I have great respect for. The gentleman came to the body 18 years ago with me and is the chairman of the Committee on Government Reform and Oversight. He was the chairman of our conference for over a year on the line-item veto. If you want to

know why his hair is a little grayer, it is because of that, I assure you. He did yeoman work. We could not be here today without BILL CLINGER.

Mr. CLINGER. Mr. Speaker, I thank the chairman for yielding time to me.

Mr. Speaker, I rise in strong support of this rule.

Mr. Speaker, we often engage in this body in hyperbole, some would say hot air. But I have got to say today we really are entitled to say this is a historic time we are engaged in. This bill we are going to be considering today is indeed a historic bill.

For years a lot of us have talked the talk about the line-item veto. But, unfortunately, we have been unable to bring it to the floor to get a vote. Today we are going to be able to walk the walk. So I am very delighted as chairman of the conference on the line-item veto to bring our product to this floor as part of the increase in the debt limit. I think it is absolutely appropriate that it should be considered as part of this increase in the debt limit.

Mr. Speaker, we are about to consider a bill that will increase the Federal debt limit to $5.5 trillion. That is $22,000 for every man, woman, and child in this country. We have got to find a better way to get control of this spending. What this bill will do is give the President a scalpel instead of a hacksaw to really deal with the enormous debt that we keep building up year after year after year and the deficits we run year after year. This is an enormous burden we have been imposing on the American people. This is the first serious effort to really provide an effective means to address this enormous problem.

I have to say we would not be here without the hard work of a lot of people. BOB DOLE, our nominee for President, was an inspiration and really was the driving force in getting us to resolve this conference and get an agreement with the White House on what could pass and be signed by the President. The gentleman from New York [Mr. SOLOMON] has been a tireless worker for this legislation for, as he said, 10 years and longer. The gentleman from Florida [Mr. GOSS], the gentleman from Massachusetts [Mr. BLUTE], the gentleman from Kentucky [Mr. BUNNING], all of whom served over this whole year on this conference, have just been invaluable in bringing us to this day. At times we did not think we would get an agreement because of determined opposition. Despite that tough opposition from people on both sides of the aisle and both sides of the Capitol, we have gotten an agreement.

Mr. Speaker, this is a good bill. I urge support for the line-item veto and for this bill.

Mr. BEILENSON. Mr. Speaker, I yield 5 minutes to the gentleman from Colorado [Mr. SKAGGS].

Mr. SKAGGS. Mr. Speaker, I thank the gentleman from California for the time.

Mr. Speaker, this is one of those occasions when every Member of this body should be mindful of the undertaking that we make at the beginning of every Congress to protect and defend the Constitution of the United States, because the line-item veto provision in this proposed bill runs absolutely in the face of that obligation.

The first words of the Constitution are, "All legislative powers herein granted shall be vested in a Congress of the United States." A few pages later, dealing with the President's responsibility with regard to legislation, the Constitution states as follows: "If he approves, he shall sign it,"—the bill— "but, if not, he shall return it with his objections."

Those are the basic parameters of the legislative responsibilities that we have under the Constitution and that the President has under the Constitution, and it is not in our power to change them. It is our responsibility in fact to respect and preserve them.

While the friends that we have across the ocean in Britain are having second thoughts these days about their monarchy, this line-item veto provision and its effect will be to start the gradual accretion of power in an American monarchy.

If we recall those grand words of the Declaration of Independence in which we protested the usurpation of power by King George, then mark my words, we will live to regard the usurpation of power that we invite by future Presidents of the United States if this provision becomes law.

Thank God that the courts will be there to do the right thing and find it, as it is, contrary to the Constitution.

The court has spoken to this point many times, but most recently and on point I think in the Chadha case, making it absolutely clear that the powers of neither branch with respect to the division and responsibility on legislation can be eroded.

What is even more bizarre in this particular proposal is the provision for the 5-day "cancellation" period. Now, think about that. This is a metaphysical leap of Herculean proportions.

The enactment provisions of the Constitution say that once the President signs a bill, it shall be law. We propose that he then gets a 5-day cancellation right after signing a bill? That is absolutely absurd. This defies any logical reading of the clear meaning of the Constitution with regard to these provisions.

But beyond the constitutional arguments, this proposal is fundamentally unwise, and it manifests a disrespect of our own responsibilities in this body under law and under the Constitution.

On the large issues, let us think back to what would have happened during the Reagan administration, with a President who, for his own reasons, sent budgets to this body zeroing out most categories of education funding in the Federal budget. Presumably, if that President had this power, it would be exercised to eliminate most education funding by the U.S. Government, and 34 Senators representing 9 percent of the people of this country, in league with the President, could have brought about that outcome.

Even more pernicious, and the invitation to usurpation that lies in this language can also be understood by going back to those days in the late eighties when we were still debating whether we would continue aid to the Contras. Now, if I happened to have been fortunate enough to have gotten, let us say, a provision in an appropriations bill for a needed post office or a needed courthouse in my district, and it was down at the White House awaiting signature at the same time we were debating aid to the Contras, I would guarantee you I would have gotten a call from someone at the White House saying, "Congressman, I notice you had some success in dealing with this need in your district. We are pleased at that, but we need your support on aid to the Contras."

That is exactly the kind of absolutely evil excess of power that we are inviting future Presidents to use. Pick your issue. That is one that comes to my mind.

It is clear that the Governors of the several States who have this power use it in exactly this way, to get their version of spending adopted in contradiction to the legislative judgment.

Mr. SOLOMON. Mr. Speaker, I yield myself 30 seconds to just say to my good friend that I suspect he protests too much. From Thomas Jefferson to Richard Nixon, Presidents had the right of rescission. If they did not want to spend the money because it was not necessary, they did not have to do it. Unfortunately for America, this Congress took that President to the Supreme Court, and the Supreme Court made him spend the money. That is what happened, and that is why we are in the fiscal mess we are in today. We are attempting to turn around a little bit of that.

Mr. Speaker, I yield 3 minutes to the gentleman from Southgate, KY, Mr. JIM BUNNING, someone I used to worship when I was growing up. He was a hero of mine because of his baseball prowess, throwing no-hitters and pitching shutouts. He is no less a hero today, especially for what he has done today on this line-item veto.

(Mr. BUNNING of Kentucky asked and was given permission to revise and extend his remarks.)

Mr. BUNNING of Kentucky. Mr. Speaker, the first bill I signed on when I came to Congress 9 years ago was the line-item veto, and, thank God, we are finally going to get it passed today. It has been a long time coming, but we have taken another major step in restoring fiscal responsibility to the budget process. Of course, I am talking about the line-item veto.

The line-item veto will allow the President to end, once and for all, that notion that Federal spending cannot be

controlled. As President Truman said, the buck will truly stop with the President. If he does not use that power that we give him, shame on him. I have been for this bill, by the way, when a Republican was in office, and now I am for it while a Democrat is in office.

Mr. Speaker, we are going to give the President the opportunity to restore the fiscal integrity of this Government and to end the era of pork-barrel spending. We all have spending needs in our States and districts, but we have a duty to the country not to bankrupt the Treasury. All spending is not the same. Alpine Ski slides in tropical locations and ice hockey warming huts are not of the same importance as people with adequate needs for post offices and courthouses.

Mr. Speaker, the bill before us is not perfect. We have worked hard to make something work that everyone can use, that is good for the American people. It was crafted in an effort to accommodate the concerns of the broadest cross-section of the Members of this House and the Senate.

I wish we had not gone down the road of applying the line-item veto to tax issues, but even on that issue we have tried to meet the concerns with the majority of this Congress. I hope and pray that everyone realizes that this line-item veto is in the best interest of the United States of America, and if in fact the courts look at this bill, as one of the prior speakers has talked about, that they will find how much the need is there for this and it will be ruled constitutional by the courts. We will let them decide. Let us just do our work and pass this bill today.

Mr. Speaker, it's been a long time in coming but we are about to take another major step toward restoring fiscal responsibility to the budget process. I am, of course, talking about finally giving the President the line-item veto.

The line-item veto will allow the President to end, once and for all, the notion that federal spending cannot be controlled. As President Truman said, the buck will truly stop with the President.

If he doesn't use the power that we give him, shame on him.

We are going to give him the opportunity to restore the fiscal integrity of this Government and end the era of the pork barrel.

We all have spending needs in our States and districts but we also have a duty to the country not to bankrupt the Treasury.

All spending is not the same. Alpine Ski slides in tropical locations and ice hockey warming huts are not of the same importance to the people as adequate post offices and courthouses.

The bill before us is not perfect but we have worked hard to make it something that will work for the American people.

It was crafted in an effort to accommodate the concerns of the broadest cross-section of the Members of the House and Senate.

I wish we had not gone done the road of applying the line-item veto to taxes. But, even on that issue we have tried to meet the concerns of the majority of our Members.

The line-item veto before us today will be criticized by some who think that it goes too far. Others will say that we did not do enough. That satisfies me that we did the right thing.

To those who wanted us to include more on taxes, I would simply remind them that our financial problems have not been caused by too few revenues but by too much spending.

In 1981, the year before the Reagan tax cut took effect, revenues were $599 billion and by 1993 revenues had grown to nearly $1.15 trillion., Even though revenues nearly doubled spending grew at an even faster pace.

To paraphrase President Reagan, the American people are not taxed too little, their Government spends too much.

Nonetheless, we recognized that there is the potential for abuse in the tax laws and we have taken adequate steps to address that problem.

The limited tax provisions which appear from time to time in a large tax bill and which under the Democrats were often targeted to a specific taxpayer are now going to be subject to the line-item veto.

That means that Congress will now specifically point out to the President what these provisions of limited benefit are and he can use the line-item veto on them.

The nonpartisan Joint Tax Committee will identify these limited tax provisions for the tax writing committees based on the definition in this bill. And we will clearly point to them in what we send to the President for his signature.

I feel confident that the President will see the good policy behind some of these very narrow tax breaks such as the orphan drug tax credit which provides a tax incentive for research into drugs for rare diseases.

But he can use his veto pen to make sure that no unfair tax breaks are given to one or just a few taxpayers as has happened from time to time.

I would also remind those who think that we should have gone farther on allowing the President to item veto tax provisions to remember that tax breaks allow people to keep their own money.

Spending provisions take money from one person's pocket to be used for someone else's benefit.

If that distinction isn't clear to you, I imagine that your constituents can help you see the light. They know whose money we are spending.

This is a good bill and by passing it we can keep one of our most important promises from the Contract With America. I urge my colleagues to support line-item veto.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in opposition to this rule and urge the House to defeat the previous question. My opposition to the rule is very simple: This rule denies that House an opportunity to consider an amendment to increase the minimum wage that was offered before the Rules Committee by my colleague, Representative DELAURO.

Some on the other side of the aisle will argue that a minimum wage increase is not germane to a bill increasing the debt limit. I remind my colleagues that the Republican leadership has chosen to load this bill with extraneous matters, including regulatory reform for small business, which is of questionable germaneness. The Republican leadership has deliberately decided not to allow this body to consider wage relief for the working poor.

Mr. Speaker, it is time for this House to give workers a raise, a raise that is long overdue. April 1 will mark the fifth anniversary of the last time the minimum wage was increased. The real wages of American workers have been declining for over two decades and the disparity between rich and poor in this country continues to grow. In terms of distribution of wealth, the United States has become the most unequal industrialized nation in the world. Increasing the minimum wage is one modest step toward addressing this problem.

The Republican leadership of this House enjoys the distinction of destroying the spirit of bipartisanship on so many issues, including the minimum wage. In 1989, for example, the minimum wage increase passed this body by a vote of 382 to 37, with 135 Republicans voting for the bill, and 89 to 8 in the Senate, with the support of 36 Republicans. In fact, Speaker GINGRICH, Senator DOLE, and my committee chairman, BILL GOODLING voted for the last increase. Regrettably, Republicans now appear too embarrassed to even allow this body to vote on that issue.

We often talk about how important it is to get people off welfare. If we are serious about that, if we really want to get people off welfare as opposed to just talking about it, there is one simple way to do that—to make work pay.

Recent studies suggest that 300,000 workers would be lifted out of poverty if the minimum wage were raised to $5.15 per hour. It is time to do something positive for the working poor.

Mr. Speaker, the vast majority of Americans support raising the minimum wage. It is unconscionable for the Republican leadership of this House to block the will of the American public.

Defeat this rule, defeat the previous question, allow us to consider increasing the minimum wage.

□ 1130

Mr. BEILENSON. Mr. Speaker, I yield 2 minutes and 45 seconds to the distinguished gentleman from Maryland [Mr. HOYER].

Mr. SOLOMON. Mr. Speaker, I yield 15 seconds to the gentleman from Maryland [Mr. HOYER].

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Maryland [Mr. HOYER] is recognized for 3 minutes.

Mr. HOYER. Mr. Speaker, let me say that the debt limit part of this bill should have been passed last year. It is another indication of the inability of the leadership of this House to get issues of fiscal importance to the floor in a timely fashion. The debt has been confronting us since September of last year and has placed at risk the good credit of the United States of America,

which in fact placed, therefore, the fiscal stability of the international community at risk.

Mr. Speaker, I will vote against this rule, and I will vote against it because it marries two issues, one which I very strongly support.

Finally, the Republican leadership has come to the extension of the debt until 1997, so that it will not be a political football but will be the recognition of fiscal responsibility.

It is late but welcomed. However, they have married to that bill a line item veto. It is a line item veto which the gentleman from Colorado, one of the previous speakers, has characterized as contrary to the provisions of the Constitution of the United States. I agree with that premise. I am hopeful that the courts will find this provision unconstitutional, because I believe with Senator BYRD and I would hope with at least some of my colleagues that this is a radical shift of authority from the people of the United States and their representatives to the Executive of the United States.

Now, I support an enhanced rescission. That is a device which would allow the President of the United States to take out of a piece of legislation and say to the American public, this item should not be passed but the bill should be passed. But then the enhanced rescission would say, we have to bring it back to the House in the full light of the American public's scrutiny in a democracy and pass it. But what it would not do is to give to the President the ability to have one-third plus one of a House say that I and I alone will top this from going into effect.

Mr. Speaker, that will be a radical shift of power. It is not surprising that we pass radical proposals in this Congress, of course, but the fact of the matter is it is bad policy. In my opinion, we will live to regret it.

It is ironic, indeed, that those who have waited 9 years, according to the gentleman from Kentucky, Mr. BUNNING, to see this legislation pass, propose today to have it delayed until January. If it is so important, why not now? Is it perhaps because President Clinton is a Democrat? I hope not.

Mr. SOLOMON. Mr. Speaker, I yield myself 45 seconds. I was proud to yield 15 to my good friend over there so he would have some time.

The President of the United States is a part of this agreement to make it January 1, 1997. That was what we call cooperation, bipartisanship.

Let me just say to my good friends, as I listened to the speakers up here, one after another get up and oppose this line-item veto, I look at the National Taxpayers Union and almost every one of them appear as the biggest spenders in the Congress. They used to be a majority, and they are the ones that drove this debt through the ceiling, $5 trillion.

It irritates me to have to stand up here today and vote to raise the debt ceiling by $500 billion when I voted for none of it, none of that debt.

Well, the reason I am going to vote for it is because we have a chance now to do something for the senior citizens, get rid of this heinous tax that is on Social Security now, on the earnings tax. We have a chance to do the line item veto, which is going to put a crimp in every one of these big spenders. There are not many left around here. Most of them got beat, but there are still a few and we are going to cut their spending off.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, the gentleman is not referring to me personally, I take it.

Mr. SOLOMON. No; absolutely not. I have great respect for my friend, although I will check the list to see if he is on it.

Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts [Mr. BLUTE], someone I have great respect for, from Shewsbury, MA. He has only been here now for about 3½ years. But let me tell my colleagues, he has been a leader on this line item veto. With him and some of the others, like the gentleman from New York [Mr. QUINN] and the gentleman from Delaware [Mr. CASTLE] and many others, the gentleman from Tennessee [Mr. DUNCAN], who is not here on the floor yet, but because of them, we have this line-item veto here now. He is a great American.

Mr. BLUTE. Mr. Speaker, I thank the chairman for his kind words. This is, as others have said, a very important day, a very exciting day because it means that this Government is going to make a break from the past and we are going to continue the process of turning the Federal ship of state away from deficits and debt and toward fiscal sanity and fiscal balance by giving the President of the United States the line-item veto authority. It is a major step forward in eliminating wasteful Federal spending.

In passing the conference report on S. 4, the Line-Item Veto Act, Congress is saying to the American people that we have listened to the call for fiscal responsibility. For more than a century, Presidents like Ronald Reagan have called for the line-item veto, but it took this Republican Congress to give it to a Democratic President in a true showing of bipartisanship.

Bipartisanship is exactly what has characterized this legislation from its inception. It passed the House on February 6, 1995, by the overwhelming vote of 294 to 134. All along, Members from both sides of the aisle have pushed this legislation toward this ultimate destination. In a process that took more than a year, the House and Senate conferees worked out the differences in two bills which could not have been more different. The product of that work is an extremely workable procedure that mirrors what the House has passed.

Congress has delegated to the President the very serious power to cancel individual spending items that are normally buried in appropriations bills. However, we did not stop there. This conference report expands the line-item veto to include direct spending and limited tax benefits that cost the American taxpayers more in some cases than appropriations bills. Unlike other attempts at rescissions legislation, the emphasis in this conference report is on deficit reduction and not spending.

Mr. Speaker, the President will be able to cancel individual spending items, increases in direct spending and limited tax benefits. Congress must then pass a bill to disapprove of those cancellations and affirm it wants to spend the money. The President can veto the disapproval legislation and Congress must override by a two-thirds majority. Make no mistake about it, this is a powerful tool of fiscal accountability.

When the Congress cannot muster the two-thirds to override the President, the total of the cancellations must be deposited in a lockbox. This mechanism will guarantee that a cancellation or rescission in spending cannot be used in another account. Instead, any savings must be used toward deficit reduction.

This line-item veto, Mr. Speaker, has been field tested in 43 States with very impressive results. It is common sensical. It works, It is what the American people want.

Let us continue the revolution of fiscal sanity begun by the 104th Congress and give the President this fiscal tool.

Mr. Speaker, on a personal note, I would like to commend and thank the gentleman from Pennsylvania [Mr. CLINGER], the gentleman from New York [Mr. SOLOMON], the gentleman from Florida [Mr. GOSS], and the gentleman from Kentucky [Mr. BUNNING], for allowing me the extraordinary opportunity to serve with them on this historic conference report.

Mr. BEILENSON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, I thank the gentleman for yielding time to me.

The Contract With America Advancement Act: what a true abuse of the English language. If this is an advancement of the Contract With America, the one thing it demonstrates is that some of our Republican colleagues cannot tell backward from forward. Let us look at what is included in this great advancement of the Contract With America failed agenda.

Well, the first thing is an increase in the Social Security earnings limit. A laudable measure. So laudable that 411 Members of this body last year voted to approve it, and only four voted against it. Our seniors would have this Social Security earnings limit adjusted already if our Republican colleagues had advanced it at the beginning of this Congress instead of at this point.

What is the second item? Regulatory reform. Far different from the regulatory wreckage of the unilateral disarmament of our health and safety laws that they proposed last year. Again, if they had advanced this very modest regulatory reform, our small businesses across America would have had relief in 1995, not a promise in 1996. Finally and most important, it advances the contract through the line-item veto. What is the history of the line-item veto in this body?

Well, last February we took it up, and we considered it, and we approved it by a vote of 294 to 134. It is true that the version that is here before us today is improved, improved in part because at the time of that debate in February, my Republican colleagues rejected the sunset amendment that I proposed, and today they have incorporated that very amendment into this proposal.

The Speaker of the House came to the floor that night and he told us, and I quote: "You have a Republican majority giving to a Democratic President this year without any gimmicks an increased power over spending, which we think is important."

Unfortunately, he did not think it was important enough to appoint conferees for 6 months, or the President would have had this tool last year. What we have here is a Contract With America that is a flop, and this advancement act is a sop.

Mr. BEILENSON. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. Mr. Speaker, the vote we are about to have on this rule, on the previous question on the rule, will be a vote on whether or not we as Members of this body want to raise the minimum wage, whether we want to raise the minimum wage.

Mr. Speaker, all over America people are working hard. They are working overtime. They are working second jobs. They are working third jobs to make ends meet. They deserve a break. They deserve to have a government that is on their side, that will not stand in their way. But once again, we are here and the majority will not, the majority will not even allow us a vote on an issue to put more money in the pockets of Americans. That is what we are talking about, putting more money in the pockets of working people and families in this country.

Now, the minimum wage has not been raised since 1989. Back then two people who supported the raise were NEWT GINGRICH and BOB DOLE. But they are standing in the way today of helping working families. Mr. Speaker, when are my friends on this side of the aisle going to learn they cannot talk about family values if they are not going to value the family and they cannot move from welfare to work if they do not make work pay.

The minimum wage is not enough. It is less than $9,000 a year for a full-time worker. One cannot raise a family on that amount of money. There are literally millions of single parents in this country who are trying to do just that. Think about it. Could we raise a child or two children on that? It is a disgrace that people who make that choice to choose work over welfare, who work hard every single day, they try to set a good example for their kids, for their neighborhood, cannot lift themselves above the poverty line.

□ 1145

Now these are not kids we are talking about. We are talking about 60 percent of the people on the minimum wage are working women with children who work hard and deserve a raise. They do not come to this floor, do not come to this floor, I tell my colleagues, to tell us that it will cost jobs, because every study that has been done over the last few years, from California to the studies that were done in Pennsylvania and New Jersey, have indicated that there would not be a loss of jobs. In fact, some of the studies say that there would be an increase in jobs in this country if we, in fact, raise the minimum wage.

Mr. Speaker, that is why over a hundred economists, three Nobel laureates, have said raise the minimum wage. When the minimum wage goes up, everybody benefits. People who make a little bit more than the minimum wage will get a raise, people above them will get a raise, and what we will have is people circulating more money in the economy. People will be buying more at the grocery store, they will be buying more at the hardware store. It will create a dynamic where people will have more money in their pockets, and they will be spending money, and they will help the economy in general.

Now over 12 million Americans would benefit right away from a 90-cent increase in the minimum wage, including about 42,000 people in my own State of Michigan alone.

Mr. Speaker, it has been 5 years since we raised the minimum wage. Its value, as I said at the beginning of my remarks, it at its 40-year low, 40-year low. Seventy percent of the American people in a recent poll say they support an increase in the minimum wage.

Now is the chance for my colleagues to stand up and face this issue head-on because here it is. This vote on the previous question on the rule is whether or not my colleagues are going to support having this made in order so we could vote on this important question and put money in the pockets of Americans today.

I urge my colleagues to vote "no" on the previous question so we can have the opportunity to raise this issue, and I thank my colleague for having yielded me this time.

Mr. SOLOMON. Mr. Speaker, I yield 1½ minutes to the gentleman from Tennessee [Mr. DUNCAN], who has led the fight for as long as I can remember, ever since he succeeded his father as a Congressman, and he has been a real leader on this.

(Mr. DUNCAN asked and was given permission to revise and extend his remarks.)

Mr. DUNCAN. Mr. Speaker, I rise in strong support of this bill which includes a very important provision—the line-item veto.

Mr. Speaker, I first want to thank my good friend, the gentleman from New York [Mr. SOLOMON], with whom I have worked so closely on this issue in the past, for yielding me this time.

Mr. Speaker, when we pass this legislation, I think there is no one in this House who will deserve more credit for it than the gentleman from New York, JERRY SOLOMON. I congratulate him for his work on this very important piece of legislation.

Mr. Speaker, on the first day of every Congress since I was elected in 1988, I have introduced a line-item veto bill that is almost identical to the provision that we are considering now.

While past Congresses have been unwilling to pass a line-item veto with real teeth in it, and in fact we passed one that the Wall Street Journal in 1993 called a voodoo line-item veto bill, I am pleased that today we are on the verge of approving a line-item veto that will truly be effective in reducing pork barrel spending.

In fact, the other body overwhelmingly passed this provision yesterday by a vote of 69 to 31.

Mr. Speaker, this is not a partisan issue. Forty-three of our Nation's Governors, both Democratic and Republican, already have the line-item veto and are using it to cut spending in their States and balance their budgets.

It is time for Congress to give this same tool to the President, so that he can eliminate the most outrageous examples of wasteful and unnecessary spending without vetoing entire appropriation bills.

The General Accounting Office estimated in 1992 that more than $70 billion of pork-barrel spending could have been cut between 1984 and 1989 if Presidents Reagan and Bush had had a line-item veto.

The Cato Institute estimates that $5 to $10 billion a year could be saved with a line-item veto.

In last year's State of the Union Address, President Clinton highlighted some of the most absurd examples of pork-barrel spending approved by the 103d Congress, and said "If you give me the line-item veto, I will remove some of that unnecessary spending."

Mr. Speaker, I wish we did not need such things as a balanced-budget amendment and a line-item veto to bring our Federal spending under control.

Unfortunately, however, Mr. Speaker, Congress has proven time and again that it does not have the will to cut spending on its own.

That is why this legislation is so very necessary today. If the Congress does not really want to cut spending, it will have to say so, and say so publicly.

Mr. Speaker, with a national debt of over $5 trillion, we simply cannot afford to withhold this important tool from the President any longer.

Former Senator Paul Tsongas, writing in the Christian Science Monitor a few months ago, said that if present trends continue, the young people of today will face average lifetime tax rates of an incredible 82 percent.

We must do something about this to give a good economic future to our children and grandchildren.

This will not solve our problems by itself, but it will be a big step in the right direction. I urge passage of this very important legislation.

Mr. SOLOMON. Mr. Speaker, I yield 45 seconds to the gentleman from Harrisburg, PA [Mr. GEKAS].

(Mr. GEKAS asked and was given permission to revise and extend his remarks.)

Mr. GEKAS. I thank the gentleman for yielding this time to me.

Mr. Speaker, when I first ran for the Congress many years ago, I ran on a platform that included 10 separate items, much like the Contract With America. One of them, much like the Contract With America, was to advance the cause of line-item veto. My own Commonwealth, Pennsylvania, had enjoyed since its constitutional existence long time ago that privilege on the part of the Governor, the chief executive. I wanted, as part of my campaign for election to the Congress, to try to transfer that responsibility to the Chief Executive of the United States.

We are at the threshold now of accomplishing one of my points of my own personal Contract With America. Second, another point, regulatory flexibility with judicial review is also at hand with this vote.

I urge support of the previous question.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

Let me simply advise Members that if the previous question is defeated, we will offer an amendment to the rule which would make in order the floor amendment to incrementally increase the minimum wage from its current $4.25 an hour to $5.15 an hour beginning on the Fourth of July 1997.

Mr. Speaker, I yield the balance of my time to the gentleman from Missouri [Mr. GEPHARDT], our distinguished minority leader.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Missouri is recognized for 1¾ minutes.

Mr. GEPHARDT. Mr. Speaker, Members of the House, I urge my colleagues to vote against the previous question so that we can add an amendment to this bill that will increase the minimum wage. I simply want to say that wages, decent wages, are a family value. People who earn the minimum wage today earn a little over $8,000 a year. The minimum wage has not been increased in 5 years. It is a 40-year low. One-third of the people on the minimum wage are the sole wage earner in their family. It will not cost jobs, as some have asserted.

I met a woman in my district the other day, a single mother with 2 minimum wage jobs. She told me she was worried that her kids would not be a victim of a crime; she was worried they would perpetrate crimes. People cannot spend time with their family if they do not earn a decent wage.

I urge Members to vote against this previous question, and I say to my friends on the other side, "You've not heard the last of the minimum wage. I suspect we won't prevail on this vote. But we are going to bring it back and back and back and back until we finally prevail for America's families and workers."

Mr. SOLOMON. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from New York is recognized for 3 minutes.

Mr. SOLOMON. Mr. Speaker, let me say to my good friend, the minority leader, who I have great respect for, I just cannot help but feel that there are some political games being played here. As my colleagues know, written into this rule was a little provision that said during the time after the Committee on Rules finished meeting last night, and while Mr. Panetta or the President were meeting with our Republican leadership, they could have negotiated to add anything into this bill, anything. That was not even mentioned once, this business of the increasing the minimum wage. Where this has come from I do not know, but I just suspect it is political games.

So let us just do away with that, and let me just in closing give my colleagues a little bit of history because it is kind of interesting, especially when we consider the word BYRD from West Virginia, something to do with the other body. As my colleagues know, in 1876; that was 120 years ago, Representative Charles Falken of West Virginia—remember him, George; was the gentleman here then?—came to the floor of this House and introduced a bill granting the President the authority to veto individual items in spending measures. Can my colleagues imagine that 120 years ago, a Representative from West Virginia? Boy, how times change over 120 years.

When I first came to this Congress 17 years ago, one of the first bills I introduced was the line-item veto. We have been waiting 17 years. In 1980, when Ronald Reagan entered the White House and asked Congress to grant him line-item veto authority, that was 16 years ago. In 1994 the Republican candidates for the House of Representatives all across this great country campaigned on a promise in the Contract With America that, if elected, they would pass a bill giving the President line-item veto, no matter who that President was, Republican, Democrat.

Mr. Speaker, I stand here today at the finish line of a race that has lasted 120 years, and I get so excited I can jump up and down. Today I stand with my Republican colleagues and a good number of Democrats. Wait and see most of the Democrats on that side of the aisle will vote to deliver a promise to the American people.

As a conferee on the line-item veto, I must submit that this historic moment is due in no small part to the efforts of our conference chairman, the gentleman from Pennsylvania [Mr. CLINGER], sitting right next to me, and that of the Senate majority leader, BOB DOLE. If BOB DOLE had not put his weight behind this, we never would have got it by many of those Senators who do not want to give up that power. They want to spend, spend, spend, but they did, thanks to BOB DOLE.

Mr. Speaker, I ask unanimous consent to include in the RECORD further explanatory information regarding the expedited procedures of congressional consideration of a Presidential message.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The statement referred to is as follows:

Mr. Speaker, in order to ensure that the provisions relating to the receipt and consideration of a cancellation message and a disapproval bill are clearly understood, I believe it is necessary to provide some further explanation.

Upon the cancellation of a dollar amount of discretionary budget authority, an item of direct spending or a limited tax benefit, the President must transmit to Congress a special message outlining the cancellation as required. When Congress receives this special message it shall be referred to the Committee on the Budget and the appropriate committee or committees of jurisdiction in each House. For example, the message pertaining to the cancellation of a dollar amount of discretionary budget authority from an appropriation law would be referred to the Committee on Appropriations of each House; a message pertaining to the cancellation of an item of direct spending would be referred to the authorizing committee or committees of each House from which the original authorization law derived. Any special message relating to more than one committee's jurisdiction, i.e., a cancellation message from a large omnibus law such as a reconciliation law, shall be referred to each committee of each House with the appropriate jurisdiction.

Every special message is referred to the Committees on the Budget of both the House and the Senate. This is due to the requirement in the bill that the President include in each special message certain calculations made by the Office of Management and Budget. These OMB calculations pertain to the adjustments made to the discretionary spending limits under section 601 and the pay-as-go balances under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as a result of the cancellation to which the special message refers.

Upon receipt in the House, each special message shall be printed as a document of the House of Representatives.

In order to assist Congress in assuring a vote of disapproval on the President's cancellation message, a series of expedited procedures are established for the consideration of a disapproval bill. A disapproval bill qualifies for these expedited procedures if it meets certain time requirements within an overall time period established for congressional consideration. The time clock for congressional consideration starts the first calendar day of session after the date on which the special message is received in the House and Senate. Congress has 30 calendar days of session in which to approve or disapprove under these expedited procedures of the President's action. A calendar day of session is defined as only those days in which both Houses of Congress are in session.

During this 30-day time period, a disapproval bill may qualify for these expedited procedures in both Houses. However, upon the expiration of this 30 day period a disapproval bill may no longer qualify for these expedited procedures in the House of Representatives. A disapproval bill may qualify at any time for the expedited procedures in the Senate.

If Congress adjourns sine die prior to the expiration of the 30-calendar day of session time period and a disapproval bill relating to a special message was at that time pending before either House of Congress or any committee thereof or was pending before the President, a disapproval bill with respect to the same message may be reintroduced within the first 5 calendar days of session of the next Congress. This reintroduced disapproval bill qualifies for the expedited procedures and the 30-day period for congressional consideration begins over.

In order for a disapproval bill to qualify for the expedited procedures outlined in this section it must meet two requirements. First, a disapproval bill must meet the definition of a disapproval bill. Second, the disapproval bill must be introduced in later than the 5th calendar day of session following the receipt of the President's special message. Any disapproval bill introduced after the 5th calendar day of session is subject to the regular rules of the House of Representatives regarding consideration of a bill.

It should be noted that the expedited procedures provide strict time limitations at all stages of floor consideration of a disapproval bill. The conferees intend to provide both Houses of Congress with the means to expeditiously reach a resolution and to foreclose any and all delaying tactics—including, but clearly not limited to: extraneous amendments, repeated quorum calls, motions to recommit, or motions to instruct conferees. The conferees believe these expedited procedures provide ample time for Congress to consider the President's cancellations and work its will upon them.

Any disapproval bill introduced in the House of Representatives must disapprove all of the cancellations in the special message to which the disapproval bill relates. Each such disapproval bill must include in the first blank space a list of the reference numbers for all of the cancellations made by the President in that special message.

Any disapproval bill introduced in the Senate may disapprove all or part of the cancellations in the special message to which the disapproval bill relates.

Any disapproval bill shall be referred to the appropriate committee or committees of jurisdiction. Any committee or committees of the House of Representatives to which such a disapproval bill has been referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction.

If any committee fails to report the disapproval bill within that period, it shall be in order for any Member of the House to move that the House discharge that committee from further consideration of the bill. However, such a notion is not in order after the committee has reported a disapproval bill with respect to the same special message. This motion shall only be made by a Member favoring the bill and only 1 day after the calendar day in which the Member offering the motion has announced to the House his intention to make such a motion and the form of which that motion takes. Furthermore, this motion to discharge shall only be made at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day in which the Member gives the House proper notice.

This motion to discharge shall be highly privileged. Debate on the motion shall be limited to not more than 1 hour and shall be equally divided between a proponent and an opponent. After completion of debate, the previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion was agreed to or not agreed to shall not be in order. It shall not be in order to consider more than one such motion to discharge pertaining to a particular special message.

After a disapproval bill has been reported or a committee has been discharged from further consideration, it shall be in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the disapproval bill. If the bill has been reported, the report on the bill must be available for at least one calendar day prior to consideration of the bill. All points of order, except that lying against the bill and its consideration for failure to comply with the one day layover, against the bill and against its consideration shall be waived. The motion that the House resolve into the Committee of the Whole shall be highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate on the disapproval bill shall be confined to the bill and shall not exceed 1 hour equally divided between and controlled by a proponent and an opponent of the bill. After completion of the 1 hour of general debate, the bill shall be considered as read for amendment under the 5-minute rule. Only one motion that the committee rise shall be in order unless that motion is offered by the manager of the bill.

No amendment shall be in order except any Member if supported by 49 other Members, a quorum being present, may offer an amendment striking the reference number or reference numbers of a cancellation or cancellations from the disapproval bill. This process allows Members the opportunity to narrow the focus of the disapproval bill striking references to cancellations they wish to overturn. A vote in favor of the disapproval bill is a vote to spend the money the President sought to cancel. A vote against the disapproval bill is a vote to agree with the President to cancel the spending.

No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. At the conclusion of consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without any intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

All appeals of decisions of the Chair relating to the application of the rules of the House of Representatives to this procedure for consideration of the disapproval bill shall be decided without debate.

It shall be in order to consider only one disapproval bill pertaining to each special message under these expedited messages except for consideration of a similar Senate bill. However, if the House has already rejected a disapproval bill with respect to the same special message as that to which the Senate bill refers, it shall not be in order to consider that bill.

In the event of disagreement between the two Houses over the content of a disapproval bill passed by both Houses, conferees should be promptly appointed and a conference on the disapproval bill promptly convened.

Upon conclusion of such a committee of conference it shall be in order to consider the report of such a conference provided such report has been available to the House for 1 calendar day excluding Saturdays, Sundays, or legal holidays, unless the House is in session on such a day, and the accompanying statement has been filed in the House.

Debate in the House of Representatives on the conference report and any amendments in disagreement on any disapproval bill shall be limited to not more than 1 hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate shall not be debatable. A motion to recommit the conference report shall not be in order and it shall not be in order to reconsider the vote by which the conference report is agreed to or disagreed to.

Mr. SOLOMON. Mr. Speaker, in closing I just would like to point out that President Ronald Reagan closed his autobiography entitled Ronald Reagan In American Life with these following paragraphs, which I cited in my 1 minute earlier today. He said:

"And yet, as I reflected on what we had accomplished, I had a sense of incompleteness, that there was still work to be done. We need a constitutional amendment to require a balanced budget," said Ronald Reagan, "and the President needs a line-item veto to cut out unnecessary spending."

Come over here and give Ronald Reagan another birthday present. Let us pass this line-item veto. Give it to

the President who has guaranteed, "I will sign it."

Come over here and vote for it.

Mr. DINGELL. Mr. Speaker, I rise in opposition to this rule.

We have just been informed that this closed rule self-executes into this debt limit bill a completely unrelated Senate-passed bill that will promote fraud by rogue operators posing as small businesses. This bill has not been reviewed by the House committees of jurisdiction, and the SEC strongly opposes it as drafted.

While I strongly support initiatives to aid small business development, this legislation includes provisions that gives preferential treatment to small businesses that engage in securities fraud. One section would require the SEC to adopt a program to reduce, or in some circumstances to waive, civil penalties for violations of statutes or rules by small entities. This would have the obvious effect of encouraging rogues and knaves to conduct unlawful activities through small-business shells in order to get off with a slap on the wrist or a free fraud. Mr. Speaker, this is outrageously bad public policy.

I ask unanimous consent to include in the RECORD a copy of a letter from the Chairman of the SEC outlining the problems with the small business bill.

I urge my colleagues to defeat this rule.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 27, 1996.

HON. JOHN D. DINGELL,
House of Representatives, Committee on Commerce, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN DINGELL: I am writing to express the views of the Securities and Exchange Commission ("SEC" or "Commission") regarding S. 942, the "Small Business Regulatory Enforcement Fairness Act of 1996." S. 942 recently passed the Senate and we understand that it may soon be considered by the House. Although the Commission is very supportive of fostering small business endeavors, it has serious concerns that the bill could have a negative impact on the Commission's enforcement program. The Commission's principal concerns are as follows:

The Commission is concerned about the provisions in S. 942 that suggest that preferential treatment should be afforded to small businesses that engage in violative conduct. Fraud is by no means confined to large entities: some of the most egregious securities frauds in recent years (*e.g.*, involving penny stocks, prime bank notes, and wireless cable) have been perpetrated by shell companies and other entities that could qualify as "small entities" under S. 942. In fact, nearly three-quarters of the firms in the securities industry could be considered "small entities." As a general matter, the Commission believes that rules involving market integrity should apply and be enforced equally as to all firms, large as well as small.

Another troubling provision in S. 942 would shift attorneys fees and other expenses to the Commission, even in cases where the Commission prevails in court, but where it fails to obtain the *full* relief it has sought. In order to protect investor funds from fraud and abuse, the SEC often must act with swift, decisive enforcement action against fraud or other misconduct. The requirements of S. 942 could serve to hamper the Commission's enforcement efforts as it seeks penalties or other appropriate relief from wrongdoers.

The Commission's enforcement program is well-recognized for its fairness. As a general practice, potential defendants are given the opportunity through "Wells" submissions to directly address the merits of proposed SEC enforcement actions before they are instituted by the Commission. In addition, pursuant to The Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Congress already requires the Commission to weigh various factors before seeking or imposing civil penalties. These include mitigating factors—such as the ability of the respondent to pay a penalty as well as its ability to continue in business. The Commission is concerned, however, that the imposition of S. 942's additional requirements could "tilt" the enforcement balance in favor of small firms, regardless of the damage that may be done to public investors.

The Commission has a record on small business issues that is second to none. In recent years, the Commission has created a new, simpler registration and disclosure regime for small businesses that seek to raise capital in the securities markets. It also has sought to expand the category of small businesses that are exempt from the registration and full disclosure requirements of the Exchange Act. Most recently, the Commission's Internal Task Force on Disclosure Simplification released a report recommending the elimination of numerous SEC regulations and forms, and proposing a variety of additional steps to ease the capital formation process for small businesses.

The Commission recognizes that still more can be done to reduce the regulatory burdens of small business, and we are committed to continuing our efforts in this area. However, while it is possible to streamline disclosure requirements for small business issuers without impairing market fairness, there is much less room to dilute or alter the regulatory and enforcement framework that applies to market professionals who handle investors' retirement funds and savings. In applying and enforcing rules relating to market integrity, the Commission believes that investor protection must come first.

The attached staff analysis discusses the issues raised by S. 942 in greater detail. We believe that the Commission's concerns can be easily met through appropriate exemptive provisions for the SEC. We ask your assistance in raising these issues on behalf of the Commission when S. 942 is considered by the House.

Sincerely,

ARTHUR LEVITT,
Chairman.

Attachment.

STAFF ANALYSIS OF EFFECTS OF S. 942 ON SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission ("SEC" or "Commission") has traditionally supported efforts to facilitate the capital formation process for small business. However, SEC staff is concerned that S. 942's proposals for small business regulatory reform sweep too broadly—that the bill could potentially impair regulatory and enforcement efforts that are crucial to the integrity of the securities markets, while imposing significant new costs upon the Commission.[1] This analysis focuses on parts of the bill that the Commission staff believes are the most troublesome.

SMALL BUSINESS ENFORCEMENT VARIANCE

Section 202 of S. 942 would require each agency to adopt a policy or program "to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties" for violations of statutes or rules by small entities. This section appears to be premised on the assumption that violations by medium-sized or large businesses should be penalized, but that violations by small businesses should be tolerated. This approach does not seem appropriate for the regulation of the securities markets, which depend on the exercise of professional judgment and self-vigilance by *all* market participants, regardless of size.[2]

As a threshold matter, it is important to recognize that serious fraud is not confined to large entities: some of the most egregious frauds in recent years (involving penny stocks, prime bank notes, and wireless cable) have involved firms that could qualify as "small entities" under S. 942. In addition, this enforcement philosophy would also be applied to non-scienter based securities violations that are equally critical to the integrity of the securities market, for example, broker-dealer capital requirements. Notably, in crafting rules such as the capital requirements, the Commission already considers the size and the nature of a broker-dealer's business; if a firm violates the requirements applicable to them, there is no reason to consider these matters in the enforcement context.

This provision already exempts matter relating to environmental health and safety; on additional exemption relating to securities violations would appear equally tenable.

In any event, the language of the general requirement of Section 202 suggests that the reduction of civil penalties for violations by small businesses in mandatory; at a minimum, this language should be changed to clarify that the agency has discretion to consider "appropriate circumstances" in determining whether to reduce civil penalties.

AMENDMENTS TO EQUAL ACCESS TO JUSTICE ACT

S. 942 would increase the ability of all qualifying litigants (and not just small businesses) to recover fees from agencies under the Equal Access to Justice Act ("EAJA"). Currently, EAJA permits litigants to recover attorney's fees and other expenses from an agency if the agency's position was not "substantially justified." S. 942 would expand the opportunities for such recovery by permitting the award of fees and expenses if the judgment or decision of the court or adjudicative officer is "disproportionately less favorable" to the SEC than the relief the SEC requested. In practical terms, this means that the SEC could "lose, even if it wins" in a lawsuit or other enforcement proceeding.

The changes to EAJA made by S. 942 would significantly increase the exposure of the Commission to fee awards, in at least two ways:

First, the SEC might have to pay EAJA fees even in cases that it wins, in the event that it does not obtain the full relief it initially sought. For example, in enforcement actions, the Commission frequently seeks to obtain an injunction against securities law violations. While the court could find that a violation has occurred, it might not award an injunction for other reasons—for example, if the defendant is too old, working in a different type of business, or has expressed remorse for the violation. In such situations, the court's final judgment may be "disproportionately less favorable" to the Commission than the relief requested for reasons wholly unrelated to the merits of the Commission's case.

Second, the SEC would be vulnerable to fee awards in cases where it loses central issues of fact or law, regardless of the reasonableness of the Commission's position. The Commission faces some litigation risk every time it brings an enforcement action. Enforcement cases for insider trading fraud, for example, generally require the Commission to

Footnotes at end of article.

piece together documentary evidence such as telephone records and securities trading patterns. If a jury or judge disagrees with the Commission's interpretation of the facts and exonerates a defendant, the Commission could be liable for EAJA fees, even if the Commission had reasonably interpreted the available evidence and sought relief that it believed was substantially justified by such evidence.

Similarly, adverse resolution of legal issues could subject the Commission to EAJA fee awards. Even the most settled interpretations of the securities laws are subject to dissenting approaches of judicial or adjudicatory decisionmakers. In a recent case, for example, the U.S. Court of Appeals for the Fourth Circuit refused to follow several other circuit courts that had long recognized a claim for fraudulent insider trading based on the misappropriation of material nonpublic information. *United States* v. *Bryan*, 58 F.3d 933 (4th Cir. 1995). In such situations of novel or unanticipated legal decisions, the adverse resolution of a central issue can remove any grounds for relief and subject the Commission to fee awards.[3]

Finally, the Commission often must act with swift, decisive enforcement action against fraud, particularly in cases where money may be moved quickly outside of the jurisdiction of a U.S. Court. The requirements of S. 942 would hamper the Commission's enforcement efforts by requiring it to evaluate the risks to its own funds before seeing penalties or other appropriate relief from wrongdoers.

Because the Commission could be liable for EAJA awards even when it prevails in a lawsuit, or when its position is reasonable,[4] the Commission opposes the EAJA provisions of S. 942.[5]

AMENDMENTS TO REGULATORY FLEXIBILITY ACT

S. 942 would amend the Regulatory Flexibility Act ("Reg. Flex. Act") to permit court challenge of the Commission's final regulatory flexibility analyses. Enacted in 1980, the Reg. Flex. Act currently requires the Commission to prepare regulatory flexibility analyses evaluating the economic impact of proposed SEC rules and rule changes on small businesses. The SEC takes seriously the Reg. Flex. Act requirements, and faithfully prepares the requisite analyses for every rulemaking action it takes. Nevertheless, the Act requires the Commission to predict future events—that is, the effects that new and untested rules will have on small businesses operating in ever-changing markets. Such predictions are intrinsically imprecise; the Commission cannot predict market forces and behavior in advance.

The Reg. Flex. Act amendments in S. 942 would enable small businesses to challenge in court the SEC's compliance with the Reg. Flex. Act. A small business might try to argue, for example, that the SEC did not adequately foresee the impact that a rule change would have on small businesses. As a result of such a challenge, a court could order the SEC to defer enforcement of the rule against small entities until the court completed its review of the challenge, unless the court were to find "good cause" for continuing the enforcement of the rule.

The amendments contained in S. 942 would thus make it possible for a party who opposes any Commission rule proposal to use the Reg. Flex. analysis (regardless of the care and effort taken in its preparation) as a pretext for litigation. Conceivably, even rules that reduce burdens or provide exemptions for businesses—large or small—could be subject to attack under the Reg. Flex. Act amendments on the grounds that the Commission did not foresee their potential impact on small businesses, even where the impact was shaped in large part by market shifts or economic forces. In any event, the Commission believes that, as a general matter, rules regulating market participants and relating to market integrity issues should apply equally to all firms, large as well as small.

CONGRESSIONAL REVIEW OF COMMISSION RULEMAKING

Title V of S. 942 permits Congress to override an agency's adoption of any rules. This legislative veto authority does not extend, however, to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee. Because the Commission's rules directly concern the integrity and efficiency of the securities markets, and are often closely tied to the stability of such markets, we believe that it is appropriate to accord the same exemption for SEC rules as is accorded to the Federal Reserve and the FOMC.[6]

FOOTNOTES

[1] Senator Bond has made notable efforts to narrow the scope of S. 942. However, the bill passed by the Senate continues to pose significant issues with respect to the Commission's enforcement and regulatory programs. This analysis outlines those concerns for the Commerce Committee.

[2] In fact, of the approximately 7600 broker-dealers registered with the Commission, over 5300 are small entities.

[3] Although the proposed EAJA amendments provide an exception from fee awards if the "party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances made an award of attorney's fees unjust," a court or administrative law judge probably could not make a finding of "willful violation" or bad faith action by the defendant if it determined that, even in a close case, its interpretation of the law or the facts did not permit the relief requested by the Commission.

[4] Under existing law, EAJA fees have not been imposed on the SEC when the court has found that there was a reasonable basis for the Commission's action. *See, e.g., SEC v. Switzer*, 590 F. Supp. 756 (W.D. Okla. 1984) (refusing to award EAJA fees, despite finding no securities law violation, because of reasonable basis for Commission's enforcement action).

[5] Even though the Commission by law forwards the civil penalties it obtains in enforcement actions to the U.S. Treasury, the Commission must pay EAJA fees directly out of its annual appropriation. Amendments to EAJA under S. 942 would further increase the burden on the Commission by increasing the fee rate for attorney's fees from $75 per hour to $125 per hour.

[6] Similar concerns arise regarding H.R. 994, a separate regulatory reform bill that is currently under consideration in the House. That bill would require the Commission to engage in a lengthy, costly and onerous review of all of its rules (even those involving market integrity), despite the substantial efforts the Commission has made in the past to tailor its rules to the changing conditions of the securities industry. A similar exception in H.R. 994 for the rules of the federal banking agencies should be extended to include the Commission.

Mr. SOLOMON. Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the "ayes" appeared to have it.

Mr. BEILENSON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the resolution, as amended.

The vote was taken by electronic device and there were—yeas 232, nays 180, not voting 19, as follows:

[Roll No. 97]

YEAS—232

Allard	Ganske	Myrick
Archer	Gekas	Neumann
Armey	Geren	Ney
Bachus	Gilchrest	Norwood
Baker (CA)	Gillmor	Nussle
Baker (LA)	Gilman	Oxley
Ballenger	Goodlatte	Packard
Barr	Goodling	Parker
Barrett (NE)	Goss	Paxon
Bartlett	Graham	Petri
Barton	Greenwood	Pombo
Bass	Gunderson	Porter
Bateman	Gutknecht	Portman
Bilbray	Hall (TX)	Pryce
Bilirakis	Hancock	Quillen
Bliley	Hansen	Quinn
Boehlert	Hastert	Radanovich
Boehner	Hastings (WA)	Ramstad
Bonilla	Hayes	Regula
Bono	Hayworth	Riggs
Brownback	Hefley	Roberts
Bryant (TN)	Heineman	Rogers
Bunn	Herger	Rohrabacher
Bunning	Hilleary	Ros-Lehtinen
Burr	Hobson	Roth
Burton	Hoekstra	Roukema
Buyer	Hoke	Royce
Callahan	Horn	Salmon
Calvert	Hostettler	Sanford
Camp	Houghton	Saxton
Campbell	Hunter	Scarborough
Canady	Hutchinson	Schaefer
Castle	Hyde	Schiff
Chabot	Inglis	Seastrand
Chambliss	Istook	Sensenbrenner
Chenoweth	Johnson (CT)	Shadegg
Christensen	Johnson, Sam	Shaw
Chrysler	Jones	Shays
Clinger	Kasich	Shuster
Coble	Kelly	Skeen
Coburn	Kim	Smith (MI)
Collins (GA)	King	Smith (NJ)
Combest	Kingston	Smith (TX)
Cooley	Klug	Solomon
Cox	Knollenberg	Souder
Crane	Kolbe	Spence
Crapo	LaHood	Stearns
Cremeans	Largent	Stenholm
Cubin	Latham	Stockman
Cunningham	LaTourette	Stump
Davis	Laughlin	Talent
Deal	Leach	Tate
DeLay	Lewis (CA)	Tauzin
Diaz-Balart	Lewis (KY)	Taylor (NC)
Dickey	Lightfoot	Thomas
Doolittle	Linder	Thornberry
Dornan	Livingston	Tiahrt
Dreier	LoBiondo	Torkildsen
Duncan	Longley	Torricelli
Dunn	Lucas	Upton
Ehlers	Manzullo	Vucanovich
Ehrlich	Martini	Waldholtz
Emerson	McCollum	Walker
English	McCrery	Walsh
Ensign	McDade	Wamp
Everett	McHugh	Watts (OK)
Ewing	McInnis	Weldon (FL)
Fawell	McIntosh	Weller
Fields (TX)	McKeon	White
Flanagan	Metcalf	Whitfield
Foley	Meyers	Wicker
Fox	Mica	Wolf
Franks (CT)	Miller (FL)	Young (AK)
Franks (NJ)	Molinari	Young (FL)
Frelinghuysen	Montgomery	Zeliff
Frisa	Moorhead	Zimmer
Funderburk	Morella	
Gallegly	Myers	

NAYS—180

Abercrombie	Barrett (WI)	Bevill
Ackerman	Becerra	Bishop
Andrews	Beilenson	Bonior
Baesler	Bentsen	Boucher
Baldacci	Bereuter	Brewster
Barcia	Berman	Browder

Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (MI)
Condit
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Green
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOT VOTING—19

Blute
Borski
Bryant (TX)
Chapman
Collins (IL)
Fields (LA)
Filner
Forbes
Fowler
Gutierrez
Jefferson
Kaptur
Kennedy (RI)
Lazio
Nethercutt
Sisisky
Smith (WA)
Stokes
Weldon (PA)

□ 1214

The Clerk announced the following pairs:

On this vote:

Mrs. Fowler for, with Mrs. Collins of Illinois against.

Mr. Lazio of New York for, with Mr. Stokes against.

Mr. GIBBONS and Mr. DEUTSCH changed their vote from "yea" to "nay."

Mr. SHAYS changed his vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BEILENSON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 232, noes 177, not voting 22, as follows:

[Roll No. 98]

AYES—232

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bilbray
Bilirakis
Billey
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—177

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bishop
Bonior
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Clay
Clayton
Clyburn
Coburn
Coleman
Collins (MI)
Condit
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gephardt
Geren
Gibbons
Gonzalez
Gordon
Green
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennelly
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Skelton
Slaughter
Spratt
Stark
Stenholm
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOT VOTING—22

Blute
Borski
Bryant (TX)
Chapman
Collins (IL)
Dickey
Fields (LA)
Filner
Fowler
Gejdenson
Gutierrez
Hayes
Kaptur
Kennedy (RI)
Lazio
Longley
Nethercutt
Roth
Smith (WA)
Stokes
Tauzin
Weldon (PA)

□ 1224

The Clerk announced the following pairs:

On this vote:

Mrs. Fowler for, with Mrs. Collins of Illinois against.

Mr. Lazio of New York for, with Mr. Stokes against.

Mr. BARCIA changed his vote from "aye" to "no."

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { 104–500

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

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 rulemaking 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 "$1,166.66⅔" and insert "$1,041.66⅔".
Page 2, line 23, strike "$1,250.00" and insert "$1,125.00".
Page 3, line 3, strike "$1,333.33⅓" and insert "$1,208.33⅓".
Page 3, line 6, strike "$1,416.66⅔" and insert "$1,291.66⅔".
Page 3, line 8, strike "$1,500.00" and insert "$1,416.66⅔".

○

House Calendar No. 200

104TH CONGRESS
2D SESSION

H. RES. 391

[Report No. 104–500]

Providing for consideration of the bill (H.R. 3136) to provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 1996

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Providing for consideration of the bill (H.R. 3136) to provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order (except those arising under section 425(a) of the Congressional Budget Act of 1974) to consider in the House the bill (H.R. 3136) to provide for enactment of

the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit. The amendments specified in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) a further amendment, if offered by the chairman of the Committee on Ways and Means, which shall be in order without intervention of any point of order (except those arising under section 425(a) of the Congressional Budget Act of 1974) or demand for division of the question, shall be considered as read, and shall be separately debatable for 10 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit, which may include instructions only if offered by the Minority Leader or his designee.

SEC. 2. If, before March 30, 1996, the House has received a message informing it that the Senate has adopted the conference report to accompany the bill (S. 4) to

grant the power to the President to reduce budget authority, and for other purposes, then—

(a) in the engrossment of H.R. 3136 the Clerk shall strike title II (unless it has been amended) and redesignate the subsequent titles accordingly; and

(b) the House shall be considered to have adopted that conference report.

House Calendar No. 200

104TH CONGRESS
2D SESSION

H. RES. 391

[Report No. 104–500]

RESOLUTION

Providing for consideration of the bill (H.R. 3136) to provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

MARCH 27, 1996

Referred to the House Calendar and ordered to be printed

CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

Mr. ARCHER. Mr. Speaker, pursuant to House Resolution 391, I call up the bill—H.R. 3136—to provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line-Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Pursuant to House Resolution 391, the amendments printed in House Report 104–500 are adopted.

The text of H.R. 3136, as amended pursuant to House Resolution 391, is as follows:

H.R. 3136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Contract with America Advancement Act of 1996".

TITLE I—SOCIAL SECURITY EARNINGS LIMITATION AMENDMENTS

SEC. 101. SHORT TITLE OF TITLE.

This title may be cited as the "Senior Citizens' Right to Work Act of 1996".

SEC. 102. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66⅔,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 103. CONTINUING DISABILITY REVIEWS.

(a) AUTHORIZATION FOR APPROPRIATIONS FOR CONTINUING DISABILITY REVIEWS.—Section 201(g)(1)(A) of the Social Security Act (42 U.S.C. 401(g)(1)(A)) is amended by adding at the end the following: "Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

"(i) for fiscal year 1996, $260,000,000;

"(ii) for fiscal year 1997, $360,000,000;

"(iii) for fiscal year 1998, $570,000,000;

"(iv) for fiscal year 1999, $720,000,000;

"(v) for fiscal year 2000, $720,000,000;

"(vi) for fiscal year 2001, $720,000,000; and

"(viii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 221(i) and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under title XVI, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296).".

(b) ADJUSTMENT TO DISCRETIONARY SPENDING LIMITS.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding the following new subparagraph:

"(H) CONTINUING DISABILITY REVIEWS.—(i) Whenever a bill or joint resolution making appropriations for fiscal year 1996, 1997, 1998, 1999, 2000, 2001, or 2002 is enacted that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such reviews for that fiscal year and the additional outlays flowing from such amounts, but shall not exceed—

"(I) for fiscal year 1996, $15,000,000 in additional new budget authority and $60,000,000 in additional outlays;

"(II) for fiscal year 1997, $25,000,000 in additional new budget authority and $160,000,000 in additional outlays;

"(III) for fiscal year 1998, $145,000,000 in additional new budget authority and $370,000,000 in additional outlays;

"(IV) for fiscal year 1999, $280,000,000 in additional new budget authority and $520,000,000 in additional outlays;

"(V) for fiscal year 2000, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays;

"(VI) for fiscal year 2001, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays; and

"(VII) for fiscal year 2002, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays.

"(ii) As used in this subparagraph—

"(I) the term 'continuing disability reviews' has the meaning given such term by section 201(g)(1)(A) of the Social Security Act;

"(II) the term 'additional new budget authority' means new budget authority provided for a fiscal year, in excess of $100,000,000, for the Supplemental Security Income program and specified to pay for the costs of continuing disability reviews attributable to the Supplemental Security Income program; and

"(III) the term 'additional outlays' means outlays, in excess of $200,000,000 in a fiscal year, flowing from the amounts specified for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, including outlays in that fiscal year flowing from amounts specified in Acts enacted for prior fiscal years (but not before 1996).".

(c) BUDGET ALLOCATION ADJUSTMENT BY BUDGET COMMITTEE.—Section 606 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding the following new subsection:

"(e) CONTINUING DISABILITY REVIEW ADJUSTMENT.—

"(1) IN GENERAL.—(A) For fiscal year 1996, upon the enactment of the Contract with America Advancement Act of 1996, the Chairmen of the Committees on the Budget of the Senate and House of Representatives shall make the adjustments referred to in subparagraph (C) to reflect $15,000,000 in additional new budget authority and $60,000,000 in additional outlays for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act).

"(B) When the Committee on Appropriations reports an appropriations measure for fiscal year 1997, 1998, 1999, 2000, 2001, or 2002 that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, or when a conference committee submits a conference report thereon, the Chairman of the Committee on the Budget of the Senate or House of Representatives (whichever is appropriate) shall make the adjustments referred to in subparagraph (C) to reflect the additional new budget authority for continuing disability reviews provided in that measure or conference report and the additional outlays flowing from such amounts for continuing disability reviews.

"(C) The adjustments referred to in this subparagraph consist of adjustments to—

"(i) the discretionary spending limits for that fiscal year as set forth in the most recently adopted concurrent resolution on the budget;

"(ii) the allocations to the Committees on Appropriations of the Senate and the House of Representatives for that fiscal year under sections 302(a) and 602(a); and

"(iii) the appropriate budgetary aggregates for that fiscal year in the most recently adopted concurrent resolution on the budget.

"(D) The adjustments under this paragraph for any fiscal year shall not exceed the levels set forth in section 251(b)(2)(H) of the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year. The adjusted discretionary spending limits, allocations, and aggregates under this paragraph shall be considered the appropriate limits, allocations, and aggregates for purposes of congressional enforcement of this Act and concurrent budget resolutions under this Act.

"(2) REPORTING REVISED SUBALLOCATIONS.—Following the adjustments made under paragraph (1), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to sections 302(b) and 602(b) of this Act to carry out this subsection.

"(3) DEFINITIONS.—As used in this section, the terms 'continuing disability reviews', 'additional new budget authority', and 'additional outlays' shall have the same meanings as provided in section 251(b)(2)(H)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(d) USE OF FUNDS AND REPORTS.—

(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, medicare, and medicaid programs.

(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.

(e) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of the Social Security Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 104. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 105. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) of such Act (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Title XVI of such Act (42 U.S.C. 1381

et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x-33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x-33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 106. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(c) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(d) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

SEC. 107. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS

"SEC. 1145. (a) IN GENERAL.—No officer or employee of the United States shall—

"(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

"(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

"(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

"(b) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term 'public debt obligation' means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

"(c) FEDERAL FUND.—For purposes of this section, the term 'Federal fund' means—

"(1) the Federal Old-Age and Survivors Insurance Trust Fund;

"(2) the Federal Disability Insurance Trust Fund;

"(3) the Federal Hospital Insurance Trust Fund; and

"(4) the Federal Supplementary Medical Insurance Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 108. PROFESSIONAL STAFF FOR THE SOCIAL SECURITY ADVISORY BOARD.

Section 703(i) of the Social Security Act (42 U.S.C. 903(i)) is amended in the first sentence by inserting after "Staff Director" the following: ", and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,".

TITLE II—LINE ITEM VETO

SEC. 201. SHORT TITLE.

This title may be cited as the "Line Item Veto Act".

SEC. 202. LINE ITEM VETO AUTHORITY.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.) is amended by adding at the end the following new part:

"PART C—LINE ITEM VETO

"LINE ITEM VETO AUTHORITY

"SEC. 1021. (a) IN GENERAL.—Notwithstanding the provisions of parts A and B, and subject to the provisions of this part, the President may, with respect to any bill or joint resolution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States, cancel in whole—

"(1) any dollar amount of discretionary budget authority;

"(2) any item of new direct spending; or

"(3) any limited tax benefit;

if the President—

"(A) determines that such cancellation will—

"(i) reduce the Federal budget deficit;

"(ii) not impair any essential Government functions; and

"(iii) not harm the national interest; and

"(B) notifies the Congress of such cancellation by transmitting a special message, in accordance with section 1022, within five calendar days (excluding Sundays) after the enactment of the law providing the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.

"(b) IDENTIFICATION OF CANCELLATIONS.—In identifying dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits for cancellation, the President shall—

"(1) consider the legislative history, construction, and purposes of the law which contains such dollar amounts, items, or benefits;

"(2) consider any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information; and

"(3) use the definitions contained in section 1026 in applying this part to the specific provisions of such law.

"(c) EXCEPTION FOR DISAPPROVAL BILLS.—The authority granted by subsection (a) shall not apply to any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any law that is a disapproval bill as defined in section 1026.

"SPECIAL MESSAGES

"SEC. 1022. (a) IN GENERAL.—For each law from which a cancellation has been made under this part, the President shall transmit a single special message to the Congress.

"(b) CONTENTS.—

"(1) The special message shall specify—

"(A) the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit which has been canceled, and provide a corresponding reference number for each cancellation;

"(B) the determinations required under section 1021(a), together with any supporting material;

"(C) the reasons for the cancellation;

"(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the cancellation;

"(E) all facts, circumstances and considerations relating to or bearing upon the cancellation, and to the maximum extent practicable, the estimated effect of the cancellation upon the objects, purposes and programs for which the canceled authority was provided; and

"(F) include the adjustments that will be made pursuant to section 1024 to the discretionary spending limits under section 601 and an evaluation of the effects of those adjustments upon the sequestration procedures of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(2) In the case of a cancellation of any dollar amount of discretionary budget authority or item of new direct spending, the special message shall also include, if applicable-

"(A) any account, department, or establishment of the Government for which such budget authority was to have been available for obligation and the specific project or governmental functions involved;

"(B) the specific States and congressional districts, if any, affected by the cancellation; and

"(C) the total number of cancellations imposed during the current session of Congress on States and congressional districts identified in subparagraph (B).

"(c) TRANSMISSION OF SPECIAL MESSAGES TO HOUSE AND SENATE.—

"(1) The President shall transmit to the Congress each special message under this part within five calendar days (excluding Sundays) after enactment of the law to which the cancellation applies. Each special message shall be transmitted to the House of Representatives and the Senate on the same calendar day. Such special message shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session.

"(2) Any special message transmitted under this part shall be printed in the first issue of the Federal Register published after such transmittal.

"CANCELLATION EFFECTIVE UNLESS DISAPPROVED

"SEC. 1023. (a) IN GENERAL.—The cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect upon receipt in the House of Representatives and the Senate of the special message notifying the Congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law shall be null and void and any such dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall be effective as of the original date provided in the law to which the cancellation applied.

"(b) COMMENSURATE REDUCTIONS IN DISCRETIONARY BUDGET AUTHORITY.—Upon the cancellation of a dollar amount of discretionary budget authority under subsection (a), the total appropriation for each relevant account of which that dollar amount is a part shall be simultaneously reduced by the dollar amount of that cancellation.

"DEFICIT REDUCTION

"SEC. 1024. (a) IN GENERAL.—

"(1) DISCRETIONARY BUDGET AUTHORITY.—OMB shall, for each dollar amount of discretionary budget authority and for each item of new direct spending canceled from an appropriation law under section 1021(a)—

"(A) reflect the reduction that results from such cancellation in the estimates required by section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 in accordance with that Act, including an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear; and

"(B) include a reduction to the discretionary spending limits for budget authority and outlays in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 for each applicable fiscal year set forth in section 601(a)(2) by amounts equal to the amounts for each fiscal year estimated pursuant to subparagraph (A).

"(2) DIRECT SPENDING AND LIMITED TAX BENEFITS.—(A) OMB shall, for each item of new direct spending or limited tax benefit canceled from a law under section 1021(a), estimate the deficit decrease caused by the cancellation of such item or benefit in that law and include such estimate as a separate entry in the report prepared pursuant to section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(B) OMB shall not include any change in the deficit resulting from a cancellation of any item of new direct spending or limited tax benefit, or the enactment of a disapproval bill for any such cancellation, under this part in the estimates and reports required by sections 252(b) and 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) ADJUSTMENTS TO SPENDING LIMITS.—After ten calendar days (excluding Sundays) after the expiration of the time period in section 1025(b)(1) for expedited congressional consideration of a disapproval bill for a special message containing a cancellation of discretionary budget authority, OMB shall make the reduction included in subsection (a)(1)(B) as part of the next sequester report required by section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(c) EXCEPTION.—Subsection (b) shall not apply to a cancellation if a disapproval bill or other law that disapproves that cancellation is enacted into law prior to 10 calendar days (excluding Sundays) after the expiration of the time period set forth in section 1025(b)(1).

"(d) CONGRESSIONAL BUDGET OFFICE ESTIMATES.—As soon as practicable after the President makes a cancellation from a law under section 1021(a), the Director of the Congressional Budget Office shall provide the Committees on the Budget of the House of Representatives and the Senate with an estimate of the reduction of the budget authority and the reduction in outlays flowing from such reduction of budget authority for each outyear.

"EXPEDITED CONGRESSIONAL CONSIDERATION OF DISAPPROVAL BILLS

"SEC. 1025. (a) RECEIPT AND REFERRAL OF SPECIAL MESSAGE.—Each special message transmitted under this part shall be referred to the Committee on the Budget and the appropriate committee or committees of the Senate and the Committee on the Budget and the appropriate committee or committees of the House of Representatives. Each such message shall be printed as a document of the House of Representatives.

"(b) TIME PERIOD FOR EXPEDITED PROCEDURES.—

"(1) There shall be a congressional review period of 30 calendar days of session, beginning on the first calendar day of session after the date on which the special message is received in the House of Representatives and the Senate, during which the procedures contained in this section shall apply to both Houses of Congress.

"(2) In the House of Representatives the procedures set forth in this section shall not apply after the end of the period described in paragraph (1).

"(3) If Congress adjourns at the end of a Congress prior to the expiration of the period described in paragraph (1) and a disapproval bill was then pending in either House of Congress or a committee thereof (including a conference committee of the two Houses of Congress), or was pending before the President, a disapproval bill for the same special message may be introduced within the first five calendar days of session of the next Congress and shall be treated as a disapproval bill under this part, and the time period described in paragraph (1) shall commence on the day of introduction of that disapproval bill.

"(c) INTRODUCTION OF DISAPPROVAL BILLS.—(1) In order for a disapproval bill to be considered under the procedures set forth in this section, the bill must meet the definition of a disapproval bill and must be introduced no later than the fifth calendar day of session following the beginning of the period described in subsection (b)(1).

"(2) In the case of a disapproval bill introduced in the House of Representatives, such bill shall include in the first blank space referred to in section 1026(6)(C) a list of the reference numbers for all cancellations made by the President in the special message to which such disapproval bill relates.

"(d) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—(1) Any committee of the House of Representatives to which a disapproval bill is referred shall report it without amendment, and with or without recommendation, not later than the seventh calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill, except that such a motion may not be made after the committee has reported a disapproval bill with respect to the same special message. A motion to discharge may be made only by a Member favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent

and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

"(2) After a disapproval bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order, except any Member if supported by 49 other Members (a quorum being present) may offer an amendment striking the reference number or numbers of a cancellation or cancellations from the bill. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

"(3) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a disapproval bill shall be decided without debate.

"(4) It shall not be in order to consider under this subsection more than one disapproval bill for the same special message except for consideration of a similar Senate bill (unless the House has already rejected a disapproval bill for the same special message) or more than one motion to discharge described in paragraph (1) with respect to a disapproval bill for that special message.

"(e) CONSIDERATION IN THE SENATE.—

"(1) REFERRAL AND REPORTING.—Any disapproval bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a disapproval bill has been referred shall report the bill not later than the seventh day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the Calendar.

"(2) DISAPPROVAL BILL FROM HOUSE.—When the Senate receives from the House of Representatives a disapproval bill, such bill shall not be referred to committee and shall be placed on the Calendar.

"(3) CONSIDERATION OF SINGLE DISAPPROVAL BILL.—After the Senate has proceeded to the consideration of a disapproval bill for a special message, then no other disapproval bill originating in that same House relating to that same message shall be subject to the procedures set forth in this subsection.

"(4) AMENDMENTS.—

"(A) AMENDMENTS IN ORDER.—The only amendments in order to a disapproval bill are—

"(i) an amendment that strikes the reference number of a cancellation from the disapproval bill; and

"(ii) an amendment that only inserts the reference number of a cancellation included in the special message to which the disapproval bill relates that is not already contained in such bill.

"(B) WAIVER OR APPEAL.—An affirmative vote of three-fifths of the Senators, duly chosen and sworn, shall be required in the Senate—

"(i) to waive or suspend this paragraph; or

"(ii) to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

"(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of a disapproval bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

"(6) LIMIT ON CONSIDERATION.— (A) After no more than 10 hours of consideration of a disapproval bill, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or to table.

"(B) A single motion to extend the time for consideration under subparagraph (A) for no more than an additional five hours is in order prior to the expiration of such time and shall be decided without debate.

"(C) The time for debate on the disapproval bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.

"(7) DEBATE ON AMENDMENTS.—Debate on any amendment to a disapproval bill shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.

"(8) NO MOTION TO RECOMMIT.—A motion to recommit a disapproval bill shall not be in order.

"(9) DISPOSITION OF SENATE DISAPPROVAL BILL.—If the Senate has read for the third time a disapproval bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a disapproval bill for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate disapproval bill, agree to the Senate amendment, and vote on final disposition of the House disapproval bill, all without any intervening action or debate.

"(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a disapproval bill shall be limited to not more than four hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.

"(f) CONSIDERATION IN CONFERENCE—

"(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to a disapproval bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

"(2) HOUSE CONSIDERATION.—(A) Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to a disapproval bill provided such report has been available for one calendar day (excluding Saturdays, Sundays, or legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.

"(B) Debate in the House of Representatives on the conference report and any amendments in disagreement on any disapproval bill shall each be limited to not more than one hour equally divided and controlled by a proponent and an opponent. A motion to further limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

"(3) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on a disapproval bill shall be limited to not more than four hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

"(4) LIMITS ON SCOPE.—(A) When a disagreement to an amendment in the nature of a substitute has been referred to a conference, the conferees shall report those cancellations that were included in both the bill and the amendment, and may report a cancellation included in either the bill or the amendment, but shall not include any other matter.

"(B) When a disagreement on an amendment or amendments of one House to the disapproval bill of the other House has been referred to a committee of conference, the conferees shall report those cancellations upon which both Houses agree and may report any or all of those cancellations upon which there is disagreement, but shall not include any other matter.

"DEFINITIONS

"SEC. 1026. As used in this part:

"(1) APPROPRIATION LAW.—The term 'appropriation law' means an Act referred to in section 105 of title 1, United States Code, including any general or special appropriation Act, or any Act making supplemental, deficiency, or continuing appropriations, that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States.

"(2) CALENDAR DAY.—The term 'calendar day' means a standard 24-hour period beginning at midnight.

"(3) CALENDAR DAYS OF SESSION.—The term 'calendar days of session' shall mean only those days on which both Houses of Congress are in session.

"(4) CANCEL.—The term 'cancel' or 'cancellation' means—

"(A) with respect to any dollar amount of discretionary budget authority, to rescind;

"(B) with respect to any item of new direct spending—

"(i) that is budget authority provided by law (other than an appropriation law), to prevent such budget authority from having legal force or effect;

"(ii) that is entitlement authority, to prevent the specific legal obligation of the United States from having legal force or effect; or

"(iii) through the food stamp program, to prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect; and

"(C) with respect to a limited tax benefit, to prevent the specific provision of law that provides such benefit from having legal force or effect.

"(5) DIRECT SPENDING.—The term 'direct spending' means—

"(A) budget authority provided by law (other than an appropriation law);

"(B) entitlement authority; and

"(C) the food stamp program.

"(6) DISAPPROVAL BILL.—The term 'disapproval bill' means a bill or joint resolution which only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of new direct spending, or limited tax benefits in a special message transmitted by the President under this part and—

"(A) the title of which is as follows: 'A bill disapproving the cancellations transmitted by the President on _____', the blank space being filled in with the date of transmission of the relevant special message and the public law number to which the message relates;

"(B) which does not have a preamble; and

"(C) which provides only the following after the enacting clause: 'That Congress disapproves of cancellations _____', the blank space being filled in with a list by reference number of one or more cancellations contained in the President's special message, 'as transmitted by the President in a special message on _____', the blank space being filled in with the appropriate date, 'regarding _____.', the blank space being filled in with the public law number to which the special message relates.

"(7) DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY.—(A) Except as provided in subparagraph (B), the term 'dollar amount of discretionary budget authority' means the entire dollar amount of budget authority—

"(i) specified in an appropriation law, or the entire dollar amount of budget authority required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included;

"(ii) represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompanying such law;

"(iii) required to be allocated for a specific program, project, or activity in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law;

"(iv) represented by the product of the estimated procurement cost and the total quantity of items specified in an appropriation law or included in the statement of managers or the governing committee report accompanying such law; and

"(v) represented by the product of the estimated procurement cost and the total quantity of items required to be provided in a law (other than an appropriation law) that mandates the expenditure of budget authority from accounts, programs, projects, or activities for which budget authority is provided in an appropriation law.

"(B) The term 'dollar amount of discretionary budget authority' does not include—

"(i) direct spending;

"(ii) budget authority in an appropriation law which funds direct spending provided for in other law;

"(iii) any existing budget authority rescinded or canceled in an appropriation law; or

"(iv) any restriction, condition, or limitation in an appropriation law or the accompanying statement of managers or committee reports on the expenditure of budget authority for an account, program, project, or activity, or on activities involving such expenditure.

"(8) ITEM OF NEW DIRECT SPENDING.—The term 'item of new direct spending' means any specific provision of law that is estimated to result in an increase in budget authority or outlays for direct spending relative to the most recent levels calculated pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(9) LIMITED TAX BENEFIT.—(A) The term 'limited tax benefit' means—

"(i) any revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; and

"(ii) any Federal tax provision which provides temporary or permanent transitional relief for 10 or fewer beneficiaries in any fiscal year from a change to the Internal Revenue Code of 1986.

"(B) A provision shall not be treated as described in subparagraph (A)(i) if the effect of that provision is that—

"(i) all persons in the same industry or engaged in the same type of activity receive the same treatment;

"(ii) all persons owning the same type of property, or issuing the same type of investment, receive the same treatment; or

"(iii) any difference in the treatment of persons is based solely on—

"(I) in the case of businesses and associations, the size or form of the business or association involved;

"(II) in the case of individuals, general demographic conditions, such as income, marital status, number of dependents, or tax return filing status;

"(III) the amount involved; or

"(IV) a generally-available election under the Internal Revenue Code of 1986.

"(C) A provision shall not be treated as described in subparagraph (A)(ii) if—

"(i) it provides for the retention of prior law with respect to all binding contracts or other legally enforceable obligations in existence on a date contemporaneous with congressional action specifying such date; or

"(ii) it is a technical correction to previously enacted legislation that is estimated to have no revenue effect.

"(D) For purposes of subparagraph (A)—

"(i) all businesses and associations which are related within the meaning of sections 707(b) and 1563(a) of the Internal Revenue Code of 1986 shall be treated as a single beneficiary;

"(ii) all qualified plans of an employer shall be treated as a single beneficiary;

"(iii) all holders of the same bond issue shall be treated as a single beneficiary; and

"(iv) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision.

"(E) For purposes of this paragraph, the term 'revenue-losing provision' means any provision which results in a reduction in Federal tax revenues for any one of the two following periods—

"(i) the first fiscal year for which the provision is effective; or

"(ii) the period of the 5 fiscal years beginning with the first fiscal year for which the provision is effective.

"(F) The terms used in this paragraph shall have the same meaning as those terms have generally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

"(10) OMB.—The term 'OMB' means the Director of the Office of Management and Budget.

"IDENTIFICATION OF LIMITED TAX BENEFITS

"SEC. 1027. (a) STATEMENT BY JOINT TAX COMMITTEE.—The Joint Committee on Taxation shall review any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 that is being prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill or joint resolution contains any limited tax benefits. The Joint Committee on Taxation shall provide to the committee of conference a statement identifying any such limited tax benefits or declaring that the bill or joint resolution does not contain any limited tax benefits. Any such statement shall be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

"(b) STATEMENT INCLUDED IN LEGISLATION.—(1) Notwithstanding any other rule of the House of Representatives or any rule or precedent of the Senate, any revenue or reconciliation bill or joint resolution which includes any amendment to the Internal Revenue Code of 1986 reported by a committee of conference of the two Houses may include, as a separate section of such bill or joint resolution, the information contained in the statement of the Joint Committee on Taxation, but only in the manner set forth in paragraph (2).

"(2) The separate section permitted under paragraph (1) shall read as follows: 'Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall _____ apply to _____.', with the blank spaces being filled in with—

"(A) in any case in which the Joint Committee on Taxation identifies limited tax benefits in the statement required under subsection (a), the word 'only' in the first blank space and a list of all of the specific provisions of the bill or joint resolution identified by the Joint Committee on Taxation in such statement in the second blank space; or

"(B) in any case in which the Joint Committee on Taxation declares that there are no limited tax benefits in the statement required under subsection (a), the word 'not' in the first blank space and the phrase 'any provision of this Act' in the second blank space.

"(c) PRESIDENT'S AUTHORITY.—If any revenue or reconciliation bill or joint resolution is signed into law pursuant to Article I, section 7, of the Constitution of the United States—

"(1) with a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) only to cancel any limited tax benefit in that law, if any, identified in such separate section; or

"(2) without a separate section described in subsection (b)(2), then the President may use the authority granted in section 1021(a)(3) to cancel any limited tax benefit in that law that meets the definition in section 1026.

"(d) CONGRESSIONAL IDENTIFICATIONS OF LIMITED TAX BENEFITS.—There shall be no judicial review of the congressional identification under subsections (a) and (b) of a limited tax benefit in a conference report.".

SEC. 203. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress or any individual adversely affected by part C of title X of

the Congressional Budget and Impoundment Control Act of 1974 may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this part violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

SEC. 204. CONFORMING AMENDMENTS.

(a) SHORT TITLES.—Section 1(a) of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking "and" before "title X" and inserting a period;

(2) inserting "Parts A and B of" before "title X"; and

(3) inserting at the end the following new sentence: "Part C of title X may be cited as the 'Line Item Veto Act of 1996'.".

(b) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end the following:

"PART C—LINE ITEM VETO

"Sec. 1021. Line item veto authority.
"Sec. 1022. Special messages.
"Sec. 1023. Cancellation effective unless disapproved.
"Sec. 1024. Deficit reduction.
"Sec. 1025. Expedited congressional consideration of disapproval bills.
"Sec. 1026. Definitions.
"Sec. 1027. Identification of limited tax benefits.".

(c) EXERCISE OF RULEMAKING POWERS.—Section 904(a) of the Congressional Budget Act of 1974 is amended by striking "and 1017" and inserting ", 1017, 1025, and 1027".

SEC. 205. EFFECTIVE DATES.

This Act and the amendments made by it shall take effect and apply to measures enacted on the earlier of—

(1) the day after the enactment into law, pursuant to Article I, section 7, of the Constitution of the United States, of an Act entitled "An Act to provide for a seven-year plan for deficit reduction and achieve a balanced Federal budget."; or

(2) January 1, 1997;

and shall have no force or effect on or after January 1, 2005.

TITLE III—SMALL BUSINESS REGULATORY FAIRNESS

SEC. 301. SHORT TITLE.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 302. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

SEC. 303. PURPOSES.

The purposes of this title are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of chapter 6 of title 5, United States Code;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

Subtitle A—Regulatory Compliance Simplification

SEC. 311. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 312. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 313. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

SEC. 314. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing information to small business concerns regarding compliance with regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996.".

(b) Nothing in this Act in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 315. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the states, develop guides that fully integrate requirements of both Federal and state regulations where regulations within an agency's area of interest at the Federal and state levels impact small entities. Where regulations vary among the states, separate guides may be created for separate states in cooperation with State agencies.

SEC. 316. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle B—Regulatory Enforcement Reforms

SEC. 321. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 322. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C.App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 323. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a state;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 324. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle C—Equal Access to Justice Act Amendments

SEC. 331. ADMINISTRATIVE PROCEEDINGS.

(a) Section 504(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 504(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (1)(B), by inserting before the semicolon "or for purposes of subsection (a)(4), a small entity as defined in section 601";

(3) at the end of paragraph (1)(D), by striking "and";

(4) at the end of paragraph (1)(E), by striking the period and inserting "; and"; and

(5) at the end of paragraph (1), by adding the following new subparagraph:

"(F) 'demand' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 332. JUDICIAL PROCEEDINGS.

(a) Section 2412(d)(1) of title 28, United States Code, is amended by adding at the end the following new subparagraph:

"(D) If, in a civil action brought by the United States, or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5 the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 2412(d) of title 28, United States Code, is amended—

(1) in paragraph (2)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (2)(B), by inserting before the semicolon "or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5";

(3) at the end of paragraph (2)(G), by striking "and";

(4) at the end of paragraph (2)(H), by striking the period and inserting "; and"; and

(5) at the end of paragraph (2), by adding the following new subparagraph:

"(I) 'demand' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 333. EFFECTIVE DATE.

The amendments made by sections 331 and 332 shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle.

Subtitle D—Regulatory Flexibility Act Amendments

SEC. 341. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) SECTION 603.—Section 603(a) of title 5, United States Code, is amended—

(A) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States"; and

(B) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.".

(2) SECTION 601.—Section 601 of title 5, United States Code, is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; and", and by adding at the end the following:

"(7) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

"(8) RECORDKEEPING REQUIREMENT.—The term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 342. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to—

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 343. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small

Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 344. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTER-AGENCY COORDINATION.— Section 609 of title 5, United States Code is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities" by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(d) For purposed of this section, the term covered agency means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

"(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

"(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

"(2) Special circumstances requiring prompt issuance of the rule.

"(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

SEC. 345. EFFECTIVE DATE.

This subtitle shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.

Subtitle E—Congressional Review

SEC. 351. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional disapproval procedure..
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.
"808. Effective date of certain rules.

"§ 801. Congressional review

"(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the Chairman and Ranking Member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

"(A) the later of the date occurring 60 days after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register, if so published;

"(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

"(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive Order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register, if so published.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(g) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'rule' has the meaning given such term in section 551, except that such term does not include—

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of nonagency parties.

"§ 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 808. Effective date of certain rules

"Notwithstanding section 801—

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

"(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 352. EFFECTIVE DATE.

The amendment made by section 351 shall take effect on the date of enactment of this Act.

SEC. 353. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

TITLE IV—PUBLIC DEBT LIMIT

SEC. 401. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$5,500,000,000,000".

The SPEAKER pro tempore. Pursuant to House Resolution 391, as amended, the gentleman from Texas [Mr. ARCHER] will be recognized for 30 minutes, the gentleman from Florida [Mr. GIBBONS] will be recognized for 30 minutes, the gentleman from Pennsylvania [Mr. CLINGER] will be recognized for 10 minutes, and the gentlewoman from New York [Ms. SLAUGHTER], the designee of the ranking minority member, will be recognized for 10 minutes.

The Chair recognizes the gentleman from Texas [Mr. ARCHER].

GENERAL LEAVE

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on and include extraneous material on the bill H.R. 3136.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of H.R. 3136, the Contract With America Advancement Act of 1996. This legislation contains the Senior Citizens' Right to Work Act, the Line-Item-Veto Act, the Small Business Growth and Fairness Act of 1996, and provides for a permanent increase in the public debt limit.

Let me first compliment Chairmen SOLOMON, CLINGER, and BUNNING, and the rest of the line-item-veto conferees for their hard work. As the original author of line-item-veto legislation at the request of President Reagan, I am a true believer in the line-item veto. I know that it will help control spending and therefore aid us in obtaining a balanced budget. Accordingly, I welcome its inclusion in H.R. 3136.

I am also proud that the Senior Citizens' Right to Work Act will be included in this legislation. It is another of my career-long projects—one which I began working on with former Senator Goldwater in the early 1970's. As you know the House has already approved this measure by a large bipartisan vote of 411 to 4 last December 5. It would raise the earnings limit for seniors between the ages of 65 and 69 to $30,000 by the year 2002, while fully preserving the long-term financial integrity of the Social Security trust funds. In fact, according to the Social Security actuaries, this bill improves the long-range solvency of the trust funds by a significant amount.

This legislation is also strongly supported by a broad group of seniors' associations, including the AARP.

We all know that the current earnings limit is too low and is nothing more than a tax on hard-working seniors.

In our Contract With America, we promised to raise the earnings limit which discourages older workers from remaining in the work force and sharing their experience, knowledge, and skills with younger workers. Today, we take another important step in fulfilling that promise by providing relief from the onerous earnings limit to almost 1 million senior citizens who want or need to work. Again, I want to compliment Social Security Subcommittee Chairman JIM BUNNING and Whip DENNY HASTERT for their outstanding efforts on this legislation. They have been untiring in their work on this project.

Mr. Speaker, H.R. 3136 also includes another important element of our Contract With America, regulatory relief for small business. This is a vital element of the bill, and I believe Chairman HYDE will be speaking on it in more detail.

Finally, H.R. 3136 contains an increase in the permanent statutory debt ceiling from its current level of $4.9 trillion to $5.5 trillion. This amount should provide the Government with enough authority to operate through fiscal year 1997. This is the level including in the Balanced Budget Act, and sought by the Treasury Department. We have receive correspondence from Treasury expressing their support for the provision.

This is a straightforward debt limit extension. As you know, we need to pass this legislation quickly as the current temporary limit expires tomorrow.

Section 107 of this legislation codifies Congress' understanding that the Secretary of Treasury and other Federal officials are not authorized to use Social Security and Medicare funds for debt management purposes under any circumstances. Specifically, the Secretary of the Treasury and other Federal officials are required not to delay or otherwise underinvest incoming receipts to the Social Security and Medicare trust funds. They are also required not to sell, redeem or otherwise disinvest securities, obligations or other assets of these trust funds except when necessary to provide for the payment of benefits and administrative expenses of these programs. The legislation applies to the following trust funds: Federal Old-Age and Survivors Insurance [OASI] Trust Fund; Federal Hospital Insurance [HI] Trust Fund; and Federal Supplementary Medical Insurance [SMI] Trust Fund.

Since late October, the total amount of public debt obligations has been very close to the public debt limit. This has given rise to concerns that the Social Security and Medicare trust funds might be underinvested or disinvested for debt management purposes. While the administration has stated that it would not take such action, it is desirable to make clear in law that these funds could not be used for debt management purposes. It is the purpose of this legislation to clarify that any limitation on the public debt shall not be used as an excuse to avoid the full and timely investment of the Social Security trust funds. The Secretary, by law, is the managing trustee of these trust funds, and also the chief financial officer of the U.S. Government charged with its day-to-day cash management. As such, he shall take all necessary steps to ensure the full and timely investment of the Social Security and Medicare trust funds.

This bill seeks to assure that the Secretary of the Treasury and other Federal officials shall invest and disinvest Social Security and Medicare trust funds solely for the purposes of accounting for the income and disbursements of these programs. There are no circumstances envisioned under which the investments of the trust funds will not be made in a timely fashion in accordance with the normal investment practices of the Treasury, or under which the trust funds are drawn down prematurely for the purpose of avoiding limitations on the public debt or to make room under the statutory debt limit for the Secretary of the Treasury to issue new debt obligations in order to cover the expenditures of the Government.

Mr. Speaker, this is an excellent bill, which advances many important elements of our Contract With America, keeping our promises to the American

people. I urge my colleagues on both sides of the aisle to support it today.

□ 1230

Mr. Speaker, I reserve the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield 30 seconds to the gentlewoman from California [Ms. HARMAN].

PERSONAL EXPLANATION

Ms. HARMAN. Mr. Speaker, I was in my district yesterday on official business. Had I been present, I would have voted "no" on the rule and "no" on passage of H.R. 1833, the partial birth abortion bill; "yes" on the passage of House Resolution 379; and "yes" on the passage of House Concurrent Resolution 102.

Mr. GIBBONS. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. JACOBS].

Mr. JACOBS. Mr. Speaker, this is a paradox day in the U.S. House of Representatives. We are going to raise the earnings limit under Social Security immediately from about $11,000 a year to $14,000 or so a year, I believe, and that will, on average, mean an income of about $20,000 for a Social Security retiree. That is a very good thing to do.

The paradox is, at the same time we are not going to be doing anything about the minimum wage. So what are we saying in essence? We are saying that the person who is retired and might work part time needs $24,000 a year, but the young person who is working every day of the week and working hard, maybe digging ditches, and has children to support can get by just fine on $8,840 a year. So I want to congratulate my colleagues on a sense of humor, I suppose, and a wonderful paradox.

Mr. ARCHER. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Idaho [Mrs. CHENOWETH].

(Mrs. CHENOWETH asked and was given permission to revise and extend her remarks.)

Mrs. CHENOWETH. Mr. Speaker, I rise in opposition to H.R. 3136.

Mr. Speaker, I strongly support increasing the Social Security earnings limit. The current earnings limit of $11,280 hurts low-to-moderate-income seniors who work out of necessity, not choice.

Our Nation achieved unprecedented wealth and power because of the strong work ethic, self-reliance, and personal responsibility of today's senior citizens. They are the generation that built this Nation. To punish these productive, industrious seniors, who are the ones that made America great is absolutely absurd. All Americans lose when the earnings limit prevents us from employing the teaching and experience of our Nation's most precious resource.

Let me also say I support wholeheartedly empowering small businesses to challenge burdensome regulations. In fact, observation of the catastrophic effects extraneous regulations have on small businesses and property owners was a major motivation for my seeking office.

We should pass legislation to increase the Social Security earnings limit, and to empower small business, and I hope we do it soon. However, I must vote against this measure today because I simply cannot support what would be a monumental mistake that would be made by this Congress if we hand over legislative powers to the president in the form of a line-item veto.

Mr. Speaker, let me first say that I believe that a line item veto could be effective in eliminating wasteful port. However, I strongly believe that the consequences of shifting the delicate power balance of between the executive and legislative branches of government would far outweigh any advantages gained by this measure.

Let me remind you of Alexander Hamilton's stern warning in Federalist No. 76 of why we must keep the powers given respectively to the legislature and executive branches of government separate:

> Without the one or the other the former would be unable to defend himself against the depredations of that latter. (The Legislature) might gradually be stripped of his authorities by successive resolutions. . .
>
> And in one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands.

Mr. Speaker, the Constitution specifically gives the power of the purse to the people, which are represented in the Congress. Let us not give that sacred responsibility away to the President because we as a Congress do not have the discipline to make necessary spending cuts. The more powers we give to the executive to control the spending of taxpayer dollars, the less we will have of a representative government our Founding Fathers envisioned.

Mr. Speaker, I strongly believe that the Congress will regret the day that we surrender this tremendous power to the executive. I urge my colleagues to stand back and take a hard look at what we are doing today, and whether it is really worth giving away power that rightfully belongs to this, the people's House.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. HYDE], the highly respected chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I rise in support of H.R. 3136, and particularly title III of that bill, the Small Business Regulatory Enforcement Fairness Act of 1996.

Title III, as amended by the rule, is patterned after the provisions of S. 942, legislation sponsored by Senator CHRISTOPHER BOND of Missouri, which passed the Senate on March 19 by the vote of 100 to 0. It would provide important regulatory relief for America's small businesses.

This measure is vitally important to the small business community, which is particularly burdened by the effect of multiple, and many times conflicting, regulatory requirements. It should be viewed not as a total solution to all regulatory problems, but as a good first step of making rules more fair, more rational, and more carefully tailored to achieve the goal they are designed to accomplish.

First, title III proposes important changes in the Regulatory Flexibility Act, allowing judicial review of certain aspects of that statute. The Regulatory Flexibility Act was first enacted in 1980. Under its terms, Federal agencies are directed to consider the special needs and concerns of small entities—that is, small businesses, local governments, farmers, and so forth, 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."

From the beginning, the problem with this law has been the lack of availability of a judicial reviews mechanism to enforce the purposes of the law. Right now, if agencies do not actually conduct a regulatory flexibility analysis or fail to follow the other procedures set down in the act, there is no sanction. Thus, under current law, the small business community has no remedy.

Title III would cure this problem. In instances where an agency should have undertaken a regulatory flexibility analysis and did not, or where the agency needs to take corrective action with respect to a flexibility analysis that was prepared, small entities are authorized to seek judicial review within 1 year after final agency action. A court will then review the agency's action under the judicial review provisions of the Administrative Procedure Act. The remedies that a court may order include remanding the rule back to the agency and deferring enforcement of the rule against small entities, pending agency compliance with the Regulatory Flexibility Act.

Another important aspect of title III is the congressional review procedure. This will allow Congress to review all proposed rules to determine whether or not they should take effect. Specifically, title III would allow Congress to postpone for 60 days the implementation of any major rule, generally defined as having an annual effect on the economy of $100 million or more. The language allows the President to bypass the 60-day delay through the issuance of an Executive order, if the rule addresses an imminent threat to the public health or safety, or other emergency, or matters involving criminal law enforcement or national security.

This legislation was developed by Senator DON NICKLES and Senator HARRY REID. My Judiciary Committee staff has worked very closely with Senator NICKLES' staff concerning the details of this provision.

I think it is important to emphasize that this approach means that Congress must be prepared to take on greater responsibility in the rulemaking process. If during the review period, Congress identifies problems in a proposed major rule prior to its promulgation, we must be prepared to take action. Each standing committee will have to carefully monitor the regulatory activities of those agencies falling within their jurisdiction.

Title III also includes a provision which will require Federal agencies to simplify forms and publish a plain English guide to help small businesses comply with Federal regulations. These compliance guides will not be subject to judicial review, but may be considered as evidence of the reasonableness of any proposed fines or penalties. Federal agencies would

also be directed to reduce or waive fines for small businesses in appropriate circumstances, if violations are corrected within a certain period.

The proposal would also create an ombudsman within the Small Business Administration to gather information from small businesses about compliance and enforcement practices, and to work with the various agencies so as to respond to the concerns of small businesses regarding those practices.

In addition, some important changes would be made in the Equal Access to Justice Act. The Equal Access to Justice Act [EAJA] currently provides that certain parties who prevail over the Federal Government in regulatory or court proceedings are entitled to an award in attorneys' fees and other expenses, unless the Government can demonstrate that its position was substantially justified or that special circumstances would make the award unjust. Eligible parties are individuals whose net worth does not exceed $2 million or businesses, organizations, associations, or units of local government with a net worth of no more than $7 million and no more than 500 employees. The act covers both adversary administrative proceedings and civil court actions.

Title III proposes to change the Equal Access to Justice Act so as to make it easier for small businesses to recover their attorneys fees, if they have been subjected to excessive and unsustainable proposed penalties. It would amend the EAJA to create a new avenue for small entities to recover their attorneys fees in situations where the Government has instituted an administrative or civil action against a small entity to enforce a statutory or regulatory requirement. In these situations, the test for recovering attorneys' fees would become whether the final demand of the United States, prior to the initiation of the adjudication or civil action, was substantially in excess of the decision or judgment ultimately obtained and is unreasonable when compared to such decision or judgment. The important point here is that this legislation will level the playing field and make it far more likely that the United States will not seek excessive fines or penalties from small businesses and will be more likely to make fair settlement offers prior to proceeding with a formal regulatory enforcement action or before going to court to collect the civil fine or penalty.

Mr. Speaker, I have only described in very general terms today the substance of this important title. Because the language is the product of negotiation and compromise with the Senate, there is no formal legislative history available to explain its terms. To cure this deficiency, I will be inserting in the CONGRESSIONAL RECORD at a later date a document which will serve as the equivalent of a statement of managers. The same document will be submitted to the RECORD in the Senate. It is the committee's intent that that document carry the weight of legislative history regarding title III of H.R. 3136.

Mr. Speaker, this legislation represents an important and significant step toward removing unnecessary and unduly burdensome regulations from the backs of small businesses. I urge my colleagues to support H.R. 3136 and look forward to its prompt passage and it being signed into law.

Mr. GIBBONS. Mr. Speaker, I yield 3 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Speaker, I rise to speak against H.R. 3136. My opposition stems not from a desire to prevent the needed increase in the debt limit, nor do I oppose the increase in the Social Security earnings limit contained in section 4, a proposition I supported with my vote in favor of H.R. 2684 last December.

Rather, my objection, Mr. Speaker, is to the measure before us, which rests on my adamant opposition to the line-item veto provisions of section 3. The line-item veto is not about money as such. It is about power, specifically the balance of power between the executive and legislative branches of the Federal Government. This has nothing to do with Republicans and Democrats. It has nothing to do with the contract except the contract we should be keeping with history that provided for our constitutional democracy to be able to sustain a balance between the executive and the legislative. It assumes that the executive branch, compared to the legislature, is inherently inclined to restrain spending. In fact, however, congressional appropriations have been lower than the amounts requested by the past three Presidents, Democrat and Republican alike. In denying Congress the authority to single out proposed rescissions for individual consideration, H.R. 3136 denies to the Congress an authority it grants to the President.

If the President can unilaterally veto individual items in a single bill, why is Congress required to sustain or override those vetoes as an indivisible package? Why is Congress denied the authority, why are we denying ourselves the authority to judge each veto cast by the President? The upshot is more power for the executive branch, less for the legislature. By giving the President power to veto specific tax and appropriation items within a single bill, H.R. 3136 deprives the legislative branch of its share of its ability to strike a compromise with the executive.

Mr. Speaker, it upsets the carefully calibrated balance between the legislative and executive branches of Government. That balance is what inclines our political system to compromise. Look at what is happening in the rest of the world where the executive has exclusive authority. I know I am going to be among the few votes that is going to be cast today. What I regret is, and this has happened before in our legislative history, there will be a few who will try to strike a balance to keep the power of the legislature against the executive, and one day there will be a Ph.D. writing a thesis about it, how we gave up our power, how we gave up the balance of power that exists in our democracy. Vote "no" on 3136.

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky [Mr. BUNNING], the respected chairman of the Subcommittee on Social Security of the Committee on Ways and Means.

(Mr. BUNNING of Kentucky asked and was given permission to revise and extend his remarks.)

Mr. BUNNING of Kentucky. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, hopefully the third time around will be the charm and the Social Security earnings limit will be passed. I want to thank DENNIS HASTERT, the deputy whip, and all the Republican Members of the 100th Congress class, because this has been a class project for over 8 years.

Mr. Speaker, the House has twice passed legislation to increase this onerous earnings limit in the 104th Congress, but lack of Senate action has kept this measure off the President's desk.

I have a very good feeling that the tide has turned and our colleagues in the other body want to see this done as much as we do.

I want to commend the House and Senate leadership for working with the Ways and Means Committee and the Finance Committee to make the earnings limit increase part of the debt limit legislation.

We have worked out a fair bill which makes good policy while actually improving the financial integrity of the Social Security trust funds.

By increasing the earnings limit on working senior citizens, we are fulfilling the commitment we made in the Contract With America to bring economic relief to older workers.

The earnings limit is a depression-era relic that has outlived its usefulness. Older workers have a great deal of knowledge and experience and our country needs the skills of experienced workers. The current limit is unrealistically low and sends the message that the Federal Government does not want seniors to continue working and contributing.

Today's older Americans are living longer and healthier. They want to continue contributing to society, but they have to ask themselves if it is worth losing a good part of their Social Security benefits to do so.

In most cases, the answer is "No." By discouraging skilled older workers from working, we are forgoing one of society's greatest resources—experienced workers—a commodity every employer in the United States needs and values.

The earnings limit is particularly harsh on lower to middle-income seniors who must work to supplement their Social Security benefits.

Approximately 1 million working seniors have some or all of their benefits withheld because of the current earnings limit. These are not wealthy working seniors.

These are seniors who do not have substantial pensions, investments or savings to supplement their Social Security checks.

The earnings limit is nothing less than a tax on work. Seniors need and deserve some tax relief. I urge my colleagues to join me in making this long

overdue change to increase the earnings limit to $30,000.

Mr. GIBBONS. Mr. Speaker, I yield 3 minutes to the gentleman from Utah [Mr. ORTON].

(Mr. ORTON asked and was given permission to revise and extend his remarks.)

Mr. ORTON. Mr. Speaker, I voted against the rule on this particular bill, not because I oppose the provisions of the bill in general but in specific, I have a problem with one provision on line-item veto.

□ 1245

I am a long-time supporter of the line-item veto. That is an issue which has not been partisan. It is an issue that the administration has asked for. I have supported it, and many on both sides of the aisle have supported it. The concern I have is that the line-item veto, under this bill, will not go into effect when we pass the bill. It will not go into effect until the end of the current term of this President. This President is a Democrat. This Congress is controlled by Republicans. That looks to the public like business as usual, like the Republicans are afraid to give a Democratic President the authority to veto specific items of pork.

It is not like we do not have a problem ongoing with park-barrel spending. I have in my hand the Citizens Against Government Waste's 1996 Congressional Pig Book. In that they identify $12.5 billion in just 8 appropriation bills that we passed in 1996, 8 of the 13, $12.5 billion of pork.

We passed in February 1995 through this House and in March through the other body a line-item veto bill. It took 6 months to even appoint conferees. Now we finally have the line-item veto coming to passage as part of this bill. It is too late for 1996 and these billions of dollars. Under this bill, it is too late for 1997 as well.

Did they believe that, by passing line-item veto, there would only be Republican Presidents in the future? A Democratic President would not be eligible to use the line-item veto? Well, I am going to put into the RECORD statements by the majority leader of the House, majority leader in the Senate and majority whip in the Senate. I am also going to put into the RECORD statements by the Committee on Rules chairman and other people on the floor of this House, saying we are not afraid to give it to a Democrat President. Here we are giving it, it is not just a Republican, we are giving it to him. No, you are not, not unless he wins reelection.

So I simply believe that we ought to change one provision in this bill. Let us make line-item veto effective immediately upon enactment. If the President does not appropriately use it, then Congress can challenge the President. If the President does appropriately use it, we start cutting inappropriate spending today rather than waiting until after the 1997 fiscal year.

So I would urge my colleagues to revise this bill, and I hope that we will have a motion to recommit with instructions to do so.

Mr. CLINGER. Mr. Speaker, I yield myself 2 minutes.

As chairman of the Government Reform and Oversight Committee, I am very pleased to rise in strong support of this measure. Two of the provisions in this measure were initiated in the Government Reform and Oversight Committee, and we are very proud they are part of this debt ceiling increase, because the line-item veto goes directly to the question of trying to hold down the debt, which we are now going to be forced to increase today.

The previous speaker said that this was a provision that we should give the President right now. I would point out to the gentleman that this was a suggestion that the President himself made. Contrary to many of the Members on the other side of the aisle, this President, our President, supports the line-item veto and supports the date that has been selected.

I would also point out he does have within his own power the key to unlock this provision and make it effective today, and that would be if he would agree to a balanced budget agreement. That is, as I say, in his power.

We had a lot of trouble reconciling the many differences, frankly, that existed between the Senate and the House. Many in this room will remember how vast those differences were. But we were able, in the final analysis, to come to agreement. It was a bipartisan bicameral agreement. There are Members on both sides who support strongly the provision of the line-item veto. There are Members on both sides, frankly, who disagree with the line-item veto.

The intent of the legislation, Mr. Speaker, is to provide the President a tool, only a tool, to approach this question of deficit reduction. We have provided it not just for the appropriations process, which would only get at about 30 percent of the spending, we have also provided it for entitlements. We have provided it for targeted tax preferences which have been so abused in the past. The President is going to have a broad authority and broad ability to deal with the deficit and to deal with the debt, which has been spiraling out of control.

I would point out it is important to note, consistent with the demand of both Houses in the conference, the conference report does not allow the President to strike any restriction, condition, or limitation on how funds may be spent. It is limited to whole dollar amounts. No policy can be changed as a result of this.

Mr. Speaker, I reserve the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield 30 seconds to the gentleman from Utah [Mr. ORTON].

Mr. ORTON. Mr. Speaker, just in response to my friend who just mentioned that it was the President who asked for this, yes, the President asked for line-item veto. The President did not ask for line-item veto to be until after the new year of 1997. It was offered by the majority leader, Senator DOLE, to be available then, and the President said he wanted line-item veto, he would be willing to accept it and would accept it under those terms.

It was not the President suggesting to delay line-item veto until 1997. The President did accept it, but he has asked for it consistently to be effective immediately, and I have a letter so stating.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me explain to the Chair what I am about to do. I am going to yield to the gentlewoman from Connecticut [Mrs. KENNELLY], then I am going to get out of the way and let the gentlewoman from New York use her 10 minutes.

I yield 2 minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, I am delighted to stand here today, on March 28, 1996, because it is a good day for the United States of America, it is a good day for the economic security of the United States of America, it is a good day for the financial markets of the United States of America, but most importantly it is a good day for the full faith and credit of the United States.

We are raising the debt limit. We should have done it 5 months ago, but we are doing it today, and I am pleased that that is happening.

There are those who say it did not matter if we did not raise it when we should have 5 months ago. I have to differ because I do not think there is any way of knowing if there were not interest rate increases or delaying schedules of auctions for securities, or, in fact, holding those actions for securities, or, in fact, holding those auctions when they should have.

Having said that, I am glad today has come. There is one disappointment I have, though, in this bill. For 19 years, for 19 years, the blind of this country have been joined with the elderly of this country, in being able to earn a certain amount of money over and above the Social Security earnings test. For some reason, the majority has decided to drop the blind from this joint relationship with those over 65. I do think it is too bad, because it really hurts the economic independence of the blind in this country.

I certainly hope the majority in another time will look at this piece of legislation. I know the gentleman from Texas [Mr. ARCHER] introduced it originally. I do hope once again we can couple the blind with those over 65 so economic independence can be theirs also.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is perhaps a good day but it certainly is a strange one. I would never have thought I would be

part of a Congress of the United States that would unilaterally hand over major parts of its power to the executive department. To me, the strength of the Government of the United States, as written by the Founding Fathers, was the separation of powers, for each part of the legislative, the executive, and the judiciary, well defined.

With the action taken here in the House and in the Senate, we are unilaterally handing over to the President, whomever he or she may be, the right to veto all the work that we do here in Congress. Members of the House who have served under Governors, who have the right of line-item veto, have told me that in many cases it is a genteel way to commit blackmail.

Will we save money with the line-item veto? Well, consider this scenario: Let us say there is a President who is finding it very difficult, perhaps, to get reelected, and to get support from the members of his party who serve in the House or in the Senate. He would call in a delegation, perhaps mine, New York, which is rather large, and says to us, you are not supporting me, but I do notice here that in the bills that have been sent to me, that there is a very critical item under New York that has so much money. We are then, Members, confronted with either determining whether we are going to stand pat, face the President of the United States and tell him to forget about it, or allow him simply to line out what is necessary for the people that we represent.

It is possible, is it not, that under those circumstances, that a delegation, a legislator, anyone, a leader would decide not to spend less money, Mr. Speaker, but could be induced to spend more? Indeed, it may be that such a President wants more than that has been asked for; the line-item veto does not say that in all cases that they will be going for less; it is entirely possible that a President will ask for more.

I believe that this measure is unconstitutional, and I hope that it will be judged so. It is a tragedy to me that this has been added on to what is one of the most important pieces of legislation that we have to come before us. The threat of fiscal default hanging over the United States of America has left a cloud over us that should never have been there in the first place. No nation ever talked about defaulting by choice until this time. To put, again, a sort of genteel from of blackmail, things that we normally would like to debate, strikes me as not the best way to do business.

We have heard this conference report being bipartisan and the great support that you have had on both sides of the aisle. I think it is important to point out, Mr. Speaker, that the conference that took place, took place only between House and Senate Republicans. No Democrats in the House or Senate were a part of that conference, and indeed the Democrats only saw the conference report after it was filed. Without any question, this side of the House had no impact whatever on that conference report.

But in addition, this conference report goes much further than either the House bill or the Contract With America went. For example, it includes Medicare, Medicaid, Social Security, and all other entitlement programs. We are now going to say to the President, "If you do not like the increases that we have given in Social Security, get rid of them." We have put Medicare and Medicaid again up to the vagaries of the President without the ability of the people here to make the determination for the people who sent us, the 500,000 and more in each district who depend upon us to make those decisions, now you want to turn these decision over to the President.

But there is one other piece that I was particularly involved in myself during the 100 days of the Contract With America when line-item veto was brought up. We were concerned over on our side about the fact that in many cases it is just as serious a drain on the Federal Treasury, in many cases, just as much a breach of faith, to use tax policy. And we put forth an amendment on this side to make sure that tax policy, giving benefits to certain groups, certain persons in the United States, would be looked at and scrutinized if the line-item veto indeed became law. That has been narrowed to the point of nonrecognition. Your tax-break friends are safe.

What we are saying with this bill, this line-item veto today, is that the President may run through the bills in any way he or she likes, taking out anything or everything no matter the importance of it or what it may mean for the country. However, when it comes to tax benefits and tax policy, given to favorite constituents or constituent groups, nobody is going to be touching that. That is going to be sacred.

Obviously, this bill is important for us to pass. Our fiscal responsibility and our fiscal reputation depend on it, and it is high time that the Social Security recipients receive some attention with the fact that they have been limited in the income that they can receive. Without jeopardizing their Social Security.

But, Mr. Speaker, adding line-item veto to this is an abrogation of our power. It is an abrogation of the Constitution of the United States, and, frankly, I think that putting it on this bill says to the Nation basically we cannot be trusted. It is going to have to be somebody at 1600 Pennsylvania Avenue to make these final decisions. That is a decision and a statement that I personally am not willing to make.

Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. SMITH].

Mr. SMITH of Michigan. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I would just like to briefly carry on the discussion of how much power has been transferred from Congress to the President. Article I, section 9 of the Constitution says that Congress shall control the purse strings. Article 1 of section VII of the Constitution says that Congress shall decide how deep we go into debt.

I bring this chart to portray the authority and responsibility that Congress has now given away to the President of the United States. This pie chart represents the Federal budget for this coming year. The blue area represents the 52 percent of spending now in these welfare entitlement programs. The spending in those programs cannot be changed without the consent of the President.

□ 1300

It has been demonstrated now that also the administration has the authority to go deeper in debt without the consent of Congress.

Transferring even greater power to the administrative branch, to the President, by saying that he will have the authority to line out, to veto anything in an appropriation bill, is a tremendous transfer of power.

I served under three governors while in the State legislature in Michigan. Every one of those governors, liberal and conservative, used the leverage of the line-item veto to get spending they wanted. A lot of States have the line-item veto. Almost every one of those States also have a constitutional provision that says they have to have a balanced budget.

In the State legislature, while the Governor says "I want to shift priorities to what I think is important spending," either for political purposes or for philosophic goals. In the U.S. Government, where we do not have that kind of safeguard of a balanced budget, there is a danger of actually increasing spending and not decreasing spending as some presume.

During the last three decades, a lot of us wished that the President had authority to veto spending we did not like. But we now have a Congress that is becoming more frugal, is being more conscientious of a balanced budget, and is more interested in cutting. Now we are saying we are going to take away responsibility from this Chamber, from this body and give it to the President. This is inconsistent with what our Founding Fathers thought was an appropriate balance. I think this legislation could have different results than some expect. I hope we do not see the dangers that could result from further disrupting the balance of power.

Ms. SLAUGHTER. Mr. Speaker, I yield the balance of my time to the gentleman from Wisconsin [Mr. BARRETT].

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Wisconsin is recognized for 1½ minutes.

Mr. BARRETT of Wisconsin. Mr. Speaker, I thank the gentlewoman for yielding me the time.

Mr. Speaker, I support the line-item veto. It is a good measure, a measure

that the American people want. Why? They want the line-item veto because they are concerned about two things. They are concerned about pork barrel spending, and they are concerned about special interest tax breaks.

This bill does a good job of taking care of the pork barrel spending, but it does a lousy job of taking care of special interest tax breaks. Why is that? It is because the people on the Republican side of the aisle like special interest tax breaks.

We hear on the floor day after day proponents of tax reform from the Republican side say, "Let's have a flat tax. Let's get rid of all these deductions. Let's get rid of all these loopholes."

Well, this was the opportunity to get rid of those. This bill was the opportunity to say we do not believe in special interest tax loopholes.

But when they came up to bat, they swung and missed. They had no desire to give the President of the United States the ability to get rid of special interest tax loopholes. Why not? Because they are the gift that just keeps on giving. You can tuck them away into a revenue bill. You do not have to go through the appropriations process. It just keeps giving and giving and giving.

The other irony of this entire debate is something that has happened to me over the last year and a half when I have gone back to my district and talked at Rotary lunches or Kiwanis lunches. They always talk about the Presidential line-item veto. I say, "Mark my words: We will get it, but the Republican leadership will find a way to make sure that President Clinton does not have the authority to get rid of their pork barrel spending or their special interest tax loopholes in the 104th Congress."

The provisions we are passing today do not give the President the ability to do it in this Congress.

Mr. CLINGER. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. GOSS].

(Mr. GOSS asked and was given permission to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, I rise in very strong support of this legislation, noting that 43 Governors have the line-item veto. Governor John Engler of Michigan has spoken out strongly that it does restrain unwise spending.

Mr. Speaker, there are some supporters of line-item veto who may have despaired of ever getting it done. I must admit that there were days over the past 13 months when I had my doubts. Well, in the spirit of Sean Connery I am reminded "never to say never." Today we fulfill a major plank in the Contract With America and implement a powerful budget-cutting tool. Title II of the bill before us is the text of our conference agreement on the line-item veto. It reflects countless hours of meetings and discussions—and an enormously good faith effort by all the conferees to ensure that this significant delegation of power from the Congress to the President is effective, workable and clearly defined. The conferees understood the magnitude of a delegation of authority of this kind. Quite simply, it is historic. Although some of our colleagues are fundamentally opposed to transferring such power to the President—any President—I firmly believe that this is a legitimate and necessary element of our battle to bring the Federal budget under control. We have been very careful in this conference report to carefully define our terms and the limitations that Congress is placing on the President's use of the line-item veto authority. The purpose of the line-item veto is to add to our arsenal of weapons against low-priority or unnecessary Federal spending. The goal is deficit reduction and we have ensured that the authority applies only to money being spent. Just as 43 Governors do today, the President, under the line-item veto, will have the ability to cancel individual items of spending and tax legislation if he believes doing so will help reduce the deficit. The burden of proof will then be on the Congress to come up with a two-thirds majority to override the President and spend the money over his objections. If the Congress is unable to muster that supermajority, then the funds are not spent and are applied to deficit reduction. The remarkable thing about this measure is that it fundamentally shifts the bias away from spending and toward saving the taxpayers money. That is a change that more than 70 percent of Americans have been asking for. Americans know that when huge spending and tax bills go to the President for his signature or veto, often individual items of less or even questionable national merit get carried into law by the greater good in the bill. That costs money—lots of money—and that's what this tool is designed to control. Our conference built upon the House enhanced rescission model and, I believe, made it stronger by expanding the authority beyond appropriation measures to include new entitlements. As everyone knows, entitlement programs are a major culprit in our current budget imbalance—and the line-item veto should help to curb the creation of new programs that we can't afford. The conference report also allows the President to use his line-item veto to cancel limited tax benefits—provisions that are slipped into the Tax Code to benefit 100 or fewer people at a cost to the taxpayers at large.

Mr. Speaker, our staff has spent countless hours refining the language of this measure to ensure that we understand the repercussions of this delegation of authority. While we recognize the possibility for gaming of the system—by the Congress and the executive—we have built in important safeguards, including an 8-year sunset to allow us an opportunity to assess the line-item veto's effectiveness. Finally, Mr. Speaker, I point out to my colleagues that the President and the House leadership have agreed that the effective date of this new authority will be January 1, 1997, or enactment of a 7-year balanced budget, whichever comes sooner. This is a practical result that ensures sufficient time for the Executive and Congress to consider the measure's provisions and impact. In addition, this specified effective date allows the line-item veto to rise above short-term political realities. I think it is an enormously sensible decision and I applaud the President and our leaders for it.

Mr. Speaker, last night the other body adopted this conference report by a 69-to-31 vote. It's time for this House to deliver a similar result.

Mr. CLINGER. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. DELAY], the distinguished majority whip and tireless leader in the battle to achieve a line-item veto.

Mr. DELAY. Mr. Speaker, I thank the gentleman for his words.

Mr. Speaker, I rise in strong support of the Contract With America Advancement Act, and I urge my colleagues to vote for it.

This bill proves the pundits wrong. The Contract With America is alive and well, and is working to better the lives of American families.

I am especially pleased by two provisions in this legislation.

The regulatory flexibility act is a small but significant step in the right direction for making commonsense changes to our regulatory system.

This bill will bring much needed congressional accountability to the regulatory process. No Congress before this one has been willing to take responsibility for the way laws are implemented after they are signed.

I believe it is both appropriate and necessary for Congress to conduct oversight over agencies' promulgation of regulations, and am very pleased that this, the first Republican Congress in 40 years, is the one to make it happen.

We also are finally enacting the line-item veto.

When I was first elected to the House, I made the line-item veto one of my top priorities.

This may not be a good week for pork, but it is a great week for the American taxpayer.

Gone are the days, when Congresses inserted pork barrel projects to buy votes for their Members.

With this line-item veto, we will make certain that those days of wasting taxpayer dollars are gone forever.

I applaud my colleagues for their work on this legislation, and I urge them to send this bill to the President.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, I rise in strong support of this legislation, but it is interesting how we got here. We got here today because the Republican leadership and the Democrat administration worked together to bring this bill forward. We have Democrats and Republicans working together, and when we work together it is amazing what we can accomplish.

This bill is important. It does deal with the Social Security earning limitation. For too long senior citizens have been penalized for working with outrageously high tax rates. This bill corrects that.

The line-item veto is an important bill. It helps to spotlight individual appropriations. We pass these omnibus bills where none of us really have an opportunity to study each and every provision in that legislation. The line-item veto will give us an opportunity

to look at these items individually and give the President a role as to whether they should become law.

Small business regulatory relief, there are problems with small business. The oversight function of Congress should be to take a look at what regulations impact on small business, and this bill does that.

Increasing the debt ceiling, we all know that we need to do that. We have already spent the money. We have got to honor our obligations.

But it is interesting, why have we delayed for so long in bringing these bills forward? As I listened on the floor when we were considering other debt extension bills, the Republican leadership told us we could not consider it because we had to deal with deficit reduction. This bill does not deal with deficit reduction; it deals with extending the debt limit, as it should.

Perhaps the only lesson that we can take out of this bill on deficit reduction and balancing the budget is if we use the process of Democrats and Republicans working together, then we can accomplish a balanced budget in this Congress. So I hope this legislation will spill over to other efforts between Democrats and Republicans to bring sound legislation to the floor, not in a vacuum by one party, but in cooperation by both parties, between the Congress and the President. If we do that, we will indeed serve our constituents well.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Kansas [Mrs. MEYERS], the chairwoman of the Committee on Small Business.

(Mrs. MEYERS of Kansas asked and was given permission to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Speaker, I would like to thank the chairman very much for yielding me this time.

Mr. Speaker, I rise in strong support of H.R. 3136. I support the increase in the senior citizens earning threshold, I support the line-item veto, and particularly I support title III of this act, which is of enormous importance to this country's 21 million small businesses.

Subtitle A of title III provides that agencies will provide plain English guides on new regulations for small business. Subtitle B provides for a regulatory ombudsman to assist small businesses in disputes with the Federal Government. These two subtitles, along with subtitle D, the Regulatory Flexibility Act, were among the very top priorities listed by the White House Conference on Small Business.

I would like to focus for a moment on the Regulatory Flexibility Act, which those interested in small business have been working for for many years. The Regulatory Flexibility Act has been on the books since 1980, and it provides that agencies must review all new rules and regulations for their specific impact on small business and then help mitigate that impact if it is extreme. But there is no enforcement mechanism, and the agencies have largely ignored it.

This bill would provide for judicial review of the process, and thus put teeth in that Regulatory Flexibility Act. This judicial review of regulatory flexibility has strong bipartisan support. It has passed this House by a vote of 415 to 15, and last week it passed the Senate by 100 to 0.

There are many good reasons to support this bill, but its value and importance to small business is the best reason to me and to the Committee on Small Business.

I urge my colleagues to support H.R. 3136.

Mr. CLINGER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Florida [Mr. MICA] who has been a champion for regulatory reform and also a leader in the line-item veto battle.

Mr. MICA. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, small business is really the largest employer in our country. Small business in fact is the cornerstone of free enterprise. Today small business in the United States is being choked to death on mindless regulations, edicts and paperwork, and federally mandated compliance forms.

When they write the epitaph of American small business, let me read for you what the tombstone is going to say: "Here lies American small business, murdered by overregulation, murdered by taxation and litigation."

Today we cannot totally free the bondage of small business in America. What we can do today, however, is allow some regulatory flexibility, and that is what this legislation does.

Today, through this legislation, small business will have a small but a fighting chance to challenge this crazy Federal bureaucratic rulemaking process. Today we can let Congress place a small check on the bureaucrats who have made a lifetime career of pumping out mindless, costly, and ineffective regulations.

Today, if we are going to sink our Nation further into the rathole of debt, we can, through these regulatory reform measures, give small business, who employ our people, who pay our taxes, a small but fighting chance to dig us out of that rathole of debt.

Mr. CLINGER. Mr. Speaker, I am very pleased to yield 2 minutes to the gentleman from Indiana [Mr. MCINTOSH] who has been a leader in this Congress on regulatory reform and an active participant on our committee, and chairman of the Subcommittee on Regulatory Reform.

Mr. MCINTOSH. Mr. Speaker, I thank the chairman for yielding me time, and thank him for his leadership on this bill.

Mr. Speaker, I rise in strong support of the line-item veto provision, the provision removing penalties from senior citizens, and title III, the Small Business Regulatory Enforcement Fairness Act of 1996.

What we have before us today is a small step toward reforming our regulatory process. It is time, Mr. Speaker, that we get Government off of our backs, and back on our side in this country.

Small businesses create 75 percent of the new jobs in this country, and I am particularly pleased to support the provisions of this bill that will allow small businesses to challenge agency decisions in court when they ignore the needs of small businesses and they write new regulations and create redtape.

I am also very pleased with subtitle E that will bring agency regulations back to Congress for a vote. This part of the bill originated as a companion bill to my legislation, H.R. 450, the Regulatory Transition Act of 1995. And I was pleased to work with the gentleman from Pennsylvania, Chairman CLINGER, the gentleman from New York, Chairman SOLOMON, and the gentleman from Illinois, Chairman HYDE, along with Senator DON NICKLES, to craft provisions that will be acceptable to both bodies and provide for meaningful congressional review of agency rulemaking actions.

Our Subcommittee on Regulatory Affairs has held field hearings around the country. We have heard from many people who are suffering because of Federal over-regulation. One person is Bruce Gohman, a small businessman in Minnesota, who says that he consciously limits his job creation to 50 employees. He will not hire more people because of the fear of being subjected to more redtape and more Government regulations.

I say we need this reform to allow Mr. Gohman to create more good jobs and to pay higher wages to his employees so that we can get this economy going again.

Mr. Speaker, I strongly support title III of this bill, and say it is time we have regulations that are smarter, safer, and provide more environmental protection, and less redtape.

Mr. Speaker, this title is one of the most important pieces of legislation for small business growth and job creation that we will take up this year. In fact, it is the number one legislative priority for small business. Although this is not a comprehensive regulatory reform bill, this is an important first step in enacting needed reform for hard-working Americans in their struggle against the regulatory bureaucracy in Washington. Moreover, this title will hold the administration accountable for the impact of rules on all Americans.

As I have said, I am especially pleased with the reforms in subtitles D and E, which address issues that I have been concerned about for a number of years. Subtitle D will strengthen the Regulatory Flexibility Act by allowing affected small businesses, local governments, and other small entities to challenge certain agency action and inaction in court. Currently, the Regulatory Flexibility Act requires Federal agencies issuing new rules to consider the impact the rules would have on small entities and prepare a regulatory flexibility analysis unless it certifies that the rule

would not have a significant economic impact on a substantial number of small entities. In my experience working with Vice President Quayle on the President's Council on Competitiveness, I discovered that the Federal agencies often ignored the mandate of the act and refused to prepare a regulatory flexibility analysis. The limited judicial review provided in subtitle D will serve as a needed check on agency behavior and help enforce the mandate of the act.

Subtitle E will add a new chapter 8 to the Administrative Procedure Act, which will allow Congress to review agency rulemaking actions and determine whether Congress should pass joint resolutions under expedited procedures to overrule the rulemaking action. This subtitle originated almost one year ago as companion legislation to H.R. 450, the Regulatory Transition Act of 1995, which was reported out of my Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. Although I would have liked this subtitle to go further, the bill we are going to pass today is a good start and can easily be amended in the future to provide for an expedited procedure to review and stop the most wrong-headed rulemaking proceedings before they waste more agency and private resources.

As the principal House sponsor of the Congressional Review subtitle, I am very proud that this bill will soon be sent to the President again, and I hope signed by him this time. The House and Senate passed an earlier version of this subtitle as section 3006 of H.R. 2586, which was vetoed by the President last November. Before it becomes law, this bill will have passed the Senate at least four times and passed the House at least twice. In discussions with the Senate and House co-sponsors this past week, we made several changes to the version of this subtitle that both bodies passed on November 9, 1995, and the version that the Senate passed last week. I will be happy to work with Chairman HYDE and Chairman CLINGER on a document that we can insert in the CONGRESSIONAL RECORD at a later time to serve as the equivalent of a floor managers' statement. But because this bill will not likely have a conference report or managers' statement prior to passage, I offer the following brief explanation for some of the changes in the subtitle:

DEFINITION OF A "MAJOR RULE"

The version of subtitle E that we will pass today takes the definition of a "major rule" from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a significant rule that is purportedly as broad, several of the administration's significant rule determinations under Executive Order 12866 have been questionable. The administration's narrow interpretation of "significant rulemaking action" under Executive Order 12866 helped convince me that Congress should not adopt that definition. We intend the term "major rule" to be broadly construed, particularly the nonnumerical factors contained in the new subsection 804(2) (B) and (C).

AGENCY INTERPRETIVE RULES, GENERAL STATEMENTS OF POLICY, GUIDELINES, AND STATEMENTS OF AGENCY POLICY AND PROCEDURE ARE COVERED BY THE BILL

All too often, agencies have attempted to circumvent the notice and comment requirements of the Administrative Procedure Act by trying to give legal effect to general policy statements, guidelines, and agency policy and procedure manuals. Although agency interpretive rules, general statements of policy, guideline documents, and agency policy and procedure manuals may not be subject to the notice and comment provisions of section 553(c) of title 5, United States Code, these types of documents are covered under the congressional review provisions of the new chapter 8 of title 5.

Under section 801(a), covered rules, with very few exceptions, may not go into effect until the relevant agency submits a copy of the rule and an accompanying report to both Houses of Congress. Interpretive rules, general statements of policy, and analogous agency policy guidelines are covered without qualification because they meet the definition of a "rule" borrowed from section 551 of title 5, and are not excluded from the definition of a rule.

Pursuant to section 801(3)(C), a rule of agency organization, procedure, or practice, is only excluded if it "does not substantially affect the rights or obligations of nonagency parties." The focus of the test is not on the type of rule but on its effect on the rights or obligations of nonagency parties. A statement of agency procedure or practice with a truly minor, incidental effect on nonagency parties is excluded from the definition of a rule. Any other effect, whether direct or indirect, on the rights or obligations of nonagency parties is a substantial effect within the meaning of the exception. Thus, this exception should be read narrowly and resolved in favor of nonagency parties who can demonstrate that the rule will have a nontrivial effect on their rights or obligations.

THE 60-DAY DELAY ON THE EFFECTIVENESS OF MAJOR RULES AND THE EMERGENCY AND GOOD CAUSE EXCEPTIONS

Two of the three previous Senate versions of this subtitle would have delayed the effective date of a major rule until at least 45 days after the relevant agency submitted the major rule and an accompanying report to Congress. One of the Senate versions and both House versions opted for at least a 60-day delay on the effectiveness of a major rule. The 60-day period was selected to provide a more meaningful time within which Congress could act to pass a joint resolution before a major rule went into effect. Even though the expedited congressional procedures extend beyond this period—and some of the special House and Senate rules would never expire—it would be preferable for the Congress to act before outside parties are forced to comply with the rule.

The subtitle provides an emergency exception in section 801(c) and a limited good cause exception in section 808(2) from the 60-day delay on the effectiveness of a major rule. Sections 801(c) and 808(2) should be narrowly construed, for any other reading of these exceptions would defeat the purpose of the delay period. The emergency exception in section 801(c) is only available pursuant to Executive order and after congressional notification that a specified situation exists. The good cause exception in section 808(2) is borrowed from the chapter 5 of the Administrative Procedure Act and applies only to rules which are exempt from notice and comment under section 553. Even in such cases, the agency should provide for the 60-day delay in the effective date unless such delay is clearly contrary to the public interest. This is because a determination under section 801(c) and 808(2) shall have no effect on the procedures under 802 to enact joint resolutions of disapproval respecting such rule, and it is contrary to the policy of this legislation that major rules take effect before Congress has had a meaningful opportunity to act on such joint resolutions.

ALL EXECUTIVE AGENCIES AND SO-CALLED INDEPENDENT AGENCIES ARE COVERED BY THE BILL

Congress intends this legislation to be comprehensive. It covers any agency or other entity that fits the "Federal agency" definition borrowed from 5 U.S.C. 551(1). That definition includes "each authority of the government" that is not expressly excluded by section 551(1)(A)–(H). The objective is to cover each and every entity in the executive branch, whether it is a department, independent agency, independent establishment, or Government corporation, whether or not it conducts its rulemaking under section 553(c), and whether or not it is even covered by other provisions of title 5, U.S. Code. This definition of "Federal agency" is also intended to cover entities and establishments within the executive branch, such as the U.S. Postal Service, that are sometimes excluded from the definition of an agency in other parts of the U.S. Code. This is because Congress is enacting the congressional review legislation, in large part, as an exercise of its oversight and legislative responsibility over the executive branch. Regardless of the justification for excluding or granting independence for certain entities from the coverage of certain laws, that justification does not apply in this legislation, where Congress has an interest in exercising its constitutional oversight and legislative responsibility over all executive branch agencies and entities within its jurisdiction.

Examples too numerous to mention abound in which Federal entities and agencies issue regulations and rules that impact businesses, small and large, as well as major segments of the American public, yet are not subject to the traditional 5 U.S.C. 553(c) rulemaking process. It is essential that this regulatory reform measure include every agency, authority, or entity that establishes policies affecting all or any segment of the general public. Where it is necessary, a few special adjustments have been made, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it is not necessary, no exemption is provided and the rule is that the entity's regulations are covered by this act. This is made clear by the provisions of the new section 806 which states that the act applies notwithstanding any other provision of law.

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Mr. CLINGER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. ROYCE].

Mr. ROYCE. Mr. Speaker, I rise in support of this legislation which is urgently needed to avoid financial chaos. This is a compromise bill. In exchange for extending the debt limit, it provides a much needed procedure for reducing unnecessary pork barrel spending. That procedure is the line-item

veto. As cochairman of the congressional pork busters coalition, I strongly support the line-item veto as an essential tool to eliminate pork from appropriations bills. We have been battling pork for 6 years on the floor of this House, but not always successfully.

This legislation provides much needed back up power to the Executive, allowing him to surgically slice out those items which do not deserve funding. Governors in 43 States, including California, already have this power and it has worked well. In our State of California, it has allowed our Governors to balance the budget. The House voted for a line-item veto over a year ago, and it has been bottled up in the Senate ever since. This is a golden opportunity to finally achieve our goal.

Mr. GIBBONS. Mr. Speaker, I yield 4 minutes to the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Speaker, I want to thank one of the heroes of D-day for the opportunity, the gentleman from Florida [Mr. GIBBONS].

When the new majority came to power 1 year ago, they promised the American people that Congress would change its ways, that we would live by all the laws of the land. Obviously one of the laws that we are not going to live by is the law of regulating false advertising. The very name of this bill is false advertising. It has nothing to do with the Contract With America. It has everything to do with raising the debt limit by $600 billion.

The American people have consistently said that the biggest threat to this Nation is our horrible debt. It is a vulnerability greater than any other thing because it is eating up so much of our taxes. Just the interest on the national debt eats up more of our taxes than Medicare, than Medicaid, twice as much as Medicaid, the national defense, 10 times more than food stamps, and 12 times more than welfare.

In the 2 minutes that I have spoken to my colleagues, this Nation has spent $1 million on interest on the national debt, just in the past 2 minutes.

So what is their solution? We will borrow more money. We will pay more interest. That is crazy.

Mr. Speaker, what do they do? Do they come to the floor and be honest with the American people and say we want to borrow some more money? No, they hide it. They hide it behind three bills that have already passed this body on their own merit, three bills that were just waiting for the U.S. Senate to agree to so they can become law.

There is only one purpose for this bill. It is to borrow more money and to waste more money on interest on the national debt. Instead of the balanced budget that the American people were promised, this is just more borrow and spend. But it is not the first time since I have come to Congress that this has happened. Around November 7, 1989, I got a call from then-President Bush's White House. I was very new to this body. It said, can you do us a favor? Can you help us just one time temporarily raise the national debt? Just a temporary thing.

Mr. Speaker, I had only been here a couple of weeks, and, my goodness, the President of the United States called. I was flabbergasted and honored, and, of course, Mr. President, you made perfect sense. We have got to do that. So the debt was raised from 2.87 trillion to 3.1 trillion. That was not the end of it. In October 26, 1990, this House came back, and H.R. 5838 permanently raised the debt ceiling from 3.1 to 4.1 trillion, just a couple years later. And then again on August 5, 1993, the House raised the debt ceiling from 4.1 to 4.9.

It is like saying, I am going to pay off my Visa card but first I am going to raise my debt limit on my visa card from 5,000 to 10,000. You do not ever get there.

Today they are being asked to raise it from 4.9 to 5.5 trillion. Voting to raise the debt limit is a lot like an alcoholic saying, I am just going to have one more drink. A very good friend of mine from Pascagoula, MS, just came out of alcoholic rehab. He said, I would wake up every morning and I could always find an excuse for just one more drink. It is Thanksgiving. It is the week before Christmas. It is Mardi Gras. It is spring break. There is always one more excuse, one more drink. But until he work up and said, I am not going to have any more excuses, no more drinks, did he cure his problem.

Mr. Speaker, America has to run out of excuses. We have got to quit borrowing. We cannot be for a balanced budget and then turn around and borrow $600 billion more. Let us draw the line today. Let us quit fooling the American people. Let us do what is right for this country.

I thank the chairman and the great hero of D-Day. This gentleman, in case Members do not know, paratrooped into Normandy the night before the D-Day invasion. He is going to end his congressional career this year. He is a great American, and we are going to miss him.

Mr. ARCHER. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. DREIER].

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I thank my friend, the gentleman from Texas [Mr. ARCHER] for yielding time to me. I want to congratulate the gentleman from Pennsylvania [Mr. CLINGER] and, of course, congratulate the gentleman from Florida [Mr. GIBBONS]. We are going to miss him greatly.

Mr. Speaker, it saddens me that we have gotten to the point where we have to rely on the line-item veto to turn the corner on the profligate spending that we have seen go on for decades. We have seen it successful in 38 States. I would simply like the RECORD to show that in our State of California, Governor Wilson has used the line-item veto 354 times, saving our State's taxpayers nearly $800 million.

I hope very much that we can proceed with passage of this very important measure.

Mr. GIBBONS. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio [Mr. TRAFFICANT].

(Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, let us see if this sounds right. Congress is frustrated with political pork. Congress has tried but Congress is fed up with pork-barrel spending.

Congress honestly and desperately wants to stop all of this political pork. So Congress today, in both desperation and frustration, has decided that the only way to stop political pork is by giving the top politician in America, the President, the power to control political pork. Beam me up here. Let me remind everybody herein assembled, this is not Rotary. This is the Super Bowl of politics. And as we speak, White House staffers are not only watching and listening to what we say but how we say it, and they will be individually scoring your voting records to determine who may need some discipline.

In America the people are supposed to govern. My problem with the line item veto is very simple. It is an awesome transfer of the people's power to one person who needs to get elected and then needs 34 Senators in his hip pocket to run America. I guarantee not one of those 34 Senators will ever worry about a line item veto.

Mr. Speaker, let me say this today in the little bit of time I have, watch what we say from here on out, bite our tongues, mind our votes, mind our votes. And consider our votes politically, folks, because the White House is watching, the White House is keeping score.

I think there is a better way to do this without transferring the power from the people to the White House. We are making the White House too powerful in the United States of America. I think we are endangering the freedom of our Nation and the power of our people.

With that, I appreciate the gentleman for giving me the time. I want to echo the remarks of the gentleman from Mississippi [Mr. TAYLOR].

I have been quite aggressive in some of my opposition at times to the Committee on Ways and Means, but never to the gentleman personally. I think the gentleman is an absolute great American. We are going to miss the gentleman from Florida [Mr. GIBBONS]. I thank him for putting up with me. A lot of Members love him; I certainly do.

Mr. HEFNER. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from North Carolina.

Mr. HEFNER. Mr. Speaker, as one who did not support the line item veto

because I do not think we can always count on the President of the United States, regardless of who he is, not to have some pettiness in his surroundings. But what I do not understand is there was a big push to do the line item veto early on over here, and I understand that this transaction will not go into place until 1997. Why would not the line item veto go and this President have the benefits of it for the next 7 months?

Mr. TRAFICANT. Mr. Speaker, I would like to respond by saying evidently the next President-elect will have the line item veto authority. It is amazing to me. I think it is unconstitutional, to start with, but I can remember a vote on a Btu tax, and the President wanted a Btu tax. I can remember that I happened to be the only Democrat in the Congress to speak out against that tax. With the line item veto it is not a very comfortable position. Maybe someone from that side might say the reason why.

Mr. CLINGER. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania. We are going to miss him as well.

Mr. CLINGER. Just to briefly say, Mr. Speaker, the President has agreed to the date. Obviously he is confident that he is in fact going to be reelected. I do not share that confidence, but he believes that he will be. Therefore, he is going to have that ability on January 1 in his view. The second thing is he has the key to provide the line-item veto to his use now upon signing a balanced budget agreement.

Mr. TRAFICANT. Reclaiming my time, I do not care if it is a Democrat or Republican, we are all Americans. We are expanding the power of the Presidency. That is not good for our country, Mr. Speaker.

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the deputy whip, the gentleman from Illinois [Mr. HASTERT], a respected Member of the House.

Mr. HASTERT. Mr. Speaker, I thank the gentleman for yielding time to me.

This is the third time the House of Representatives has taken up legislation to raise the earnings limit for working seniors in the 104th Congress. I want to congratulate the gentleman from Texas [Mr. ARCHER], who I think for 13 Congresses has worked to make this thing possible. I also want to congratulate the gentleman from Kentucky [Mr. BUNNING], who is the chairman of the Social Security Subcommittee, along with Members of the 100th class who have been working on this project for another 8 years. They have made this thing happen.

Mr. Speaker, every time this legislation has come to the floor, it has passed with nearly a huge bipartisan margin. It is clear the House understands that working seniors, people who have to earn money by the sweat of their brow, usually people who have earned money by the sweat of their brow their whole life, who have not been able to accumulate huge savings or investments or those revenues or huge pensions, that today they have to go out and work to supplement their pension, to supplement their Social Security so that they can have a decent life, so that they can help put their grandchildren through college, so that they can maybe go on a vacation or somebody pay their property taxes or even buy a new car. These people are affected by this bill.

I am proud to be able to stand here today and say that those seniors will be able to make more money this year without paying a tax on work. Those seniors will be able to eventually realize and take the earnings test up to $30,000 so that they can share the benefits of work that all Americans can have without paying a penalty or a tax on it.

Mr. Speaker, I sincerely wish we were able to raise the limits faster, as in earlier versions of this bill, but I am glad we have been able to come up with a plan that the President will sign. The seniors need and deserve relief. They have waited patiently for too long. In fact, I think those people who have to work by the sweat of their brow, people who work at McDonald's and flower shops and drive school buses need a break today, and we are going to give it to them.

Mr. GIBBONS. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina [Mr. HEFNER].

Mr. HEFNER. Mr. Speaker, to my friend, the gentleman from Pennsylvania [Mr. CLINGER], who is leaving this august body and has been a friend for a lot of years, everything that is in this bill that we are debating here today, as soon as the President signs it, will go into effect with the exception of the line-item veto; is that right?

Mr. CLINGER. Mr. Speaker, will the gentleman yield?

Mr. HEFNER. I yield to the gentleman from Pennsylvania.

Mr. CLINGER. Mr. Speaker, as I indicated, this would also go into effect if the President would agree to the balanced-budget agreement.

Mr. HEFNER. The balanced budget is not what we are voting on.

□ 1330

The gentleman is saying to the President, If you will do what we want to do, we'll give you the line-item veto this year, but everything else extending the debt limit and everything else will go into effect as soon as he signs it, with the exception of the line-item veto which we passed well over a year ago, in the first year of this new administration.

Why? I do not understand why the gentleman would object to giving the President the line-item veto when he has got all these bills that are coming up for all the appropriations for everything that we authorized this year. Why would the gentleman want to wait until 1997, because we can save a lot of money? Would it have been possible until you make it effective as soon as the bill is signed?

Mr. Speaker, just as among friends here, we are just friends here, would it not have been possible to put into this legislation that as soon as the President signs it, he will have the line-item veto? It is just that simple.

Yes or no; could the gentleman have done it that way?

Mr. CLINGER. Mr. Speaker, will the gentleman yield?

Mr. HEFNER. I yield to the gentleman from Pennsylvania.

Mr. CLINGER. That could be done but would kill the conference agreement and prevent enactment of the bill. The President has in fact agreed that the date should be January——

Mr. HEFNER. That is not exactly true, Mr. CLINGER.

Mr. CLINGER. He did agree to that date; did he not?

Mr. HEFNER. That was the best he could get, but I think he would agree, if it were made possible, that the line-item veto would go into effect as soon as he—I do not think he would have any problem with that.

Mr. CLINGER. I would understand that, but if the gentleman would yield——

Mr. HEFNER. But it could be done.

Mr. CLINGER. There is a recognition that this is an effort to try to——

Mr. HEFNER. Mr. Speaker, taking back my time, the gentleman is setting the legislative agenda here. He could have made it in order that everything would go into effect, the line-item veto, everything, would have gone into effect. It could have been done; am I right or not? Yes or no?

Mr. CLINGER. No. Not and pass the bill.

Mr. HEFNER. I reclaim my time.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The time of the gentleman from North Carolina [Mr. HEFNER] has expired.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding this time to me.

The American farmer and the owner of a small business will be, at the end of this day, applauding the action of the Congress of the United States. For too long they have suffered the indignity of the Federal regulator, the agency head, who burdens the farmer and burdens the small business man with countless items of regulation that stifle business, it stifles the ability of the farmer to expand his operation and, thus, have created a situation in our country where entrepreneurs are afraid to hire new people, are afraid to embark on new enterprises.

What we do here today in reforming regulatory flexibility is for the first time give a disaffected regulatee, if there be such a word, the right to appeal a burdensome regulation that has been foisted upon them by administrative agencies. That is a tremendous advance. Instead of having to sit back

and take whatever the agency says as a mandate, now for the first time we will have the farmer and the small business man say to himself and to the community, "I'll be able to do something about this adverse regulation."

Mr. ARCHER. Mr. Speaker, I yield 1½ minutes to the gentleman from Delaware [Mr. CASTLE].

Mr. CASTLE. Mr. Speaker, I thank the distinguished gentleman for yielding this time to me, and let me just say I support this legislation in every aspect of it. I think many, many good things are happening here.

I only have a minute and a half. I want to talk about the line-item veto. I think we need to look at the record first of all. Congress over the years, Republicans and Democrats, have spent a tremendous amount of money, more than, perhaps, we should have. I think this country really wants mechanisms in place which are going to help us reduce that burden of spending, and I believe strongly the line-item veto will do it.

I have listened to this whole argument today because I am interested in it. As a Governor of a State for 8 years, I had the line-item veto. We are one of the 43 States which has it. I can tell my colleagues it was beneficial in my State from both points of view. It caused us to get into a room together and to discuss our budgets, and to make absolutely sure we were in concert with each other and we were doing what was in the best interests of the State. It was beneficial, without a doubt, to the budget process of the State of Delaware and I am convinced it will be beneficial to the budget process of the United States of America.

We, in my judgment, are not yielding power to the President absolutely. We are allowing the President to become involved in the budget process. But we also retain the right to override vetoes in the circumstances in which they arise, and, quite frankly, if we have a President who for political reasons, ideological reasons, political reasons, whatever it may be, decides to make an issue of all of this, we have the ability to just as easily point out that it is politics and that it is wrong.

What will really happen in this process is that we will be able to sit down together to negotiate things that are absolutely in the pork barrel category. They can be eliminated.

So for the reasons of that and the rest of this very good bill I hope we will all support it here in a few minutes.

Mr. ARCHER. Mr. Speaker, I yield 1½ minutes to the gentleman from New York [Mr. QUINN].

Mr. QUINN. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise today in support of the entire bill which includes the most important line-item veto. This 104th Congress has been hailed as a reform-minded Congress. We have made historic attempts to cut wasteful Government spending, scale back a bloated bureaucracy and, most importantly, balance our Federal budget.

Although we have made great strides in these areas, our budgets still suffer from a deficit increasing plague which is known as pork barrel spending. In order to complete this goal of returning fiscal responsibility to the Federal Government, we must enact this measure.

With the line-item veto the President can literally draw a line through any item in the Federal budget without having to veto the entire budget. No longer will taxpayer dollars be spent on wasteful projects. Instead, the stroke of a pen from the President will eliminate millions of dollars of pork from each year's budget.

Furthermore, these savings will go into a lockbox, insuring that they be used for deficit reduction. In fact, the General Accounting Office, during the course of our discussion on this matter these last 2 years, has reported that they would have saved or been able to save over $70 billion had the line-item veto been in effect.

Mr. Speaker, we are here again with this opportunity to pass a historic measure. On a day when we are asking to support an increase in the debt limit to a record $5.5 billion, I think it is imperative and it is appropriate that we give the President this authority.

Mr. Speaker, I also want to take a moment at this time to commend our colleague, the gentleman from Pennsylvania [Mr. CLINGER], who is retiring after this session. We said yesterday at the Committee on Rules, I will say it again, his work on the line-item veto bill, as well as many other numerous reform problems and perspectives, has been truly remarkable. Without his effort it would still be stuck in conference. We appreciate his work and ask everybody to vote for the line-item veto.

Mr. ARCHER. Mr. Speaker, I yield 30 seconds to the gentleman from Michigan [Mr. SMITH].

Mr. SMITH of Michigan. Mr. Speaker, I thank the gentleman from Texas for yielding time to a person that wants to talk against the bill.

Mr. Speaker, what this bill does is increases the debt of the United States by $600 billion. At 5-percent interest, that is another $30 billion a year that taxpayers will have to pay.

I think it is unconscionable to continue to increase the debt without some guidelines, without some actual legislative change, at the very least some direction, to cut the spending of this overbloated Government. Borrowing has obscured the true siege of Government. Ultimately we must reach a balanced budget. This bill does not do that, and that is why I am voting against it.

Mr. GIBBONS. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. I thank the gentleman for yielding me the time.

Mr. Speaker, let me rise in opposition to H.R. 3136 and mention that, along with some of the Members who have spoken earlier, I, too, believe that this bill will ultimately be found constitutional if it is signed into law. I also note with curiosity that we made the line-item veto effective after the term of the current President, Bill Clinton, has expired, and I think that is somewhat questionable as to why this Congress, under the new majority, has decided not to allow this particular President the opportunity to exercise a line-item veto if they are so adamantly for it.

But let me mention something that I find extremely disturbing in this particular bill, which I cannot understand why it is even in here, and that is the whole issue of regulatory reform. I do not think there is any Member of Congress who does not wish to see regulatory flexibility and decreasing the burden on small business so long as we provide protections to the environment, to workers, and to people, our consumers.

But, disturbingly, this bill commits an end run on the whole issue of regulatory reform because what it does is it provides, in this particular piece of legislation, through an amendment which I must say just came to us last night, which amends this bill which came to us just 2 days ago, the whole structure used to regulate agencies and regulate businesses out there in this country. How someone is supposed to be able to know what something that they got 2 days ago completely means and then now have to analyze something that they got last night, what that means is beyond me. But that is what we are being asked to swallow here through this end run.

I am not sure what is wrong with this particular bill, but why was it that the majority was unwilling to let sunshine on these provisions so we could decide if, in fact, this is the true regulatory reform we need?

Let me mention a couple of other things. This legislation creates, in the regulatory reform provisions, so-called regulatory fairness boards and advocacy panels. These are panels and boards that may be made up completely of a few favored small businesses that are trying to get themselves out of regulation, or can even include people who are exclusively major campaign contributors to particular Members of Congress or to particular parties. That I find very disturbing and very offensive.

What else does this legislation do? It allows for private ex parte communications. In other words, all the interested parties are normally under the customary practice allowed to sit in, in an open and fair process on the record, on what should be done with regard to regulatory reform.

This legislation says no, we do not need to do that any more. Let us go ahead and let a few people who happen to sit on these boards or advocacy panels have the opportunity to privately, without the other interested parties,

sit down with some of these agencies that are actually going to create these particular regulations or remove certain regulations. That is unfair to those businesses that are trying to do this in a fair and evenhanded manner.

Finally, the environment is at stake. I would urge all the Members to, if they really have a chance, take a look at this. We are going to take out the penalties for environmental violations of law.

As I was saying, take a look at the provisions that deal with environmental regulations. What we see here are waivers of penalties that would otherwise apply to those businesses that we find in violation of our clean water and safe drinking water standards. Any penalty for having violated those particular laws or regulations could be waived.

Not only that, but because we have not had enough time to examine it, it is going to be fairly clear from some of the cryptic language that is used that they are going to create a nest egg for attorneys, because they will be able to go in there and take this to court because so much of this is so difficult to understand. What they are doing though is putting the consumer at risk, they are putting the environment at risk, and I would urge Members to take a close look for all the reasons I stated on why we should oppose H.R. 3136.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume simply to very briefly respond to the gentleman who has just spoken.

Mr. Speaker, this legislation on small business regulatory reform should not come as a big surprise to him because it was debated thoroughly on the floor of this House last year. This was one of the elements of the Contract With America.

Mr. Speaker, I reserve the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield 1½ minutes to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I have voted on the three main components of this bill already, regulatory reform, Social Security earnings limit increase, and a line-item veto. I think it is very important that the American public knows what this bill is. This is adding things to increase the debt for our children. What is wrong with the scenario to say that we are in debt, we have no figured-out way, no agreed-to plan, to solve that debt, and we are going back to the bank to borrow more money?

□ 1345

Mr. Speaker, the Members of this Congress need to make sure they know what they are doing when they vote to extend the debt and jeopardize the future of our children by not doing the proper thing in terms of living within our means today.

Consider what it will be like when we are 70 or 80 years of age. They will not, our children or grandchildren, be able to buy a home, will not be able to own a car. Their living standard will be halved, because we did the wrong thing today. This is not about the Social Security earnings limit, this is not about the line-item veto, this is not about reg reform, this is about not living up to the very hard responsibility that this Congress has been entrusted with, and that is not to live beyond our means.

I would urge each Member of Congress to consider what the real issue is here today, and vote not to extend his debt limit until we have an agreement that gives us a plan on how we manage the finances of this country.

Mr. CLINGER. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks and include extraneous material.)

Mrs. ROUKEMA. Mr. Speaker, I rise in reluctant opposition to this legislation

Mr. Speaker, I want my colleagues to know that I have absolutely no quarrel with the heart of this bill—the mechanism by which we enact a long-term increase in the debt limit. My colleagues know that I have long advocated decisive action on the debt limit and feel this step is long overdue. In addition, I have supported the increase in the Social Security earnings limit and believe the so-called reg flex provisions of this bill are an improvement on current law.

My opposition is prompted exclusively by the inclusion of the line-item veto in this must-pass legislation.

Mr. Speaker and my colleagues, enactment of the line-item veto is a serious error and a fundamental violation of the basic constitutional principal of the separation of powers. Every school child in America should have learned that. The separation of powers is a foundation of our democracy.

Mr. Speaker, Mr. David Samuels has it right in an Op-Ed piece in today's New York Times—"Line Item Lunacy." I include this article for the RECORD.

David Samuels writes:

The line-item veto would hand over unchecked power to a minority President with minority support in Congress, while opponents would have to muster two-thirds support to override the President's veto.

[From the New York Times, Mar. 28, 1996]

LINE-ITEM LUNACY

(By David Samuels)

It's a scene from a paranoid thriller by Oliver Stone: A mercurial billionaire, elected President with 35 percent of the vote, holds America hostage to his minority agenda by vetoing item after item in the Federal budget, in open breach of the separation of powers doctrine enshrined in the Constitution. Impossible? Not anymore.

With the announcement by Republican leaders that they plan to pass the line-item veto this spring, the specter of a Napoleonic Presidency has moved from the far reaches of poli-sci fiction, where it belongs, to the brink of political possibility.

At the moment, of course, a Presidential dictatorship is far from the minds of the G.O.P. leadership and White House Democrats, who hope that the line-item veto would encourage the President to eliminate pork-barrel giveaways and corporate tax breaks. But to see the measure as a simple procedural reform is to ignore the forces that have reconfigured the political landscape since it was first proposed.

Back in the 1980's, President Ronald Reagan ritually invoked the line-item veto while shifting blame onto a Democratic Congress for ballooning deficits. Part Republican chestnut, part good-government gimmick, the line-item veto became part of the Contract With America in 1994, and this month rose to the top of the political agenda.

What the calculations of Democrats and Republicans leave out, however, is that the unsettled politics of the 1990's bear little relation to the political order of the Reagan years.

In poll after poll, a majority of voters express a raging disaffection with both major parties. With Ross Perot poised to run in November, we could again elect our President with a minority of the popular vote (in 1992, Mr. Clinton won with 43 percent). The line-item veto would hand over unchecked power to a minority President with minority support in Congress, while opponents would have to muster two-thirds support to override the President's veto.

By opening every line in the Federal budget to partisan attack, the likely result would be a chaotic legislature more susceptible than ever to obstructionists who could demand a Presidential veto of Federal arts funding or sex education programs or aid to Israel as the price of their political support.

And conservatives eager to cut Government waste would do well to reflect on what a liberal minority might do to their legislative hopes during a second Clinton term in office.

Nor would the line-item veto likely result in more responsible executive behavior. The zigs and zags of Bill Clinton's first term in office give us a clear picture of the post-partisan Presidency, in which the executive freelances across the airwaves in pursuit of poll numbers regardless of the political coherence of his message or the decaying ties of party. With the adoption of the line-item veto, the temptation for Presidents to strike out on their own would surely grow.

The specter of a President on horseback armed with coercive powers might seem far away to those who dismissed Ross Perot as a freak candidate in the last election. Yet no law states that power-hungry billionaires must be possessed of Mr. Perot's peculiar blend of personal qualities and doomed to fail. Armed with the line-item veto, a future Ross Perrot—or Steve Forbes—would be equipped with the means to reward and punish members of the House and Senate by vetoing individual budget items. This would enable an independent President to build a coalition in Congress through a program of threats and horse-trading that would make our present sorely flawed system seem like a model of Ciceronian rectitude.

President Clinton has promised to sign the line-item veto when it reaches his desk. Between now and then, the historic breach of our constitutional separation of powers that the measure proposes should be subject to a vigorous public debate. At the very least, we might reflect on how we intend to govern ourselves at a time when the certainties of two-party politics are dissolving before our eyes.

He's absolutely right! A pure line-item veto—and the version included in this bill is fairly pure—would give the President of the United States new dramatic, unilateral powers. It would mean that any President, operating in league with just 34 Senators, could strip any

spending proposal or tax cut, no matter their merit, from any bill. The consolidation of power in the executive branch is undeniable.

As Mr. Samuels writes, "By opening every line in the Federal budget to partisan attack, the likely result would be a chaotic legislature more susceptible than ever to obstructionists . . ."

This line-item veto could easily take legislative horse-trading to a new level. While many President's have held out the prospect of pork in order to enlist votes for legislation they wanted—that is, the vote trading that occurred during the NAFTA debate—the line-item veto will allow a President to threaten specific programs and projects proposed by Members in order to compel their cooperation on other votes.

This is a dramatic shift in the balance of power is an open invitation to any President to engage in legislative blackmail. For example, what if President Clinton decided to remove only Republican initiatives from a measure? If 34 Democratic Senators uphold his action, the President wins.

We all recognize the genius of the framers of our U.S. Constitution. They did not want a king or a dictator or an oligarchy—a small group ruling the Nation. So they wrote the Constitution based on a delicate system of checks and balances and the separation of powers doctrine.

I have supported a so-called expedited rescissions process which will maintain the delicate balance of powers by allowing the President to reject spending and tax changes with a majority vote of Congress.

I am convinced, however, that the Supreme Court of the United States will save this Congress from itself. This proposed violates the foundation of our Constitution and will be overturned at its first judicial challenge.

Mr. Speaker, I regret that inclusion of this line-item veto will force me to vote "no" on this vital legislation.

Many of my colleagues know that I have been a strong voice urging quick passage of a long-term debt limit extension. I spoke out on this issue as early as November 15 in a letter to Speaker GINGRICH and again in letters in late January, in late February, and early March.

And today—finally, finally—we are doing the right thing.

For too long, many in this Congress threatened to use this long-term debt limit extension bill as leverage in the effort to enact entitlement reform or other legislation.

That was playing with fire.

When it comes to our financial obligations, the stakes are simply too high. In its 219-year history, the United States has never defaulted on its financial obligations. The full faith and credit of the United States must not be jeopardized.

Default could set off a chain reaction of economic events, at home and abroad, that could be both uncontrollable and catastrophic. Even talking about a default carries costs that are being borne by the taxpayers and private businesses.

As Members dedicated to fiscal responsibility and protecting the economic future of our country, I am pleased that we are finally taking responsible action to increase the debt ceiling and, in doing so, avoid default.

Mr. Speaker, I also support enactment of a phased increase in the Social Security earnings limit and the provisions of the small business regulatory flexibility act.

Mr. CLINGER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, 75 percent of the American people support the line-item veto, and have supported the line-item veto for a long time. I am sorry the gentleman from North Carolina did not stay on the floor. He asked me the question, could we not have made this effective now? I would return the question and say why did not the majority, the then-majority party, provide a line-item veto for the 40 years in which they controlled this body?

It has been suggested that there are a number of reasons why we should not enact this legislation. It has been suggested that it is unconstitutional. It is not really our job to determine what is constitutional or what is not unconstitutional, but the fact is that we do provide severability in this measure. If a provision, any provision of the matter is considered to be unconstitutional, it can be stricken and the rest of the matter can stand.

It has also been suggested, Mr. Speaker, that we have engaged in a reckless transfer of power. I would suggest, on the contrary, this provides the President with a refined tool to attack the deficit problem that looms over us. It merely gives him an effort to be more selective in the way that he goes about deficit reduction.

Congress retains the power to override any Presidential veto. We have not given that power away. I am sure that we will exercise that power. We also limit his ability to do this to whole dollar amounts. He cannot single out projects unless they are congressional earmarks. He has to take out the entire amount if he is going to do anything, so that was, I think, an important addition that we got in conference.

Mr. Speaker, there are the dire results that have been indicated by some of the Members who have spoken against this measure, if, in fact, that turns out to be true, there is a sunset provision in this legislation that provides that there will be an opportunity to review this matter at a time within 8 years. Mr. Speaker, I think this is a reasonable, a reasoned, and a sensible measure that should be enacted.

I want to discuss just one other brief area that needs clarification in this legislation. We created small business and agriculture enforcement ombudsmen who would be appointed by the Administrator in the SBA. Concerns have arisen in the inspector general community that those ombudsmen would have new enforcement powers that would conflict with those currently held by the inspectors general. I want to make it very clear that nothing in this act is intended to supercede or conflict with the Inspector General Act of 1978, as amended, or to otherwise restrict or interfere with the activities of any office of the inspector general but, rather, be used to help our small business and work with the inspectors general.

Mr. Speaker, I urge a strong bipartisan support for the increase in the debt limit and the line-item veto and regulatory reform.

Mr. Speaker, I include for the RECORD a letter from the Joint Committee on Taxation containing examples of how the tax provisions of this measure would work.

The material referred to is as follows:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, March 26, 1996.

Hon. PETER BLUTE,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. BLUTE: This is in response to your letter of March 24, 1996, in which you requested the staff of the Joint Committee on Taxation to prepare some examples of how the provisions of S. 4, the "Line Item Veto Act," would apply to tax legislation.

The Line Item Veto Act provides that each "limited tax benefit" is subject to the President's line-item veto authority. In general, the Line Item Veto Act defines a "limited tax benefit" as any provision prescribing tax consequences under the Internal Revenue Code that is either (1) a revenue-losing provision that provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries in any fiscal year for which the provision is in effect (subject to certain exceptions described below); or (2) a Federal tax provision that provides temporary or permanent transitional relief to 10 or fewer beneficiaries in any fiscal year, except to the extent that the provision provides for the retention of prior law for all binding contracts (or other legally-enforceable obligations) in existence on a date contemporaneous with Congressional action specifying such a date. The Joint Committee on Taxation is responsible for identifying limited tax benefits.

A provision is defined as "revenue-losing" if it results in a reduction in Federal tax revenues either for the first year in which the provision is effective or for the 5-year period beginning with the fiscal year in which the provision is effective. A revenue-losing provision that affects 100 or fewer beneficiaries in a fiscal year is not a limited tax benefit if any of certain enumerated exceptions is satisfied. First, if a provision has the effect of providing all persons in the same industry or engaged in the same activity with the same treatment, the item is not a limited tax benefit even if there are 100 or fewer persons in the affected industry. For this purpose, the staff of the Joint Committee on Taxation believes that a broad definition of "activity" is intended to be applied, e.g. for purposes of determining whether a proposal related to drug testing is a limited tax benefit, all persons engaged in drug testing would be considered to be engaged in the same activity or the same industry rather than all persons engaged in clinical testing of drugs for certain diseases. A second exception is for provisions that have the effect of providing the same treatment to all persons owning the same type of property or issuing the same type of investment instrument. Finally, a provision is not a limited tax benefit if the only reason the provision affects different persons differently is because of: (1) the size or form of the business or association involved; (2) general demographic conditions affecting individuals, such as their income level, marital status, number of dependents, or tax return filing status; (3) the amount involved; or (4) a generally available election provided under the Internal Revenue Code.

We have made a preliminary review of the Balanced Budget Act of 1995 (the "BBA"), as passed by the Congress, and have also provided examples of items from earlier legislation that would constitute limited tax benefits if the Line Item Veto Act were in effect at the time such provisions were enacted. (The Line Item Veto Act is scheduled to go into effect on January 1, 1997, or the day after a seven-year balanced budget act has been enacted, whichever is earlier.) The attached list is not intended to be dispositive of exhaustive. The Joint Committee staff continued to analyze the provisions in the BBA and other tax legislation and it is possible that additional provisions will be identified as limited tax benefits.

I hope that this information is helpful to you. If we can be of further assistance, please let me know.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

EXAMPLES OF LIMITED TAX BENEFITS WITHIN THE MEANING OF S. 4, THE LINE-ITEM VETO ACT

THE BALANCED BUDGET ACT ("BBA") OF 1995

1. Exemption from the generation-skipping transfer tax for transfers to individuals with deceased parents (sec. 11074)

Under present law, a generation-skipping transfer tax generally is imposed on transfers to an individual who is more than one generation younger than the transferor. An exception provides that a transfer from a grandparent to a grandchild is not subject to the generation-skipping tax if the grandchild's parent (who is the grandparent's child) is deceased at the time of the transfer. The BBA provision would expand the present-law exception to apply also in other limited circumstances, e.g., to transfers to grandnieces and grandnephews whose parents are deceased.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 beneficiaries in at least one fiscal year in which the provision would be in effect, and it does not fall within any of the stated exceptions. It does not provide the same treatment to all persons engaged in the same activity—making generation-skipping transfers—because transfers to individuals with deceased parents would be treated differently than transfers to individuals whose parents are still alive.

2. Extension of the orphan drug tax credit (sec. 11114)

Prior to January 1, 1995, a 50-percent tax credit was allowed for qualified clinical testing expenses incurred in the testing of certain drugs for rare diseases or conditions. The BBA provision would extend the credit through December 31, 1997.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 drug companies in at least one fiscal year in which the provision would be in effect, and all persons engaged in the activity of drug testing are not treated the same. Only certain types of drug testing would qualify for the credit.

3. Extension of binding contract date for biomass and coal facilities (sec. 11142)

Under present law, a tax credit is provided for fuel produced from certain "nonconventional sources." In the case of synthetic fuel produced from coal and gas produced from biomass, the credit is available only for fuel from facilities placed in service before January 1, 1997, pursuant to a binding contract entered into before January 1, 1996. The BBA provision would extend the credit to facilities placed in service before January 1, 1998, pursuant to a binding contract entered into before July 1, 1996.

This provision is a "limited tax benefit" because it loses revenue, it is expected to affect fewer than 100 fuel producers, and all persons engaged in the production of fuel from nonconventional sources are not treated the same. Persons producing fuel from nonconventional sources in facilities placed in service after July 1, 1996 would not be eligible for the credit.

4. Exemption from diesel fuel dyeing requirements with respect to certain States (sec. 11143)

Under present law, an excise tax is imposed on all diesel fuel removed from a terminal facility unless the fuel is destined for a nontaxable use and is indelibly dyed pursuant to Treasury Department regulations. A similar dyeing regime exists for diesel fuel under the Clean Air Act, but the State of Alaska is partially exempt from the dyeing regime of the Clean Air Act. The BBA provision would exempt diesel fuel sold in the State of Alaska from the excise tax dyeing requirement during the period when that State is exempt from the Clean Air Act dyeing requirement.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 beneficiaries in at least one fiscal year in which the provision would be in effect, and it does not fall within any of the stated exceptions. The provision does not treat all persons engaged in the same activity the same way, because persons removing diesel fuel from terminals in Alaska would be treated differently than those removing diesel fuel from terminals in other areas of the United States.

5. Common investment fund for private foundations (sec. 11276)

The BBA provision would grant tax-exempt status to any cooperative service organization comprised solely of members that are tax-exempt private foundations and community foundations, if the organization meets certain requirements and is organized and operated solely to hold, commingle, and collectively invest and reinvest funds contributed by the members in stocks and securities, and to collect income from such investments and turn over such income, less expenses, to the members.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 beneficiaries in at least one fiscal year in which the provision would be in effect, and it does not fall within any of the stated exceptions. The provision does not treat all persons engaged in the same activity the same way, because mutual funds that are engaged in the same type of activity, i.e., collectively investing funds in stocks and securities, would not receive the benefit of the provision.

6. Transition relief from repeal of section 936 credit (sec. 11305)

Under present law, certain domestic corporations with business operations in the U.S. possessions may elect the section 936 credit which significantly reduces the U.S. tax on certain income related to their operations in the possessions. The BBA generally would repeal section 936 for taxable years beginning after December 31, 1995. However, transition rules would be provided under which corporations that are existing claimants under section 936 would be eligible to claim credits for a transition period. One of these transition rules would allow a corporation that is an existing claimant with respect to operations in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands to continue to determine its section 936 credit with respect to its operations in such possessions under present law for its taxable years beginning before January 1, 2006.

This transition rule for corporations operating in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands is a "limited tax benefit" because it is expected to provide transitional relief from a change to the Internal Revenue Code to 10 or fewer beneficiaries in at least one fiscal year in which the provision would be in effect, and it does not meet the binding contract exception.

7. Modification to excise tax on ozone-depleting chemicals (sec. 11332)

Under present law, an excise tax is imposed on the sale or use by the manufacturer or importer of certain ozone-depleting chemicals. Taxable chemicals that are recovered and recycled within the United States are exempt from tax. The BBA provision would extend the exemption to imported recycled halons.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 importers in at least one fiscal year in which the provision would be in effect, and it does not fall within any of the stated exceptions. Although anyone who imports recycled halons would receive the same treatment under the provision, others engaged in the manufacture or import of ozone-depleting chemicals would not qualify for the exemption.

8. Modification to tax-exempt bond penalties for local furnishers of electricity and gas (sec. 11333)

Under present law, tax-exempt bonds may be issued to benefit private businesses engaged in the furnishing of electric energy or gas if the business's service area does not exceed either two contiguous counties or a city and one contiguous county. If, after such bonds are issued, the service area is expanded beyond the permitted geographic area, interest on the bonds becomes taxable, and interest paid by the private parties on bond-financed loans becomes nondeductible. The BBA provision would allow private businesses engaged in the local furnishing of electricity or gas to expand their service areas beyond the geographic bounds allowed under present law without penalty under certain specified circumstances.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 beneficiaries in at least one fiscal year in which the provision would be in effect, and it does not fall within any of the stated exceptions. All persons engaged in the activity of generating electricity or gas would not be treated the same.

9. Tax-exempt bonds for sale of Alaska Power Administration Facility (sec. 11334)

Under present law, tax-exempt bonds may be issued for the benefit of certain private electric utilities. If the bonds are used to finance acquisition of existing property by these utilities, a minimum amount of rehabilitation must be performed on the property as a condition of receiving the tax-exempt bond financing. The BBA provision would waive the rehabilitation requirement in the case of bonds to be issued as part of the sale of the Snettisham facility by the Alaska Power Administration.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit only one issuer of tax-exempt bonds, and it does not fall within any of the stated exceptions. No other issuers of tax-exempt bonds would benefit from the provision.

10. Transitional rule under section 2056A (sec. 11614)

Under present law, a marital deduction generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. The marital deduction is not available for property passing to a non-U.S.-citizen spouse outside a qualified domestic trust

("QDT"). The requirements for a qualified domestic trust were modified in the Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"). The BBA provision would allow trusts created before the enactment of OBRA 1990 to qualify as QDTs if they satisfy the requirements that were in effect before the enactment of OBRA 1990.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 beneficiaries in at least one fiscal year in which the provision would be in effect, and it does not fall within any of the stated exceptions. The provision would benefit a closed group of taxpayers. Trusts created before the enactment of OBRA 1990 would be treated differently than trusts created after the enactment of OBRA 1990.

11. Organizations subject to section 833 (sec. 11703)

Present-law section 833 (created in the Tax Reform Act of 1986) provides special tax benefits to Blue Cross or Blue Shield organizations existing on August 16, 1986, which have not experienced a material change in structure or operations since that date. The BBA provision would extend this special rule to other similarly-structured organizations that were in existence on August 16, 1986, and have not materially changed in structure or operations since that date.

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit fewer than 100 beneficiaries in at least one fiscal year in which the provision would be in effect, and all persons engaged in the same activity would not be entitled to take the benefit. The benefit would be available only to a closed group of taxpayers that were in existence in 1986, and would not be available to any newly formed entities.

EXAMPLES OF "LIMITED TAX BENEFITS" FROM OTHER STATUTES

1. The original income tax, as enacted in 1913, exempted the sitting President

The 1913 Act imposing the first income tax provided an exemption for the sitting President of the United States for the remainder of his term. If the Line Item Veto Act had been applicable at the time, the President would have had the option of canceling this "limited tax benefit."

2. Financial institution transition rule to interest allocation rules

A provision in the Tax Reform Act of 1986 changed the rules relating to how multinational corporations allocate interest expense for foreign tax credit purposes. The provision included a favorable rule for banks, and also included a special exception allowing "certain" nonbanks to use the favorable bank rule. The special exception applied to any corporation if "(A) such corporation is a Delaware corporation incorporated on August 20, 1959, and (B) such corporation was primarily engaged in the financing of dealer inventory or consumer purchases on May 29, 1985, and at all times thereafter before the close of the taxable year." P.L. 99-514, 100 Stat. 2548, sec. 1215(c)(5).

This transition rule would have been a "limited tax benefit" if it were expected to provide transitional relief from a change to the Internal Revenue Code to 10 or fewer beneficiaries in at least one fiscal year in which the provision would be in effect. (In retrospect, it is believed that 10 or fewer beneficiaries actually received the benefit of this provision.)

3. Community development corporations

The Omnibus Budget Reconciliation Act of 1993 included a provision that created an income tax credit for entities that make qualified cash contributions to one of 20 "community development corporations" ("CDCs") to be selected by the Secretary of HUD using certain selection criteria. Each CDC could designate which contributions (up to $2 million per CDC) would be eligible for the credit.

This provision would have constituted a "limited tax benefit" if it were expected to provide a benefit to 100 or fewer contributors in at least one fiscal year in which the provision would be in effect. (In retrospect, it is believed that 100 or fewer contributors received the benefit of this provision.) All persons who engage in the activity of making contributions to CDCs are not treated the same, and the difference is not based upon size, filing status, or any of the other enumerated factors.

4. Exemptions from cutbacks in meal and entertainment expense deductions

Prior to 1986, a 100-percent deduction was provided for certain meal and entertainment expenses. In 1986, the deduction was reduced to an 80-percent deduction. In 1993, the deduction was again reduced, to a 50-percent deduction. In both 1986 and 1993, an exemption was provided for food and beverages provided on an offshore oil or gas platform or drilling rig. A separate exemption was provided for support camps in proximity to and integral to such a platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude (i.e., in Alaska).

These exemptions both would have been "limited tax benefits" in 1986 if they had been expected to provide transitional relief from a change to the Internal Revenue Code to 10 or fewer beneficiaries in at least one fiscal year in which the provision would be in effect.

5. Transition relief from private activity bond requirements

The Omnibus Budget Reconciliation Act of 1987 created a new category of private activity bond for bonds issued by a governmental unit to acquire certain nongovernmental output property, e.g., electrical generation facilities. Such bonds generally are subject to a State's annual private activity volume limitation. However, specific transition relief was provided for "bonds issued—(A) after October 13, 1987, by an authority created by a statute—(i) approved by the State Governor on July 24, 1986 and (ii) sections 1 through 10 of which became effective on January 15, 1987, and (B) to provide facilities serving the area specified in such statute on the date of its enactment."

This provision is a "limited tax benefit" because it loses revenue, it is expected to benefit only on issuer of tax-exempt bonds, and it does not fall within any of the stated exceptions. No other issuers of tax-exempt bonds would benefit from the provision.

6. Various Tax Reform Act of 1986 provisions

The Tax Reform Act of 1986 contains a number of provisions that are clearly targeted to only one taxpayer (in some cases, even referring to the taxpayer by name). For example:

"* * * indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma." (sec. 1215(c)(2)(D))

"In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887 * * *" (sec. 1215(c)(6)(A))

A facility if "(i) such facility is to be used by both a National Hockey League team and a National Basketball Association team, (ii) such facility is to be constructed on a platform using air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation, and (iii) such facility is eligible for real property tax (and power and energy) benefits pursuant to State legislation approved and effective as of July 7, 1982." (sec. 1317(3)(S))

"A project is described in this subparagraph if such project is consistent with an urban renewal plan adopted or ordered prepared before August 28, 1986, by the city council of the most populous city in a state which entered the Union on February 14, 1859." (sec. 1317(6)(U))

A facility if "(i) such facility is to be used for an annual civic festival, (ii) a referendum was held in the spring of 1985 in which voters permitted the city council to lease 130 acres of dedicated parkland to such festival, and (iii) the city council passed an inducement resolution on June 19, 1986." (sec. 1317(7)(J))

A residential rental property if "(i) it is a new residential development with approximately 98 dwelling units located in census tract No. 4701, and (ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984." (sec. 1317(13)(M))

"A facility is described in this subparagraph if it consists of the rehabilitation of the Andover Town Hall in Andover, Massachusetts." (sec. 1317(27)(I))

Proceeds of an issue if "(i) such issue is issued on behalf of a university established by Charter granted by King George II of England on October 31, 1754, to accomplish a refunding (including an advance refunding) of bonds issued to finance 1 or more projects, and (ii) the application or other request for the issuance of the issue to the appropriate State issuer was made by or on behalf of such university before February 26, 1986." (sec. 1317(33)(C))

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield the balance of my time to the gentleman from Texas [Mr. ARMEY].

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Texas [Mr. ARMEY] is recognized for 12 minutes.

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, when we wrote the Contract With America, we promised the American people a new deal, a change, a real change which would be meaningful in their real lives. We promised innovation and responsiveness.

Today we bring forward the Contract With America Advancement Act, and it includes the line-item veto. The line-item veto is something the American people have called for for years. The chairman of the committee, the gentleman from Texas [Mr. ARCHER], who first came to Congress with Richard Nixon was in the White House, introduced the line-item veto at that time.

Through the end of the Nixon Presidency and through the Ford Presidency, through the Carter Presidency, the Reagan Presidency, the Bush Presidency, and thus far through the Clinton Presidency, the chairman has fought for a line-item veto, and through all that time the other party, while in the majority, were unwilling to give this authority to the President

of the United States. They were unwilling to give this authority to any President, Republican or Democrat, because they claimed it for themselves, in defiance of the will of the American people. Today we will pass it, Mr. Speaker.

We promised and we are delivering today, regulatory reform to give relief to the small business men and women of this country who create the majority of our new good jobs. Again, we are trying to roll back the regulatory steamroller that has been running over small business in America and has been the hallmark of initiatives of the past Democrat majorities.

In this landmark piece of legislation, we are increasing the limitation on earnings available to our senior citizens before they see a reduction of their Social Security benefits, benefits that were bought and paid for with after-tax dollars throughout all their working years, a simple justice for senior Americans, denied to them for all these years by the Democrat majorities in the past.

They say we are late in getting this done. In the first few months of the second session of our first term in the majority in 40 years, they say we are late in getting done what it is they never would or never could even try to do. We will stand on our promptness. These contract items that will go forward today, I expect the President will sign. Unhappily, he has vetoed others.

The President has already vetoed lower taxes for the working men and women of this country. Welfare reform, much needed and much called for by the people of this country, the President has vetoed twice. A balanced budget the President has vetoed; significant spending reductions and reform, the President has vetoed. The President has not been an agent of change for the American people, Mr. Speaker. The President has been a veto for the status quo.

When the President vetoed these bills, he shut down the Government, and yes, he won a short-term public relations battle. Many were counting us out in our new majority by the end of last year, but we came back in March, and we are back. We have just completed the most productive month of this Congress. During this month of March we have passed a farm bill that is truly revolutionary, taking agriculture in a new direction of freedom for all Americans.

As I have observed the move of farm policy in the past, I have found myself observing that when the American farmers bit on it and joined a partnership with the Federal Government, they became the junior partners, not free on their own land. We are fixing that this month.

We are passing this month a job that we began in 1990, that we had prepared in 1991, that was disallowed to come to this floor by the Democrat majority in 1991, that would move health legislation to end job lock, and would make insurance more affordable for all Americans. That will be done before we leave this week.

We will pass this week product liability reforms. The gentleman from Illinois, HENRY HYDE, our distinguished chairman of the Committee on the Judiciary, sat on that committee for 22 years, 22 years of time when the American people cried for relief from the product liability laws that were choking off job creation in America, and the gentleman from Illinois never got to see even a single hearing on the subject under Democrat chairmen. We will pass that on to the President this week. He says he will veto it on behalf of the trial lawyers.

We have passed already in March the most effective death penalty ever. We have passed an immigration reform that, one, protects our borders; and two, reflects the true openness and compassion to lovers of freedom that this country has demonstrated through its foundation and through its entire history.

Today in Roll Call, Mr. Speaker, this legislation was called landmark and nontraditional. It is landmark and it is nontraditional, nontraditional in the sense that for the past 40 years we had a do-nothing majority that only chose to build on the status quo, never chose to dare to take a chance on freedom, never chose to dare to innovate, never chose to keep faith and be responsive to the demands of the American people.

We are doing that today, and we will do that through the rest of this term, and we will do that in the next Congress, because, Mr. Speaker, the American people deserve a Congress that has the ability to know their goodness and the decency to respect it. That is what they will have.

Mr. SKAGGS. Mr. Speaker, this is one of those occasions when every Member should be mindful of the undertaking that we make at the beginning of every Congress to protect and defend the Constitution of the United States, because adopting the line-item veto provision in this proposed bill would run absolutely counter to that obligation. The first words of Article I, sec. 1 of the Constitution are, "All legislative powers herein granted shall be vested in a Congress of the United States." Later in Article I, sec. 7 dealing with the President's responsibility with regard to legislation, the Constitution states as follows: "If he approve, he shall sign it,"—the bill— "but, if not, he shall return it with his objections."

Those are the basic parameters of the legislative responsibilities that we have under the Constitution and that the President has under the Constitution, and it is not in our power to change them. It is our responsibility in fact to respect and preserve them.

While our friends across the ocean in Britain are having second thoughts these days about their monarchy, this line-item veto provision will effectively start the accretion of monarchical power in the American presidency. The Founders would surely be appalled.

Incredibly, under this proposal, after an appropriations bill has been passed by the Congress and signed it into law, the President can repeal, the authors of this bill say "cancel," those parts of that law he opposes by the mere act of writing them down on paper and sending the list to Congress. This "repeal" power may be suitable for Royalty but it is an unconstitutional insult to the principle of representative democracy.

Recall those grand words of the Declaration of Independence in which we protested the usurpation of power by King George, and mark my words, we will live to regret the usurpation of power that we invite on the part of future Presidents of the United States if this provision becomes law.

Thank God the courts stand ready to do the right thing and to find this provision, as it is, contrary to the Constitution.

The Supreme Court has spoken to this issue most recently and on point in the Chadha case, there making it absolutely clear that the powers of neither branch with respect to the division of responsibility on legislation can be legislatively eroded.

What is even more bizarre in this particular proposal is the provision for the 5 day cancellation period. Now think about that. This is a metaphysical leap of Herculean proportions.

The enactment provisions of the Constitution say that once the President signs a bill, it shall be law. We propose that he then has a 5 day cancellation right, after signing a bill? That is absolutely absurd. This defies any logical reading of the clear meaning to the provisions of the Constitution that delineate the roles and powers of Congress and the President with respect to legislation.

But beyond the constitutional arguments, this proposal is fundamentally unwise. And, sadly, it manifests a shameful disrespect by us of our own responsibilities and the Constitution.

On the large issues, let us think back to what would have happened during the Reagan administration, with a President who, for his own reasons, sent budgets to this body zeroing most categories of education funding in the Federal budget. Presumably, if that President had this power, it would be exercised to eliminate most education funding by the United States Government, and 34 Senators representing 9 percent of the people of this country, in league with the President, could have brought about the outcome.

The invitation to usurpation that lies in this language is even more pernicious and can also be understood by going back to the late eighties, when we were still debating whether we would continue aid to the Contras. Now, let's say I happened to have been fortunate enough to have gotten a provision in an appropriations bill for a needed post office or a needed courthouse in my district, and the bill was down at the White House awaiting signature at the same time we were debating aid to the Contras. I would guarantee you I would have gotten a call from someone at the White House saying "Congressman, I notice you had some success in dealing with this need in your district. We are pleased at that, but we need your support on aid to the Contras." The not so subtle message: your vote on what we want, or you lose the post office.

That is the kind of extortionate excess of power that we are inviting future presidents to apply.

Pick your issue. That is one that comes to my mind.

It is clear that the Governors of the several States who have this power use it in exactly

this way, to get their version of spending adopted. As one former Governor recently stated, the real use of the line-item veto power he had as Governor was not to control a bloated budget but to persuade legislators to change their votes on important issues. Ironically, this may actually result in more spending; in most cases, certainly no reduction.

Last year, the majority in this body rejected the expedited rescissions proposal that represented a constitutionally acceptable approach to this issue, requiring each Member of Congress to be accountable with a specific vote on any items a President might find objectionable enough to rescind. Without that mechanism for requiring congressional reconsideration, the line-item veto proposal before us is clearly unconstitutional.

The language in the Constitution clearly gives Congress the responsibility for crafting legislation, while the President is limited to simple approval or disapproval of bills presented to him. Article I, section 7 refers to the President returning a bill, not pieces of a bill. Yes, the Constitution allows the President to state his objections to a bill upon returning it, but the objections merely serve as guidelines for Congress should it choose to redraft the legislation.

We have no legitimate power to pass a statute to the contrary. The Constitution does not allow the President to repeal a provision of law by striking a spending level approved by Congress. We have no legitimate power to pass a statute to the contrary.

As the Supreme Court noted in its decision I.N.S. versus Chadha, "Explicit and unambiguous provisions of the Constitution prescribe and define the respective functions of the Congress and of the Executive in the legislative process."

The Court continues, "These provisions of Article 1 are integral parts of the constitutional design for the separation of powers." The line-item veto proposal in the bill before us would impermissibly alter the "constitutional design for the separation of powers" between the executive and legislative branches by allowing the President singlehandedly to repeal or amend legislation which Congress has approved, and the President has already signed into law.

The Framers were deliberate and precise in dividing legislative powers. In the Federalist papers, Hamilton and Madison both expressed the view that the legislature would be the most powerful branch of government. Thus, they also recognized the need for some checks on its powers. So, the Constitution provides for a bicameral legislature, with each body elected under different terms and districts. And it affords the President a veto power. Other constraints are also imposed, such as requirements for origination of certain legislation in the House.

The President's veto power, as a check on Congress, was recognized to be a blunt instrument. As Hamilton explains in Federalist 73, the Framers acknowledged that with the veto power "the power of preventing bad laws includes that of preventing good ones." It was their sense, however, that "the negative would be employed with great caution."

The line-item veto being considered today, by providing the President with the authority to repeal or "cancel" appropriations and some tax laws, turns the framework defined in article I, section 7 on its head. What the President might decide to "cancel" under this provision is simply repealed, unless the Congress goes through an entire repetition of the article I legislative process, including a two-thirds vote of both houses. This would allow the President and a minority in only one house of Congress to frustrate the will of the majority—an outcome that flies in the face of the constitutional principle of majority rule.

Finally, Mr. Speaker, I must comment on a very deceptive provision of this line-item veto bill. The authors of the bill claim it doesn't focus unfairly on appropriations bills—which traditionally include funding for education, environmental, health, and other governmental programs—because it also includes tax provisions among the items the President can "cancel."

But, the only tax provisions that can be cancelled are "limited tax benefits," defined as revenue-losing provisions that provide a benefit to "100 or fewer beneficiaries under the Internal Revenue Code of 1986." A tax break for a particular industry that takes millions of dollars out of the Federal treasury can't be cancelled by the President. And even a so-called limited tax break can be easily finessed—that is, immunized from veto—if the conference report merely fails to identify it as such.

Why? I think the answer is obvious. Many members of the majority party are fond of handing out tax breaks to their friends in particular industries. So, under this bill, a member who wants to include funding in an appropriations bill for a national park in her Congressional District must worry about the President cancelling a benefit to her District, but a member who wants to provide funding to his favorite industry or business by including a tax break in a larger tax bill doesn't need to be concerned.

Mr. Chairman, this proposal goes too far in fuzzing the separation of powers set forth in the Constitution. It subjects members of Congress to a new, extreme form of executive branch pressure. It unfairly targets appropriation expenditures while ignoring most tax expenditures. I urge my colleagues to reject it before it is rejected by the courts. Regrettably, this provision so taints this entire bill, otherwise needed to extend the debt limit, that the bill itself should be defeated.

Mr. STEARNS. Mr. Speaker. I rise in support of this legislation to raise the debt ceiling because I do not believe we can allow our Government to go into default. To do otherwise would wreak havoc on our Nation's good standing and would result in Social Security and Veterans benefits from being sent out.

It is difficult to take this action but I can tell you that because of this Congress' vigilance we have already saved approximately $23 billion in spending over the past year. This is a very good start on the road to achieving a balanced budget.

There are two provisions in particular that are included in this measure that allow me to vote in favor of H.R. 3136.

We provide the means to give the President the line-item veto. President Reagan asked Congress over and over again—"Give me the line-item veto." If only Congress had given him this mechanism for fiscal discipline, we wouldn't have these huge debts which, if not reduced, threaten to crush the next generation with huge taxes and a diminished quality of life.

Today we have been given a rare opportunity to enact legislation that will accomplish this.

My other chief reason for voting for this bill is that it contains an increase in the earnings limit for those age 65 to 69 to $30,000 by the year 2002. Currently, a working senior who reaches $11,280 in earned income loses $1 in Social Security for each $3 earned thereafter. That's a marginal tax rate of 33 percent. That's a high price for merely wanting to work.

The earnings test limit is unjust. It treats Social Security benefits less like a pension and more like welfare. It represents a Social Security bias in favor of unearned income over earned income.

It is effectively a mandatory retirement mechanism our country no longer accepts or needs. It precludes greater flexibility for the elderly worker and also prevents America's full use of eager, experienced and educated elderly workers. Finally, it deprives the U.S. economy of the additional income tax which would be generated by the elderly workers.

Let's pass this bill today so that we can get America back on the right track.

Mr. VENTO. Mr. Speaker, I reluctantly support this measure, H.R. 3136, the debt limit package. First, we need to honor the debt which our Nation has incurred. The U.S. credit rating must not be in question, nor should the risk of default. For over 200 years through civil and world wars, recession and depression, the United States has honored our debt.

Certainly it is deplorable that the total U.S. debt has grown so dramatically in the past decades, but the 1993 Clinton budget measure passed by Congress has had a dramatic and positive impact. The deficit of 1996 is half of the 1993 projected 1996 deficit, lowering the amount of deficit by $150 billion this 1996 fiscal year, and at the same time our Nation's economy has performed positively, inflation is in check, unemployment remains low and productivity growth, G.D.P., and business profitability are strong.

This debt ceiling will act to accommodate the Federal budget needs until late 1997. It is past time to take this off the Republican political agenda. The threat of default and intimidation won't work, to sell GOP budget programs that lack merit.

Included in this package of legislative measures is a constitutionally questionable line item veto power for the President. President Clinton, of course, wants this power, but this sloppy rearrangement of the fundamental separation of powers proviso won't pass muster. Furthermore, the line item veto power in this promises much but delivers little. First, it doesn't apply to authorization and appropriation riders.

Therefore, the environmental riders so controversial this fiscal year would be beyond the line item veto reach of this measure. Second, it only applies to categories of spending, making it impossible to single out the specific bad apple in the basket. Finally it doesn't apply to bad tax policy, only specific narrow tax provisions of specific small groups as certified by the Joint Tax Committee.

Yet another dubious congressional limit in the constitutional separation of powers and unique congressional authority which cannot be delegated to the nonelected apparently is the rush to give away congressional powers held by the previous Democratic Congress. The Republicans have today sold symbolism,

not substance, to the Executive Office, and they bought it. To add further limits, the measure has a short life—1997 to 2005. This line item veto is weak, not likely to be effective and will be rendered inoperable by the courts and/or its limited scope.

Everyone can record it on their political campaign literature as an accomplishment, that's probably its best use; other issues added to the debt ceiling measure apparently are popular and the further price of the 2-year debt ceiling which the President agreed to. I'm concerned that the expanded Social Security earning limit, the retirement test ceiling may undermine support for the Social Security Retirement System. The basic predicate of Social Security retirement is that the beneficiary is no longer working. This means a job and slot is available to a less senior worker.

For many, this elevated ceiling means they will receive Social Security retirement benefits but remain on the same job, in essence claiming a retirement income and the wages of a worker. The idea regarding the Social Security retirement is that workers are not able to continue working and that the Social Security income provides for that person and family during that phase of one's life. At least this measure maintains a ceiling and earlier versions lifted it even further.

The income group that benefits from this provision is healthy and generally better off financially. It would be regrettable if the upshot of this policy change would undermine Social Security retirement for those unable to work.

Finally, this overall bill contains some regulatory relief for smaller enterprises. Candidly, I've had serious reservations about the broad ranging measures that try to pass as regulatory relief. Too many have been put forth and passed by the 104th Congress whose intent was to render inoperable important health, safety, and environmental laws.

Rules and regulations are the wheels which carry laws into implementation. Usually the Administrative Procedures Act [APA] provides sufficient assurance of participation and monitoring of the executive department or agency rule and regulatory process. The features of this provision seems reasonable—ironically expanding the potential for lawsuits and litigation—after the Republican majority in this House and Congress have beat the drum and attempted to enact ill considered punitive measures on the legal process and limiting the peoples right to seek redress.

Mr. Speaker, legislation is the art of compromise and as we can note from this document a big dose of symbolism. I'm voting for this measure with little enthusiasm, but with a pragmatic eye.

The Republicans have finally arrived at a point of talking with a Democratic President and have convinced themselves to move forward on the debt ceiling, the main vehicle and single most important engine which necessitates this legislation before the House.

Mr. CONYERS. Mr. Speaker, I am opposed to the regulatory reform provisions of the bill for the following reasons.

On process: This bill has never been considered by the Judiciary Committee or by any other committee in the House. It's stealth process—we only saw the final draft late last night—continues the Republican record of disdain for the committees and for proper democratic process. This bill was created by a secret process in the House, and will allow special interests to secretly influence regulations in the executive branch.

The secret influences of the few: Under the bill, so-called Regulatory Fairness Boards and Advocacy Panels are to be established to directly influence the content of regulations and the nature of regulatory enforcement. These boards are to be made up solely of a few favored small businesses, and can include exclusively campaign contributors.

Ex parte contacts in reg writing: The boards and advocacy panels will provide an avenue for private ex parte contacts with the agencies and the OIRA administrator to influence regulations and enforcement—a departure from the commonly accepted principle that the regulation writing process should be open and on the record. They provide an ex parte and secret forum for these favored businesses to complain about how statutorily mandated regulations are written and enforced.

Yet another attack on the environment: While we all support the concept of regulatory flexibility—that is helping small businesses comply with a vast array of Federal regulations—this bill takes the concept to the extreme. For it allows the waiver of some of our most important environmental penalties relating to safe drinking water and clean air. If, for example, it happens to be a small business that is operating a chemical manufacturing operation or a small business that is a water supplier, laws protecting citizens from drinking water hazards like cryptosporidium or other chemical contamination could simply be waived (section 323). Our environmental safety and health is at risk from these hazards regardless of the source of the hazards.

Still more litigation for the lawyers: Section 611 allows for environmental regulations that protect our air, water, food, and workplaces to be suspended or even overturned by the courts if these and other ill-defined provisions are not strictly adhered to. This judicial review is different from what the House has voted on in the past—for past regulatory flexibility bills that we've voted on allow for judicial review of the reg flex analysis only. This bill, however, could put hundreds of environmental rules at risk, and subject them to endless litigation in the courts for merely procedural reasons that are only marginally related to the fundamental issues surrounding the promulgation of the rule.

Mrs. MALONEY. Mr. Speaker, I intend to vote for this bill. It contains measures which I strongly support. Most importantly, raising the debt ceiling is absolutely essential to ensuring the continued full faith and credit of the United States. Without passage of this bill, the economic security of our country would be gravely imperiled. The legislation also contains provisions to relieve the regulatory burden on our Nation's small businesses and a measure, which I strongly support, to increase the earnings limit for Social Security recipients.

This measure also contains a line-item veto provision about which I have very serious concerns. First, this conference report grants to the President the significant power to item veto new entitlement spending. Spending on Medicare, Medicaid, Social Security, and food stamps help out most vulnerable citizens, the elderly, and infirm. The original House bill, and the Republican's own contract on America, did not grant this authority.

The line-item veto provision before us today also would not become effective until January 1, 1997. This timing conveniently exempts the fiscal year 1997 appropriations cycle from Presidential line-item vetoes. Cynics might conclude that the Republican majority wants one last chance to tuck the pet projects into this year's appropriations bills.

Finally and most egregiously Mr. Chairman, this line-item veto measure takes a loophole included in the House-passed bill and expanded it into a black hole for special interests. The House bill included a provision on allowing the President to item veto targeted tax breaks. Unfortunately, the majority breached its own contract in defining that term very narrowly to mean only those tax giveaways that affect 100 or fewer people. This artificial number can easily be fudged by a smart tax lawyer—you simply have to help out 101 or 102 people.

This conference report includes this loophole and expands it into a black hole for special interests by allowing the President to item veto only those targeted tax benefits identified by the Joint Committee on Taxation, a committee controlled by the tax writing committees of Congress. So if they say it isn't a special interest tax break, the President can never veto it. Mr. Chairman, this is a sham.

The Republican Party was committed to the much broader definition right up to the moment they gained the majority, then they had a sudden change of heart. With this bill the Republicans claim they will end special interest tax breaks, but if you read the fine print you'll see they expect nothing of the kind.

Mr. BEREUTER. Mr. Speaker, this Member rises in support of H.R. 3136, the Contract With America Advancement Act.

This Member is particularly pleased that, as reported on the House floor H.R. 3136 included the Line-Item Veto Act. An important tool in the battle to reduce spending would be to give the President line-item veto authority.

A line-item veto would enable the President to veto individual items in an appropriations bill without vetoing the entire bill. With a line-item veto the executive could strike a pen to the pork-barrel projects that too often find their way into appropriations bills.

This power is currently given to 43 of the Nation's Governors, where it has been a successful tool that discourages unnecessary expenditures at the State level. It is appropriate that the President have this authority as well.

This Member has cosponsored legislation to institute a line-item veto since 1985, and is pleased that this initiative may soon be enacted into law. Legislation to provide for a line-item veto has been introduced in Congress for over 100 years. The time has come to recognize the need for more stringent and binding budget mechanisms.

This Member is also pleased that H.R. 3136 raises the limit on income senior citizens may earn and still receive full Social Security benefits. In the last three Congresses, this Member cosponsored related legislation, and has consistently supported efforts to reduce or eliminate the Social Security earnings limit on senior citizens who must work to make ends meet. Seniors of modest means who have to work to supplement their Social Security checks should be allowed to work without paying an effective marginal tax rate higher than that of millionaires.

In addition, this legislation also includes much-needed regulatory relief provisions that

would inject some common sense into the current regulatory and bureaucratic framework which now exists.

Federal regulations cost the economy hundred so billions of dollars each year. Too often, these regulations were not based on sound science and resulted in little or no benefit to society. This is an issue which must be addressed to provide relief from the plethora of Federal regulations.

This Member urges his colleagues to support H.R. 3136 as reported to the House floor, in order to advance important initiatives to establish a line-item veto, provide regulatory relief, and limit an unfair tax on senior citizens.

Mr. FRANKS of Connecticut. Mr. Speaker, I rise today in strong support of H.R. 3136, the Contract With America Advancement Act, a measure to provide for a line-item veto, for Social Security benefits relief for our senior citizens and for small business regulatory reform.

Mr. Speaker, during my tenure in the Congress, I have been a solid and steady advocate of a platform that recognizes we need to bring real change to this Federal Government of ours. For example, during my freshman and sophomore years, I had sponsored legislation providing for the implementation of a Presidential line-item veto to end the days where the legislatively-spawned Government pork and largesse would cause our deficit to grow like an unkempt bush in one's front yard and the President would not have the hedge clippers to trim it.

However, during those two Congresses, I and other fervent supporters of the line-item veto had been frustrated and thwarted by the then-Democratic majority. The Democrats would say that a line-item veto would render Congress impotent or that Congress does not need to use such a draconian measure as a line-item veto and that we can solve our Nation's fiscal problems by just saying no to pork. Mr. Speaker, I did not accept the Democrats' empty assurances about spending then, and my instincts were proved current when that supposed discipline was nowhere to be found.

Thankfully, Mr. Speaker, times have changed. With the passage of H.R. 3136, the President of the United States, be he Republican or Democrat, will be able to eliminate specific spending and target tax provision in legislation passed by the Congress. This is important, for now the President will have the ability to veto out pork barrel spending in a bill which he may view in an otherwise favorable light. Mr. Speaker, this is a mechanism that 43 of our Governors now possess, and we should extend it to the President of the United States.

Mr. Speaker, I also want to take note of other provisions in H.R. 3136 that I support. I feel that the bill's provisions which raise the limit of income senior citizens may earn while still receiving full Social Security benefits would be beneficial to those concerned.

Presently, senior citizens between the ages of 65 and 69 lose $1 in Social Security benefits for every $3 they earn above $11,520 while the earnings test amounts to an additional 33 percent marginal tax rate on top of existing income taxes. Because of this, seniors who want to work past the age 64 would not have the ability to remain productive, and thus, they are unfairly treated. H.R. 3136 would gradually raise the earnings limit for seniors between the ages of 65 and 90 from the current level of $11,520 to $30,000 by the year 2002.

I have spoken with many seniors around my district, and they, Mr. Speaker, have indicated to me that this measure sounds like a pretty good idea. Many of the seniors in my district still want to work full time or part time. They want to be productive members of society and by raising the limit on income, they can achieve this desired lifestyle. We should definitely support this initiative.

Finally, I rise in full support of the measures in H.R. 3136 which would provide regulatory relief to our Nation's small businesses. Presently, Federal regulations cost our Nation's small businesses an astronomical $430 billion per year while spending a ludicrous 1.9 billions hours per year completing Federal regulatory forms.

Included in these relief provisions are reforms providing for regulatory compliance simplification, regulatory flexibility, procedures for Congress to disapprove new regulations, and small business legal fees associated with fighting excessive proposed penalties.

Mr. Speaker, small businesses are the true lifeblood of our Nation's economy. By helping our small businesses by providing regulatory fairness, we will truly help our workers, our families, our towns and our cities.

Mr. Speaker, I support H.R. 3136, and I urge my colleagues to do likewise when it comes time to vote.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today to speak about H.R. 3136, the Contract With America Advancement Act. I will vote for this bill because it raises the debt limit, however, I must state that I would have preferred a clean debt limit bill. I support the increase in the earnings limit for social security beneficiaries, however, I would like to have had more debate about the small business regulatory flexibility provisions.

I am a strong supporter of small business, which is the foundation of America's economic base. I support regulatory flexibility for small business and having clear guidelines so that small businesses can more easily comply with Government standards. However, I have concerns about bogging down Government agencies in frivolous lawsuits that would draw their attention away from maintaining Government standards for the environment and ensuring workplace safety.

Mr. Speaker, I would also like to discuss this bill in the context of the current ongoing budget debate, and I would urge that we as a body do more for the American people than pass a debt limit increase. Although we will be discussing other important issues the Health Coverage Availability Act, I would like to remind this House of the glaring fact that we do not yet have a balanced budget for the United States, when this fiscal year is half over, and we have not provided funding for all of the Government agencies that serve the American public. This outrageous fact is not forgotten by the American people, and I would urge the leadership on both sides to not forget their duty to the citizens of this country.

The summer is fast approaching and teens that participate in the Summer Jobs Program are wondering if the budget will leave their program intact, or if it will be eliminated. Students and families across the country are wondering what is going on in this House.

Mr. Speaker, I will vote for this debt limit increase bill, but I would urge my colleagues to remember that we are not finished with the budget and that the American people are watching and that they know what the real issues are. Thank you, Mr. Speaker, and I reserve the balance of my time.

Mr. EWING of Illinois. Mr. Speaker, I rise in strong support of this legislation which contains judicial review of the Regulatory Flexibility Act [RFA].

This is an issue which I have been heavily involved in for nearly 5 years, when I was first elected to Congress in 1991. At that time, one of the top concerns I heard about from my constituents was the burden of excessive Federal regulations. Small businesses in particular felt that the money and time they spent complying with rules and regulations handed down from the Federal Government were crippling their ability to complete and invest in productive activity. In the 4½ years since I was elected, these concerns have only increased.

When I was elected, I looked for ways to reduce unnecessary regulation. I found that way back in 1980 Congress passed, and President Carter signed into law, the RFA. Simply put, the RFA required Federal regulators to conduct an analysis of the impact of any proposed new regulation could have on small businesses and small governmental entities. The RFA required the regulators to seek corrective ways to minimize the impact of those proposed rules before they are finalized.

Despite the good intentions of the RFA, the act has been almost totally ignored by Federal regulators for the 16 years its has been on the books. When I looked further into this issue, I found that Federal agencies were routinely using a loophole in the law which allows then to publish a statement in the Federal Register certifying that their regulation does not affect a significant number of small entities, and therefore allowing the agency to avoid conducing the analyses required by the RFA. In fact, I found that RFA analyses are rarely conducted, even when a regulation clearly would have a major impact on the small entities being regulated.

Herein lies the achilles heel of the RFA. When an agency certifies that a regulation will not significantly affect small entities, that certification cannot be challenged in court. A small business owner is prohibited from asking the courts to review whether the Federal agency has complied with the RFA. It is because the agencies know their decision to ignore the RFA cannot be challenged that they almost always do ignore the act. This fact has been confirmed to me as I have met with dozens of small business organizations and hundreds of small business owners over the past 4 years to discuss this issue. A number of hearings have been held in both the Small Business Committee and the Judiciary Committee and scores of witnesses have convinced me and many others in Congress that without judicial review, the Federal regulators will continue to ignore the RFA.

Many of us talk about reducing the cost which Government regulations impost on the American economy, but with passage of this

legislation this Congress is actually doing something about it. We are living up to our campaign promises to make the Government less intrusive, less burdensome on the private sector. We will make Government regulations more sensible, more responsive to those who must comply with them. And we will do it without jeopardizing the environment, or public health and safety.

Many of this issues we debate in Congress have become polarized by partisanship and deep philosophical differences. But this issue, providing judicial review of the RFA, is a fine example of how both parties can identify a problem which the American people want us to fix, and how we can work together, both Republicans and Democrats, to solve a problem and help the American people. I am proud to have worked in a bipartisan fashion with JAN MEYERS, IKE SKELTON, and JOHN LAFALCE for 4 years to pass judicial review of the RFA. Working together, we convinced over 250 Members of the last Congress to cosponsor our legislation, and have passed RFA judicial review with overwhelming majorities in the House. We have put aside our partisan differences to pass this commonsense legislation.

The Republican Congress and President Clinton, who have disagreed on so many issues, have come together in support of providing judicial review of the RFA. Vice President GORE's Reinventing Government Commission recommended providing RFA judicial review as its top priority for the Small Business Administration. RFA judicial review was again a top recommendation of the White House Conference on Small Business conducted last year. We have received letters pledging strong support for RFA judicial review from the President, Chief of Staff Leon Panetta, and SBA Administrator Philip Lader. I would like to request consent to include those letters in the RECORD. Mr. Jere Glover, the administration's chief advocate for small business, has been a strong supporter of judicial review and his influence has been very important.

Virtually every national small business organization has been strongly supportive of RFA judicial review, but a handful of groups have been active participants of the Regulatory Flexibility Act coalition for the past 4 years, and have made this issue a top priority for their members. I would like to recognize these organizations for their outstanding work and commitment to passing this legislation. Jim Morrison, Benson Goldstein and Becky Anderson of the National Association for the Self Employed have provided invaluable institutional knowledge about how the RFA can and should work. David Voight of the U.S. Chamber of Commerce has also provided great institutional knowledge about the RFA, and the Chamber has lent considerable clout to this legislation. The National Federation of Independent Business, and their employees Nelson Litterst and Kent Knutson, have worked endlessly to mobilize hundreds of thousands of small businesses in support of this legislation. Both the NFIB and the Chamber of Commerce have included Reg Flex votes in their "Key Vote" programs which have been extremely important in informing Members of Congress about how important this issue is to their small business constituents. Craig Brightup and the National Roofing Contractors Association have made this issue a top priority from the very beginning, and in fact was the first small business organization to bring this issue to my attention. Marcel Dubois and the American Trucking Associations have been extremely active in mobilizing small businesses in support of RFA judicial review. Finally, Tom Halicki of the National Association of Towns and Townships has played a critical role in bringing to the attention of Congress the importance of judicial review not only to small businesses, but to small governmental bodies as well.

Finally, I want to thank Representatives MEYERS, LAFALCE, and SKELTON and their staff, particularly Harry Katrichis of the Small Business Committee, and Eric Nicoll of my staff for their persistent dedication to passing this legislation over the past 4 years.

SMALL BUSINESS ADMINISTRATION,
October 8, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: The Administration supports strong judicial review of agency determinations under the Regulatory Flexibility Act that will permit small businesses to challenge agencies and receive strong remedies when agencies do not comply with the protections afforded by this important statute.

In fact, the National Performance Review publicly endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small businesses, states, and other entities are reduced.

As Chairman of the Policy Committee of the National Performance Review, under Vice President Gore's leadership I vigorously advocate this position. I have continued to champion this policy within the Administration.

If confirmed as Administrator of the U.S. Small Business Administration, I will join the Congress and the small business community in continued efforts to pass legislation for such judicial review.

Thank you for your leadership on this important issue to small business.

Sincerely,

PHILIP LADER,
Administrator-Designate.

THE WHITE HOUSE,
Washington, October 7, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: Your particular question about the Administration's position on judicial review of actions taken under the Regulatory Flexibility Act has come to my attention.

As you have discussed with Senator Bumpers, the Administration supports such judicial review of "Reg Flex."

The Administration supports a strong judicial review provision that will permit small businesses to challenge agencies and receive meaningful redress when they choose to ignore the protections afforded by this important statute.

In fact, the National Performance Review endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small business, states, and other entities are reduced.

Ironically, Phil Lader, our nominee for Administrator of the Small Business Administration (whose nomination was voted favorably today by a 22–0 vote of the Senate Small Business Committee) has been a principal champion of judicial review of "Reg Flex." In his capacity as Chairman of the Policy Committee on the National Performance Review, Phil vigorously advocated this position. I know that, if confirmed, as SBA Administrator, he would join us in continued efforts to win Congressional support for such judicial review.

Sincerely,

LEON E. PANETTA,
Chief of Staff.

THE VICE PRESIDENT,
Washington, November 1, 1994.

Hon. THOMAS W. EWING,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE EWING: Thank you for contracting me regarding the Regulatory Flexibility Act.

As the President and I have made clear, we strongly support judicial review of agency determinations rendered under the Regulatory Flexibility Act. We remain committed to securing this important reform during the next Congress and will work with Congress for the enactment of strong judicial review for small businesses.

We also understand that it will be important to continue our work with small businesses to ensure that such an amendment provides a sensible, reasonable, and rational approach to judicial review, as recommended by the National Performance Review. As you know, the National Performance Review recommended that which was (and continues to be) sought by the small business community—i.e., an amendment that furthers the intent of the Act and reduces the paperwork burdens on small businesses.

The President and I look forward to working with Congress on this matter and appreciate your leadership in this area.

Sincerely,

AL GORE.

THE WHITE HOUSE,
Washington, October 8, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: My Administration strongly supports judicial review of agency determinations under the Regulatory Flexibility Act, and I appreciate your leadership over the past years in fighting for this reform on behalf of small business owners.

Although legislation establishing such review was not enacted during the 103rd Congress, my Administration remains committed to securing this very important reform. Toward that end, my Administration will continue to work with the Congress and the small business community next year for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute.

As you know, the National Performance Review endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small business, states, and other entities are reduced.

Again, thank you for your continued leadership in this area.

Sincerely,

BILL CLINTON.

Mr. SHAW. Mr. Chairman, I rise today in support of H.R. 3136, the Contract With America Advancement Act, which includes language to raise the amount of money a senior citizen may earn before losing Social Security benefits. Twice before I have supported this legislation; in the Senior Citizens' Equity Act, and in the Senior Citizens Right to Work Act. Support of this legislation is my commitment to the senior citizens of my district to remove the disincentive to continue working after they begin receiving their Social Security benefits.

Increasing the Social Security earnings limit from $11,520 to $30,000 will significantly improve benefits for moderate- and middle-income beneficiaries who work out of necessity, not choice. It will also remove the penalty on those with income from work, but not from other sources such as dividends and interest. I urge my colleagues to help our Nation's seniors by voting for this bill.

Mr. DAVIS. Mr. Chairman, I rise to speak in favor of the Senior Citizens' Right to Work Act which has been included in H.R. 3136. This bill will encourage seniors between the ages of 65 to 69 to work by eliminating financial penalties on hardworking seniors who want to supplement meager Social Security benefits. I strongly urge all of my colleagues to support H.R. 3136 and our senior citizens by increasing the Social Security earnings limit.

The Senior Citizens' Right to Work Act also contains a provision which will eliminate Social Security disability benefits to drug addicts and alcoholics. While I adamantly support this provision, I would like to voice my concern about the fraud and abuse that will occur as a result. Given past abuses in the SSI and SSDI programs, we must be alert to the likelihood that many of these drug addicts and alcoholics currently on Federal disability rolls will attempt to requalify for Social Security benefits under other disability categories. I believe that more can and should be done to ensure accountability in these programs, eliminate fraud and abuse, and save Federal dollars.

Mr. Chairman, we should support referral and monitoring agency programs that currently use national case tracking systems to identify drug addicts and alcoholics who are improperly receiving Federal checks. These types of programs have already saved the Federal taxpayers millions of dollars that would have been spent as a result of the fraudulent practices of drug addicts and alcoholics. Unfortunately, this legislation, in eliminating the drug addiction and alcoholism benefit category, will also eliminate these types of tracking programs. I hope that we can correct this blow to current fraud and abuse monitoring practices in order to ensure that drug addicts and alcoholics do not find a way around the major accomplishments we are achieving today.

Mr. BROWN of California. Mr. Speaker, small manufacturing businesses striving to meet Federal regulatory requirements must have access to the technological information they need to comply with Federal and State laws and regulations. Therefore, I am pleased that the Regulatory Flexibility Act title of this conference report makes it clear that any Federal agency with the requisite expertise is empowered to help in this effort. I am especially pleased that the Manufacturing Extension Program [MEP] of the National Institute of Standards and Technology will continue to provide its full menu of services in southern California and throughout the Nation.

Those of us who have worked to promote the concept of technology extension over the years are well aware of the unique roles played by the Small Business Development Centers [SBDC], the Agricultural Extension Service, and other specialized programs in helping small business. Each of these programs, however, has limited funding; even when they are all putting forth their best efforts, there may not be enough resources to go around. If small business people are required to take time away from production to comply with environmental and other standards, we want them to locate the help to do so as readily as possible, whether that help comes from the Small Business Administration, the Department of Commerce, or the Department of Agriculture.

Given that SBDC's have a broad mission to serve all small business, specialized programs like the MEP are often best situated to meet the regulatory compliance needs of small manufacturers. In my native southern California, for example, there are many excellent examples where the MEP provided help to small businesses that no SBDC could have been expected to provide. Our region is blessed by a large number of small manufacturers, including defense subcontractors, who need very specialized assistance to meet California's air and water quality standards. This led the MEP to set up the Los Angeles Pollution Prevention Center, which provides the specialized environmental engineering expertise both to companies and also to other manufacturing extension centers.

Let me give some specific examples. Without this center, it would have been extremely difficult for Nelson Name Plate, a small manufacturer of metal and plastic nameplates, to survive the mandated phase-out of chemicals it was using for cleaning its brass stock. The center helped Nelson implement a closed loop, customized cleaning system which required no modification of its sanitation permits. The Pollution Prevention Center also permitted Art-Craft, a 20-person firm in the Santa Barbara area, to identify a waterborne primer for painting aircraft which met the exacting standards of both Boeing and the Clean Air Act and to develop the monitoring system it needed to show compliance. It helped CUI, a medical prosthesis company, to replace a curing process using ozone-depleting chemicals with a low-cost, solvent-free process that led to reductions both in hazardous wastes and air emissions.

Mr. Speaker, clearly it is in the Nation's interest to write our laws so that small businesses can provide good jobs and high-quality products while complying fully with environmental and other important regulations. I thank the conferees on this Title for avoiding a legislative turf fight and for allowing the MEP to continue one of its most important missions.

Mr. REED. Mr. Speaker, it is with reluctance that I will vote in favor of this bill before us today.

For almost 6 months, this Nation's good faith and credit has been questioned due to the failure of the Republican majority to complete its budgetary responsibilities.

Apparently, my Republican colleagues have come to their senses and will end their last minute, stop gap extensions of the Government's ability to meet its obligations to bond holders and Social Security recipients.

However, while my colleagues are acting to prevent default they have attached a number of controversial provisions to this must-pass legislation—namely, some of the bill's regulatory reform language as well as line-item veto authority for the President.

Let me be clear, while I am concerned with some of the regulatory reform provisions included in this bill, I support regulatory reform.

I am pleased that legislation to provide judicial review of the Regulatory Flexibility Act is finally on its way to becoming law.

Small businesses have been working to pass this legislation for years, and it will give real teeth to the small business protections in the Regulatory Flexibility Act. My subcommittee marked up this legislation last year, and this will be the second time a version of this legislation has passed the House.

However, there are other regulatory reform-related provisions in the debt ceiling bill that were never considered by the Judiciary Committee, nor any other House committee.

These provisions were not in H.R. 3136 as introduced. Instead, these items were slipped into a manager's amendment that was adopted by passage of the rule. Moreover, they are not identical to the provisions that passed the Senate as part of Senator Bond's bill, S. 942.

For example, one of the non-Senate provisions requires the chief counsel of the SBA to select individuals representative of affected small entities who would review a proposed rule before it is available to the public at large and lobby for changes. These individuals could be campaign contributors of special interest representatives. This provision has been limited to OSHA and EPA rules, since apparently the majority realized what havoc it would wreak if certain politically connected individuals were able to preview IRS, SEC, and other rules—and were thus able to restructure their financial transactions, for example.

Many of the regulatory reform provisions in the bill are meritorious and are based on S. 942. However, that is no reason to circumvent the deliberative legislative process. We ought to review these provisions in committee and work on a bipartisan basis to evaluate and improve upon them instead of slipping them in to must pass legislation.

If my colleagues are not concerned with some of the provisions of the regulatory reform language in H.R. 3136, I would urge them to consider the implications of the line-item veto section of this bill.

I am concerned with wasteful spending, and I have voted to cut a multitude of unneeded programs like the superconducting supercollider and the advanced liquid rocket motor.

However, I am opposed to the line-item veto because it would disrupt the checks and balances of the Constitution. Currently, the President has the power to veto any legislation and Congress can attempt to override this veto. A line-item veto would severely inhibit the legislative branch's say in the spending priorities of this Nation.

The line-item veto sounds innocuous enough, but the people of a small State like Rhode Island know full well what giving the President the authority to pick and choose budget items means.

Indeed, Rhode Island has experienced a Presidential effort through existing executive branch authority to eliminate an essential program.

In 1992, President Bush tried to rescind funding for the *Seawolf* submarine program which is vital to our Nation's defense and is the livelihood of thousands of working Rhode Islanders.

Fortunately, Democrats beat back this attempt, but I am concerned that the line-item provision before us would make future battles closer to a Sisyphean battle than a fair fight. For example, a President—of any political party—could use the line-item veto to eliminate other programs that are important to Rhode Island without fear because a small State like mine only has four votes in Congress.

I would argue that it was this fear of retribution which motivated the Founding Fathers to give the legislative branch the power of the purse and restrict the President's veto powers.

Regrettably, the line-item veto before us today, would grossly distort the Constitution's delicate balance of power and tilt it to the President, and I cannot support such a shift with the interests of my State in mind.

Mr. Speaker, as I stated earlier, I will support this bill because it is imperative that we prevent the Government from defaulting on obligations made many years ago.

In addition, I will also vote for this legislation because it contains provisions that would increase the amount of income that Social Security recipients can earn without losing any benefits.

Under current law, Social Security recipients between the ages of 65 and 69 can earn up to $11,520 in 1996 without having their benefits reduced. Each $3 in wages earned in excess of this limit results in a deduction of $1 in Social Security benefits.

This legislation gradually increases the amount seniors under age 70 can earn without losing any benefits to $30,000 by the year 2002.

I support increasing the Social Security earnings test and voted in favor of the Senior Citizens' Right to Work Act, which included this increase. The House overwhelmingly passed this bill on December 5, 1995 by a vote of 411 to 4.

Approximately 1 million of the 42 million Social Security recipients are expected to benefit from this increase in the earnings limit.

Increasing the earnings test will help improve the overall economic situation of low and middle income seniors in Rhode Island who work out of necessity, not by choice. For example, a Rhode Island senior currently making $12,500 loses almost $330 in Social Security benefits. With the increase included in the legislation before us, that senior would not lose any benefits.

Our seniors have the skills, expertise, and enthusiasm that employers value, and they should be encouraged to work and contribute, not penalized for it.

Mr. Speaker, in closing, I believe I have a duty to prevent the default of the U.S. Government and I will support H.R. 3136, but I would urge my Republican colleagues to stop using important budget legislation as a vehicle for pet causes, Thank you, Mr. Speaker.

The SPEAKER pro tempore. Pursuant to House Resolution 391, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BONIOR

Mr. BONIOR. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. BONIOR. I am in its present form, Mr. Speaker.

Mr. ARCHER. Mr. Speaker, I reserve a point of order against the motion to recommit.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BONIOR moves to recommit the bill to the Committee on Ways and Means with an instruction to report the bill back to the House forthwith with the following amendment: Add at the end of section 331(b) the following:

The amendment made by subsection (a) shall only apply during periods when the minimum wage under section 6(a)(1) of the Fair Labor Standards Act is not less than $4.70 an hour during the year beginning on July 4, 1996 and not less than $5.15 an hour after July 3, 1997.

POINT OF ORDER

Mr. ARCHER. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. ARCHER. Mr. Speaker, I make, actually, two points of order: a point of order that the motion to recommit with instructions is not germane to the bill; and, second, that the motion to recommit with instructions constitutes an unfunded intergovernmental mandate under section 425 of the Congressional Budget Act.

I would ask that a ruling first be made on the point of order against germaneness, on the basis of germaneness.

The SPEAKER pro tempore. Does the gentleman from Michigan [Mr. BONIOR] desire to be heard on the point of order?

Mr. BONIOR. I do, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan [Mr. BONIOR] on the point of order.

Mr. BONIOR. Mr. Speaker, this bill is very broad in its scope. This bill provides that the President be given a line-item veto authority. This bill provides for an increase in the amount Social Security recipients could earn before their Social Security benefits are reduced. Third, it allows small businesses to seek judicial review of regulations.

Mr. Speaker, this bill has to do with taxpayers. There is nothing more important to taxpayers and citizens in this country than to be able to have revenues in their pockets. What we are offering and what we are suggesting under this motion to recommit is that we be given the chance to vote on the increase in the minimum wage, which has not been raised for the past 5 years. The minimum wage is a very important part of a variety of laws in this country that deal with ability of people to make ends meet. People today have incomes——

The SPEAKER pro tempore. The Chair would advise the gentleman from Michigan [Mr. BONIOR] to speak on the point of order, and keep his remarks confined to what is pending.

Mr. BONIOR. I would say to the Speaker that the minimum wage is directly related to the interest of small business in our country today.

The third piece of this bill that was added in the Committee on Rules allows small business to seek judicial review of regulations. In that sense, Mr. Speaker, it seems to me that those people who are affiliated with small business on the employment side ought to have redress to getting a decent wage in this country. You cannot live and raise a family on $9,000 a year or less. We are asking millions of Americans to do that. This bill will provide an opportunity for——

Mr. ARCHER. Mr. Speaker, may we have regular order on the debate on the point of order?

The SPEAKER pro tempore. The gentleman is correct. The gentleman from Michigan is reminded to confine his remarks to the germaneness of the point of order as raised by the gentleman from Texas [Mr. ARCHER].

□ 1400

Mr. BONIOR. Let me just add another point to my argument, Mr. Speaker, on a more technical ground, because I am not able, under the admonition of the Speaker, and the proper admonition, I would say, to talk about the substance, which deals with giving people a fair wage in this country. So I will talk about subtitle c of the bill that requires that the Department of Labor certify whether any of its rules, including rules governing the minimum wage, where a small business could go to court seeking a stay of the Department of Labor's rules governing the minimum wage.

It seems to me that, because of the addition of that subsection and the broadening of the bill, the minimum wage indeed is in order as a discussion point in a motion to recommit.

I would further add, Mr. Speaker, that my recommittal motion is logically relevant to the bill and establishes a condition that is logically relevant to subtitle c. Under the House precedent, my motion, I think, meets this test. If we are meeting the test for employers, if we are meeting the test for seniors, it seems to me we ought to be meeting the test for those women, primarily, millions of them raising kids on their own making less than $8,000 a year. They ought to be given the chance to have this debated and voted on by the House of Representatives.

Mr. Speaker, wages are important, they are stagnant in this country.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman will suspend.

Mr. ARCHER. Mr. Speaker, I regret again that I must ask for regular order. The gentleman wants to wander afield and to debate the substance of the motion to recommit, which is improper at this moment in the House.

The SPEAKER pro tempore. The Chair has observed that the gentleman is to confine his remarks to the point of order, and not the substance.

Mr. BONIOR. Mr. Speaker, I apologize to my friend from Texas and to the Speaker for wandering. I have difficulty not talking emotionally about this issue because of what I see in the country. But I will confine my remarks to subsection c of the bill that requires

that the Department of Labor certify. And I would tell my friend from Texas, the Department of Labor has to certify whether any of its rules, including rules governing the minimum wage. And that, it seems to me, is the direct connection in this bill with the needs of working people in this country who are working for a minimum wage and deserve to have the opportunity to have that wage increase.

Mr. ARCHER. Mr. Speaker, may I be heard on my point of order?

The SPEAKER pro tempore. The gentleman from Texas is recognized.

Mr. ARCHER. Mr. Speaker, I would like to be heard on the point of order on germaneness first and, subsequent to the ruling on that point of order, be heard on the second point of order on intergovernmental mandates.

Mr. Speaker, the motion to recommit is not germane because it seeks to introduce material within the jurisdiction of a committee that is not dealt with in this bill. That is, the subject of the amendment, the minimum wage falls within the jurisdiction of the Committee on Economic and Educational Opportunities, while the subject matter of the bill falls only within the jurisdiction of the Committee on Ways and Means, the Committee on the Budget, the Committee on Rules, the Committee on the Judiciary, the Committee on Small Business, and the Committee on Government Reform and Oversight.

In addition, the motion to recommit seeks to amend the Fair Labor Standards Act, which is not amended by this bill.

Finally, there is the gentleman's argument about rulemaking. The rulemaking authority under this bill is general and not agency specific. Therefore, the motion to recommit is not germane to the bill and should be ruled out of order on that basis.

Mr. ENGEL. Point of order, Mr. Speaker.

The SPEAKER pro tempore. Does the gentleman from New York [Mr. ENGEL] wish to be heard on the point of order raised by the gentleman from Texas [Mr. ARCHER]?

Mr. ENGEL. Yes; I would.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. ENGEL. Mr. Speaker, I must say that I think it is disingenuous and outrageous to say that the minority leader's point of order is not in order here.

The SPEAKER pro tempore. The gentleman will suspend.

Mr. ARCHER. Mr. Speaker, the gentlemen on the other side of the aisle can debate substance at another point in time. This debate now is on the point of order, and they should be told to restrain their comments on the point of order.

The SPEAKER pro tempore. The gentleman from Texas is correct. The Chair would remind the gentleman from New York, as he reminded the minority whip, that he is to confine his remarks to the question of germaneness as raised on the point of order by the gentleman from Texas.

Mr. ENGEL. Mr. Speaker, it would seem to me, if we are debating this bill on raising the debt ceiling limit, that something to do with the minimum wage is about as germane to the debt ceiling limit lifting as the line-item veto is and as allowing seniors to make more money for Social Security purposes. I cannot see why one would not be germane and why these other things are germane. In fact, we should have a clean lifting of the debt ceiling and then we would not have to worry about germaneness after all.

So it would seem to me that we cannot on the one hand attach all kinds of extraneous things to the lifting of the debt ceiling and then on the other hand claim that the minimum wage is not at least as relevant to the lifting of the debt ceiling as the line-item veto and senior citizens are. I just do not think it is fair if we are going to talk about playing by fair rules. I think we ought to be fair. While they may want to stifle free speech on the other side of the aisle, I think we have a right to ask for equity here.

The SPEAKER pro tempore. The Chair is prepared to rule on the point of order raised by the gentleman from Texas on germaneness. The gentleman from Texas makes a point of order that the amendment proposed in a motion to recommit offered by the gentleman from Michigan is not germane to the bill. The text of germaneness in the case of a motion to recommit with instructions is a relationship of those instructions to the bill as a whole.

The pending bill permanently increases the debt limit. It also comprehensively addresses several other unrelated programs, specifically, the Senior Citizens' Right to Work Act, which amends the Social Security Act, the Line-Item Veto Act, which amends the Congressional Budget and Impoundment Control Act, and the Small Business Growth and Fairness Act of 1996, which amends the Regulatory Flexibility Act and the Small Business Act, and it establishes congressional review of agency rulemaking.

The motion does not amend the Fair Labor Standards Act. The motion does not directly amend the laws that go directly to the jurisdiction of the Committee on Economic and Educational Opportunities.

The Chair would cite to page 600 of the Manual the following: An amendment that conditions the availability of funds covered by a bill by adopting as a measure of their availability the monthly increases in the debt limit may be germane so long as the amendment does not directly affect other provisions of law or impose unrelated contingencies.

Therefore, the Chair rules that this motion is germane and overrules that point of order.

UNFUNDED MANDATE POINT OF ORDER

Mr. ARCHER. Mr. Speaker, I urge my second point of order that the motion to recommit with instructions constitutes an unfunded governmental mandate under section 425 of the Congressional Budget Act. Section 425 prohibits consideration of a measure containing unfunded intergovernmental mandates whose total unfunded direct costs exceeds $50 million annually. The precise language in question is the text of the instructions that amends the Fair Labor Standards Act to increase the minimum wage.

According to the Congressional Budget Office, an increase in the minimum wage from $4.25 to $5.15 would exceed the threshold amount under the rule of $50 million. In fact, CBO estimates that it would impose an unfunded mandate burden of over $1 billion over 5 years.

Let me also point out that CBO estimates that this provision would result in a 0.5- to 2-percent reduction in the employment level of teenagers and a smaller percentage reduction for young adults. These would produce employment losses of roughly 100,000 to 500,000 jobs. Therefore, I urge the Chair to sustain this point of order, and I urge my colleagues to vote against the consideration of this unfunded mandate on State and local governments.

The SPEAKER pro tempore. The gentleman from Texas makes a point of order that the motion violates section 425 of the Congressional Budget Act of 1974. In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language of the motion. Under section 426(b)(4) of the Act, the gentleman from Texas [Mr. ARCHER] and a Member opposed will each control 10 minutes of debate on the point of order.

Pursuant to section 426(b)(3) of the Act, after debate on the point of order, the Chair will put the question of consideration, to wit: Will the House now consider the motion?

Mr. BONIOR. Mr. Speaker, I seek time in opposition to the point of order.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. BONIOR] will control 10 minutes.

The Chair recognizes the gentleman from Texas [Mr. ARCHER].

Mr. ARCHER. Mr. Speaker, I reserve the balance of my time.

Mr. BONIOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is indeed ironic that a point of order would be made on this particular motion on the basis that this provides an additional burden on small businesses in this country. That is from our perspective not accurate, not fair. Let me take the accuracy argument first.

Every study recently done in New Jersey, in Pennsylvania, in California, has come to the conclusion that an increase in the minimum wage which has not been increased in 5 years, which is at $4.25 an hour, which is at its lowest level in 40 years, would not only, Mr. Speaker, would not only not cost businesses, would not cost jobs, it would

add jobs. That is what some of these studies have said. Over 100 economists, three Nobel laureates, have suggested it is way past the time that we raise the minimum wage for these folks who have chosen work over welfare, 70 percent of them who are adults, many of them single women with children who need to have more money in their pockets so that they can survive and so they can live in dignity and teach their children that work indeed does pay in this country.

That is what we are all about here, making work pay. Five years ago we passed a similar bill, 90 cents over 2 years, which President Bush supported. Some of my friends on this side of the aisle support it. And here we are again, 5 years later, people struggling to make ends meet, having to work because they are getting paid the minimum wage and in various parts of this country having to work overtime in some jobs, having to work two or three jobs; fathers who cannot come home at night and be with their kids for athletic events, who are not there for PTA meetings; mothers who have to work overtime who are not there reading them bedtime stories, teaching their kids right from wrong.

Mr. Speaker, that is what this is all about. This issue is more than about wages. This is about community. This is about family.

Mr. Speaker, there is nothing more important than increasing the wages of the 80 percent of Americans in this society today who have not seen an increase since 1979.

□ 1415

Since 1979, 98 percent of all income growth in America has gone to the top 20 percent. The other 80 percent got 2 percent of that growth. So the minimum wage, while it will not help all of those 80 percent, will help some of them and it will help the people who are above the minimum wage a little bit. But it more importantly will circulate money throughout the economy, and the more money people have, the more they spend at the hardware store, the more they spend at the grocery store.

This indeed is necessary for us to do justice to those who are working in this society today and who have been denied economic justice for too long. So I do not believe, Mr. Speaker, that this is a violation of the unfunded mandates bill. This is a funding of the mandates of people to take care of their families. That is what this is about, Mr. Speaker.

Mr. Speaker, I reserve the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, this clearly is an unfunded mandate on State and local government. It is the very thing that this Congress overwhelmingly passed a law to prevent last year. It will significantly increase the cost of State and local government. If the Federal Government is to do that by its own legislation, it has an obligation to reimburse the State and local governments. That is not mandatory that we do that, but we took the position that it was inappropriate for us to do that. That is why we are having this debate today, because of the unfunded mandate legislation that was passed and signed into law by the President last year.

In addition, it places an unfunded mandate of unquantified amount on employers, which was also part of the law that we passed on a bipartisan basis and signed by the President of the United States last year. Here already the provisions of that law are to be tested. Did we really mean it? Well, if this motion to recommit passes, it will say to the American people we did not really mean it.

I do not think that is an appropriate thing for this Congress to do. CBO estimates that the potential loss of jobs will range, will reduce the employment level of teenagers and a smaller percentage reduction of young adults, reducing by a half a percent to 2 percent in the employment level of those types of individuals. They would produce employment losses of 90 cents per hour, increasing the minimum wage. From roughly 100,000 to 500,000 jobs, that 90-cent-per-hour increase will cost employment that much.

I urge a positive vote on the point of order on unfunded mandates, Mr. Speaker.

Mr. Speaker, I reserve the balance of my time.

Mr. BONIOR. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. ENGEL].

Mr. ENGEL. Mr. Speaker, I thank the minority whip for yielding me the time.

Mr. Speaker, let us say what this really is. This is an attempt by the Republican majority not to allow the whole issue of minimum wage, of raising the minimum wage for American workers to come to the floor. I serve on the Committee on Economic and Educational Opportunities. We cannot get that bill to come to committee. The Republican leadership has blocked it. We cannot get that bill to come to the floor. The Republican leadership has blocked it.

They could care less about raising the minimum wage. They expect people to work at a $4.25 an hour standard, which is less than people who are on welfare are getting. So much for welfare reform. They claim they are for welfare reform, but they do not want to pay someone who wants to work for a living a decent wage. Apparently they think coolie wages is what we should do, $4.25 an hour. This would simply raise it to $5.15.

The last raise was 5 years ago. Workers' moneys in terms of what they make on minimum wage are at a 40-year low. Is there no decency? Do we not care about what people who are trying to work for a living do?

The Republican majority does not want this to come to a vote. I may ask my colleagues on the other side of the aisle, what are they afraid of? All we are saying is that the minimum wage ought to be raised from $4.25 to $5.15. We owe it to America's workers to do this. This is simple decency. What are you afraid of? Are you afraid that the vote will pass and that people on your side of the aisle, some of them, may even vote for it?

There has been an attempt to block this bill from being in the committee and from being on the floor. We cannot get a vote. All we are saying is let us vote up or down whether or not the minimum wage should be raised. That is all we are asking and that is all we want here this afternoon.

PARLIAMENTARY INQUIRY

Mr. ARCHER. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman will state it.

Mr. ARCHER. Would the Speaker please explain to the House how this vote will be framed and what a "yes" or "no" vote will mean, because this is the first time that we have had a test of the unfunded mandate legislation?

The SPEAKER pro tempore. The question will be put by the Chair, to wit, will the House now consider the motion to recommit? So an "aye" vote would mean that the House should indeed consider the motion to recommit. A "no" vote would mean that the House would not consider the motion to recommit.

Mr. ARCHER. Mr. Speaker, would it be fair to say that a "no" vote then would sustain the point of order?

The SPEAKER pro tempore. Yes.

Mr. BONIOR. Mr. Speaker, that is not a point of order. Mr. Speaker, may I be heard?

The SPEAKER pro tempore. The statute provides that on this point of order the House shall decide that question and not a ruling from the Chair on whether to consider the motion. It would not be a prerogative of the Chair to make that judgment.

Mr. CLINGER. Mr. Speaker, I would indicate that I think a "yes" vote on this matter would in effect be saying that we would allow an unfunded mandate to be passed through, or open the door to passing through, an unfunded mandate to the States.

Those who would want to sustain the unfunded mandate legislation, and this is our first look at this thing, the first time we have had to consider this procedure, those who want to sustain that should vote "no" on this measure.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. DELAY], the majority whip.

Mr. DELAY. Mr. Speaker, I hope Members are watching this debate because this is the first time that we have had this kind of vote in the 104th Congress, and I am urging a "no" vote on this particular motion.

I hope Members will really take a look at what is happening here. This is blatant politics and blatant hypocrisy.

The gentleman from New York who just spoke before I did said in his speech that we owe the American workers this vote and we owe the American workers to raise the minimum wage. Where did he get that? I submit he got that from the convention that was just held in this town by the AFL–CIO who said that they would raise over $35 million to take this majority out.

That is what this vote is all about. This group over here on this side of the aisle has been screaming and yelling for the last many weeks.

Mr. BONIOR. Mr. Speaker, I move that the gentleman's words be taken down. He used the word "hypocrisy."

□ 1425

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The Clerk will report the last words by the gentleman from Texas [Mr. DELAY].

The Clerk read as follows:

The gentleman from New York, who just spoke before I did, said in his speech that we owe the American workers this vote and we owe the American workers to raise the minimum wage. I submit he got that from the convention that was just held in this town by the AFL–CIO, who said that they would raise over $35 million to take this majority out. That is what this vote is all about. This group over here on this side of the aisle has been screaming and yelling for the last many weeks.

The SPEAKER pro tempore. The Chair does not believe that anything in those remarks constitutes any personal reference to any other Member of this body.

Mr. BONIOR. Mr. Speaker, may I be heard?

The SPEAKER pro tempore. The gentleman from Michigan.

Mr. BONIOR. Mr. Speaker, the Clerk needs to go back farther, because there was reference and the use of the word "hypocrite," and the Clerk has not gone back far enough to pick up the words that I objected to. The word "hypocrisy" was used, excuse me, Mr. Speaker.

The SPEAKER pro tempore. The Chair would remind the gentleman that on points such as that, the point of order from the gentleman making the point of order has to be timely. The Clerk has gone back several sentences to transcribe what the gentleman had said, and the gentleman's demand certainly was not timely in this instance.

The gentleman from Texas may proceed with his remarks.

POINT OF ORDER

Mr. BONIOR. Point of order, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. BONIOR. Mr. Speaker, that dialog that I am referring to could not have taken more than 30 seconds, and it seems to me that I was indeed timely when I rose to my feet as the gentleman was completing his idea, which included referring to the gentleman from New York [Mr. ENGEL] with the term "hypocrisy."

The SPEAKER pro tempore. Under the precedents set, those points of order raised by the gentleman have to be on a timely basis. This is precedent that has been set in this body for a number of years where there are intervening remarks that you are alluding to. So the Chair rules that the gentleman from Texas may proceed.

Mr. BONIOR. Mr. Speaker, I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. ARCHER

Mr. ARCHER. Mr. Speaker, I move to table the appeal of the ruling of the Chair.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. ARCHER] to lay on the table the appeal of the ruling of the Chair.

The question was taken; and the Speaker pro tempore announced that they ayes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 232, noes 185, not voting 14, as follows:

[Roll No. 99]

AYES—232

Allard	Davis	Hoke
Archer	Deal	Horn
Armey	DeLay	Hostettler
Bachus	Diaz-Balart	Houghton
Baker (CA)	Dickey	Hunter
Baker (LA)	Doolittle	Hutchinson
Ballenger	Dornan	Hyde
Barr	Dreier	Inglis
Barrett (NE)	Duncan	Istook
Bartlett	Dunn	Jacobs
Barton	Ehlers	Johnson (CT)
Bass	Ehrlich	Johnson, Sam
Bateman	Emerson	Jones
Bereuter	English	Kasich
Bilbray	Ensign	Kelly
Bilirakis	Everett	Kim
Billey	Ewing	King
Blute	Fawell	Kingston
Boehlert	Fields (TX)	Klug
Boehner	Flanagan	Knollenberg
Bonilla	Foley	Kolbe
Bono	Forbes	LaHood
Brownback	Fox	Largent
Bryant (TN)	Franks (CT)	Latham
Bunn	Franks (NJ)	LaTourette
Bunning	Frelinghuysen	Laughlin
Burr	Frisa	Lazio
Burton	Funderburk	Leach
Buyer	Gallegly	Lewis (CA)
Callahan	Ganske	Lewis (KY)
Calvert	Gekas	Lightfoot
Camp	Gilchrest	Linder
Campbell	Gillmor	Livingston
Canady	Gilman	LoBiondo
Castle	Goodlatte	Longley
Chabot	Goodling	Lucas
Chambliss	Goss	Manzullo
Chenoweth	Graham	Martini
Christensen	Greenwood	McCollum
Chrysler	Gunderson	McCrery
Clinger	Gutknecht	McDade
Coble	Hancock	McHugh
Coburn	Hansen	McInnis
Collins (GA)	Hastert	McIntosh
Combest	Hastings (WA)	McKeon
Cooley	Hayworth	Metcalf
Cox	Hefley	Meyers
Crane	Heineman	Mica
Crapo	Herger	Miller (FL)
Cremeans	Hilleary	Molinari
Cubin	Hobson	Moorhead
Cunningham	Hoekstra	Morella
Myers	Roth	Tate
Myrick	Roukema	Tauzin
Nethercutt	Royce	Taylor (NC)
Neumann	Salmon	Thomas
Ney	Sanford	Thornberry
Norwood	Saxton	Tiahrt
Nussle	Scarborough	Torkildsen
Oxley	Schaefer	Upton
Packard	Schiff	Vucanovich
Parker	Seastrand	Waldholtz
Paxon	Sensenbrenner	Walker
Petri	Shadegg	Walsh
Pombo	Shaw	Wamp
Porter	Shays	Watts (OK)
Portman	Shuster	Weldon (FL)
Pryce	Skeen	Weller
Quillen	Smith (MI)	White
Quinn	Smith (NJ)	Whitfield
Radanovich	Smith (TX)	Wicker
Ramstad	Solomon	Wolf
Regula	Souder	Young (AK)
Riggs	Spence	Young (FL)
Roberts	Stearns	Zeliff
Rogers	Stockman	Zimmer
Rohrabacher	Stump	
Ros-Lehtinen	Talent	

NOES—185

Abercrombie	Gibbons	Obey
Ackerman	Gonzalez	Olver
Andrews	Gordon	Ortiz
Baesler	Green	Orton
Baldacci	Gutierrez	Owens
Barcia	Hall (OH)	Pallone
Barrett (WI)	Hall (TX)	Pastor
Becerra	Hamilton	Payne (NJ)
Bellenson	Harman	Payne (VA)
Bentsen	Hastings (FL)	Pelosi
Berman	Hefner	Peterson (FL)
Bevill	Hilliard	Peterson (MN)
Bishop	Hinchey	Pickett
Bonior	Holden	Pomeroy
Borski	Hoyer	Poshard
Boucher	Jackson (IL)	Rahall
Brewster	Jackson-Lee (TX)	Rangel
Browder	Jefferson	Reed
Brown (CA)	Johnson (SD)	Richardson
Brown (FL)	Johnson, E. B.	Rivers
Brown (OH)	Johnston	Roemer
Cardin	Kanjorski	Rose
Chapman	Kaptur	Roybal-Allard
Clay	Kennedy (MA)	Rush
Clayton	Kennedy (RI)	Sabo
Clement	Kennelly	Sanders
Clyburn	Kildee	Sawyer
Coleman	Kleczka	Schroeder
Collins (MI)	Klink	Schumer
Condit	LaFalce	Scott
Conyers	Lantos	Serrano
Costello	Levin	Sisisky
Coyne	Lewis (GA)	Skaggs
Cramer	Lincoln	Skelton
Danner	Lipinski	Slaughter
de la Garza	Lofgren	Spratt
DeFazio	Lowey	Stark
DeLauro	Luther	Stenholm
Dellums	Maloney	Studds
Deutsch	Manton	Stupak
Dicks	Markey	Tanner
Dingell	Mascara	Taylor (MS)
Dixon	Matsui	Thompson
Doggett	McCarthy	Thornton
Dooley	McDermott	Thurman
Doyle	McHale	Torres
Durbin	McKinney	Torricelli
Edwards	Meehan	Towns
Engel	Meek	Traficant
Eshoo	Menendez	Velazquez
Evans	Miller (CA)	Vento
Farr	Minge	Visclosky
Fattah	Mink	Volkmer
Fazio	Moakley	Ward
Flake	Mollohan	Waters
Foglietta	Montgomery	Watt (NC)
Ford	Moran	Waxman
Frank (MA)	Murtha	Wilson
Furse	Nadler	Wise
Gejdenson	Neal	Woolsey
Gephardt	Oberstar	Wynn
Geren		Yates

NOT VOTING—14

Bryant (TX)	Frost	Stokes
Collins (IL)	Hayes	Tejeda
Fields (LA)	Martinez	Weldon (PA)
Filner	McNulty	Williams
Fowler	Smith (WA)	

□ 1453

So the motion to lay on the table the appeal of the ruling of the Chair was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. TEJEDA. Mr. Speaker, I was at the White House on official business and missed vote No. 99. Had I been present, I would have voted "no."

I ask that my statement appear in the RECORD immediately after the vote.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Under the order of business, the debate is on a point of order by the gentleman from Texas [Mr. ARCHER].

The gentleman from Texas [Mr. DELAY], the majority whip, has 1 minute remaining.

The Chair recognizes the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Speaker, all I was trying to say was is it not interesting that we are having a motion on the floor, 3 days after the AFL–CIO had a convention calling for an increase in the minimum wage and promising to raise $35 million by assessing their membership more of their hard-earned wages, to take out the majority that is trying to allow working families to keep more of their hard-earned wages?

I hope everyone that was outraged by the gun vote last week will vote "no" on this, because we were accused of the same thing.

Is it not also interesting that we have heard time and time again that we have not had enough hearings in this body; that we have to look at these issues, hold hearings on these issues. yet we have the Democrats bringing a motion to the floor that wants to do away with the unfunded mandate legislation that was passed by the Senate and debated in less than 20 minutes.

The SPEAKER pro tempore. The gentleman from Texas [Mr. ARCHER] has 5½ minutes remaining, and the gentleman from Michigan [Mr. BONIOR] has 4 minutes remaining.

Mr. ARCHER. Mr. Speaker, I yield 1½ minutes to the gentleman from Pennsylvania [Mr. GOODLING], the chairman of the Committee on Economic and Educational Opportunities.

(Mr. GOODLING asked and was given permission to revise and extend his remarks.)

Mr. GOODLING. Mr. Speaker, I think the first thing I would like to do is remind all Members that our balanced budget provides an instant raise for workers in the form of lower taxes, reduced interest rates, and greater economic growth.

PARLIAMENTARY INQUIRY

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. VOLKMER. Mr. Speaker, do we have the balanced budget before us to speak on? What is the issue which the speakers in the well should address?

□ 1500

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The House is debating whether to consider the motion to recommit; the question that the House is debating right now is whether the pending recommittal motion should be considered.

Mr. VOLKMER. A recommittal motion.

The SPEAKER pro tempore. Whether to consider a recommittal motion.

Mr. VOLKMER. Whether to consider a recommittal motion.

The SPEAKER pro tempore. That is correct.

The gentleman from Pennsylvania [Mr. GOODLING] is recognized for 1½ minutes.

Mr. GOODLING. Mr. Speaker, our balanced budget provides an instant raise for workers in the form of lower taxes, reduced interest costs, and greater economic opportunity which will lead to higher wages for America's workers.

Let me assure Members that the committee of jurisdiction will look at the overall picture as to why in the last 3 years we have had a very stagnant economy, which has resulted in a very stagnant growth in relationship to wages and benefits. We will look at the overall picture. We will see whether it is unfunded mandates, such as one that was proposed today. We will look to see whether it is regulatory reform that is needed. But we will not look at a single issue because the issue is all-encompassing and we have to look at every piece of that and we will do it in a conference. We will do it in committee. We will do it in hearings. But we will not be rushed to do something that will, in fact, stagnate the economy even more. We cannot afford to grow at 1 percent or less, or we will never get out of this stagnated economy that we are presently in.

Mr. BONIOR. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. HINCHEY].

Mr. HINCHEY. Mr. Speaker, I am surprised that the leadership of this House would suggest that requesting an increase in the minimum wage for American workers is an unfunded mandate. If we follow that logic, adhere to it, then this body would not be able to do anything to protect the health and welfare of the American people.

We just heard it said that the so-called balanced budget contains provisions that will be beneficial to the American workers, tax cuts. In fact the opposite is true. We are chopping away at the earned income tax credit. We are going to raise taxes for minimum wage people. That is what my colleagues are going to do.

Mr. Speaker, the American people need an increase in their wages. They need an increase in wage. They have come to this Congress and asked for it. The last time this Congress authorized an increase in their salary was 1989. They are falling way behind. At the rate of this minimum wage, a person working full time makes only $8,500 a year. That is below the poverty level. The American people need an increase in their wage. They have asked for it. We have a responsibility to give it to them. Let us give them an increase.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume, simply to respond that the Parliamentarian and the Speaker have decided that there are adequate grounds, that there is an unfunded mandate in this bill, or we would not be having this procedural vote. Let me make that very clear. This is a procedural vote. There are adequate grounds to establish that there is an unfunded mandate in this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BONIOR. Mr. Speaker, I yield myself such time as I may consume.

Let me correct the gentleman from Texas by suggesting that this is a motion to proceed on a vote to have a debate on the minimum wage. That is what we are discussing. That is the issue that is before us. The question is will we even proceed to discuss this basic fundamental economic justice issue of whether people can earn a decent living and whether they should move to work as opposed to welfare in this country. That is what this is about.

My friend, and he is my friend, from Texas said and preached to us just a few minutes ago about the AFL–CIO wanting this vote. Those people do not make the minimum wage. They do not make it because they got together. They banded together in unity for a decent wage for themselves. They are working for other folks. They are trying to get them a decent wage.

Mr. Speaker, the distinguished gentleman from Pennsylvania [Mr. GOODLING], who is also my friend, says we need to study this. We are not going to be rushed. We need to go slow. It is at its 40-year low, 40-year low, the minimum wage. No hearings have been held in this Congress.

We have got about 30-some days left in the legislative calendar. My colleagues do not want a vote. They are blocking a vote. They blocked the vote on the minimum wage in the Senate. They are blocking it here again in the House. Wages are important to people. We want to put money in people's pockets by raising their wages. That is what this issue is all about.

Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Speaker, the Republican majority will find any excuse to hurt hard-working middle-class families in this country. Today the Republican majority would deny and block a vote to increase the minimum wage. Mothers and fathers are working harder, longer hours, two and three jobs,

and have seen their wages not rise but decrease. They scramble to pay their bills, to make ends meet at the end of every week. More than two-thirds of minimum wage workers are 20 years and older, they are not teenagers.

The approximate annual average salary of a minimum wage worker is $8,500 a year. It is below the poverty level. It is below the welfare level.

Imagine, this Republican majority says no to a 90 cents increase an hour for working families in this country, 90 cents, when they make over $130,000 a year.

That is not justice. It is wrong to happen to working families in this country. Shame. Stop the excuses. Let us vote on a minimum wage in this House and let us past minimum wage for working families in this country.

PARLIAMENTARY INQUIRIES

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. VOLKMER. Mr. Speaker, as a result of my previous parliamentary inquiry to the Chair and to others, that the debate was on the motion to recommit to determine whether or not it is an unfunded mandate; is that correct or incorrect?

The SPEAKER pro tempore. The Chair will read from section 426(b) of the Budget Act as to what the House is debating: question of consideration, "as disposition of points of order under section 425 or subsection (a) of this section, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order."

Mr. VOLKMER. The point of order is the motion to recommit is an unfunded mandate; is that correct?

The SPEAKER pro tempore. That is correct.

Mr. VOLKMER. That is the point of order.

Now, the Parliamentarian does not rule on this and we are to vote and make an individual decision as to whether or not we believe that this is an unfunded mandate if the point of order is proper; is that correct, as an individual?

The SPEAKER pro tempore. The question is simply on whether this body wants to consider the motion to recommit, notwithstanding the point of order.

Mr. VOLKMER. Notwithstanding the point of order. Therefore, any Member can raise a point of order not on the motion to recommit or an amendment or anything under this rule, correct?

The SPEAKER pro tempore. Only against this motion at this time.

Mr. VOLKMER. Only against the motion.

Now, should the Members not make a decision based on recommendations like the Congressional Budget Office which says this is not an unfunded mandate?

The SPEAKER pro tempore. The Chair would remind Members that the reason the House is having this debate is so the Members can make up their minds on which way they want to vote on this question.

Mr. VOLKMER. Without listening to the Congressional Budget Office.

Mr. FRANK of Massachusetts. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. FRANK of Massachusetts. Mr. Speaker, it has to do with the nature of the question we are voting on.

As I understand it, we are talking about the new rule adopted at the beginning of this Congress dealing with what to do when there is an unfunded mandate. Would this vote, and this would help, I believe, us clarify it, because we have dealt with this once before in my recollection, would a vote now to proceed with the minimum wage vote be the equivalent of what the House did when we adopted the rule on the agriculture bill which waived the unfunded mandate point of order?

When the House adopted the majority's proposed rule on the agriculture bill, it waived the point of order with regard to unfunded mandates and allowed us then to proceed on the bill which CBO said had unfunded mandates. Are we now being asked to do the same thing; namely, take up the bill although CBO does not say there are unfunded mandates in there, as we did when we adopted the majority's rule on the agriculture bill?

The SPEAKER pro tempore. The Chair can only respond that the reason the House is having this debate is so the House can make the judgment on whether there shall be a vote on the motion to recommit.

Mr. ENGEL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. ENGEL. Mr. Speaker, the previous gentleman mentioned that the rule on the agriculture bill waived a point of order with regard to unfunded mandates. Is this the blatant politics and blatant hypocrisy that the majority whip was referring to?

The SPEAKER pro tempore. The gentleman is not stating a parliamentary inquiry.

The Chair would advise Members that the gentleman from Texas [Mr. ARCHER] has 3½ minutes remaining, the gentleman from Michigan [Mr. BONIOR] has 30 seconds remaining, and the gentleman from Texas [Mr. ARCHER] has the right to close.

Mr. BONOIR. Mr. Speaker, I yield 30 seconds to the gentleman from Vermont [Mr. SANDERS].

(Mr. SANDERS asked and was given permission to revise and extend his remarks.)

□ 1515

Mr. SANDERS. Mr. Speaker, the leadership of this Congress has passed huge tax breaks for the rich and for the largest corporations in America.

But somehow, when some of us want to raise the minimum wage for millions of American workers, we are told that we are not even allowed to have a vote.

People today are working longer hours for lower wages, and they are entitled to a raise. Mr. Speaker, let us raise the minimum wage; more importantly, let us have the guts to vote on the issue.

Mr. ARCHER. Mr. Speaker. I yield the balance of my time to the gentleman from Texas [Mr. ARMEY], the majority leader.

Mr. ARMEY. Mr. Speaker, after years of frustration and months of hard work we are here today to do three good things for the American people: to give the President of the United States the long-sought line-item veto authority the American people wish for him to have, to give the senior citizens of America a chance to work in their senior years and still retain their Social Security benefits with less prejudice from the Government's desire to take their earnings away, their benefits away, if they earn money, and to create job opportunities by lessening the red tape burden on small business. We are here to do these things that the minority, when they were in the majority, would not do, and we can complete that work.

Now we are being asked, and I might say it has been a very colorful and entertaining show; we are being asked to go back on the work that we did earlier on unfunded mandates and pose an unfunded mandate on the communities in our country in order to raise the minimum wage. Is this an effort to stop three good things from happening or to do one bad thing?

I was just asked by one of my colleagues a moment ago why is it the minority did not raise the minimum wage last year when they had the majority in the House, they had the majority in the Senate and they had the White House?

Mr. Speaker, I suspect the reason is that they read page 27 of Time magazine on February 6, 1995, where the President was quoted as saying that raising the minimum wage is, and I quote, "the wrong way to raise the incomes of low wage earners." Perhaps they did not.

We have had an interesting show, I have been much entertained by it, I am sure the Nation has been entertained. But this body belongs to the people for serious work.

I propose that we vote down this motion, get on with our work, and do some good things for America rather than punish the working poor.

The SPEAKER pro tempore. The question is, will the House now consider the motion to recommit?

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 192, noes 228, not voting 11, as follows:

[Roll No. 100]

AYES—192

Abercrombie	Green	Pallone
Ackerman	Gutierrez	Pastor
Andrews	Hall (OH)	Payne (NJ)
Baldacci	Hamilton	Payne (VA)
Barcia	Harman	Pelosi
Barrett (WI)	Hastings (FL)	Peterson (FL)
Becerra	Hefner	Peterson (MN)
Beilenson	Hilliard	Pickett
Bentsen	Hinchey	Pomeroy
Berman	Holden	Poshard
Bevill	Hoyer	Rahall
Bishop	Jackson (IL)	Rangel
Bonior	Jackson-Lee	Reed
Borski	(TX)	Richardson
Boucher	Jacobs	Riggs
Browder	Jefferson	Rivers
Brown (CA)	Johnson (SD)	Roemer
Brown (FL)	Johnson, E. B.	Rose
Brown (OH)	Johnston	Roybal-Allard
Cardin	Kanjorski	Rush
Chapman	Kaptur	Sabo
Clay	Kennedy (MA)	Sanders
Clayton	Kennedy (RI)	Sawyer
Clement	Kennelly	Schroeder
Clyburn	Kildee	Schumer
Coleman	Kleczka	Scott
Collins (MI)	Klink	Serrano
Condit	LaFalce	Sisisky
Conyers	Lantos	Skaggs
Costello	Leach	Skelton
Coyne	Levin	Slaughter
Cramer	Lewis (GA)	Smith (NJ)
Danner	Lincoln	Spratt
de la Garza	Lipinski	Stark
DeFazio	Lofgren	Stenholm
DeLauro	Lowey	Stockman
Dellums	Luther	Studds
Deutsch	Maloney	Stupak
Dicks	Manton	Tanner
Dingell	Markey	Taylor (MS)
Dixon	Martinez	Tejeda
Doggett	Mascara	Thompson
Dooley	Matsui	Thornton
Doyle	McCarthy	Thurman
Duncan	McDermott	Torkildsen
Durbin	McHale	Torres
Edwards	McKinney	Torricelli
Engel	Meehan	Towns
Eshoo	Meek	Traficant
Evans	Menendez	Velazquez
Farr	Miller (CA)	Vento
Fattah	Minge	Visclosky
Fazio	Mink	Volkmer
Flake	Moakley	Ward
Foglietta	Mollohan	Waters
Ford	Moran	Watt (NC)
Frank (MA)	Murtha	Waxman
Frost	Nadler	Williams
Furse	Neal	Wilson
Gejdenson	Oberstar	Wise
Gephardt	Obey	Woolsey
Gibbons	Olver	Wynn
Gilman	Ortiz	Yates
Gonzalez	Orton	
Gordon	Owens	

NOES—228

Allard	Brownback	Cox
Archer	Bryant (TN)	Crane
Armey	Bunn	Crapo
Bachus	Bunning	Cremeans
Baesler	Burr	Cubin
Baker (CA)	Burton	Cunningham
Baker (LA)	Buyer	Davis
Ballenger	Callahan	Deal
Barr	Calvert	DeLay
Barrett (NE)	Camp	Dickey
Bartlett	Campbell	Doolittle
Barton	Canady	Dornan
Bass	Castle	Dreier
Bateman	Chabot	Dunn
Bereuter	Chambliss	Ehlers
Bilbray	Chenoweth	Ehrlich
Bilirakis	Christensen	Emerson
Bliley	Chrysler	English
Blute	Clinger	Ensign
Boehlert	Coble	Everett
Boehner	Coburn	Ewing
Bonilla	Collins (GA)	Fawell
Bono	Combest	Fields (TX)
Brewster	Cooley	Flanagan
Foley	Knollenberg	Ramstad
Forbes	Kolbe	Regula
Fox	LaHood	Roberts
Franks (CT)	Largent	Rogers
Franks (NJ)	Latham	Rohrabacher
Frelinghuysen	LaTourette	Roth
Frisa	Laughlin	Roukema
Funderburk	Lazio	Royce
Gallegly	Lewis (CA)	Salmon
Ganske	Lewis (KY)	Sanford
Gekas	Lightfoot	Saxton
Geren	Linder	Scarborough
Gilchrest	Livingston	Schaefer
Gillmor	LoBiondo	Schiff
Goodlatte	Longley	Seastrand
Goodling	Lucas	Sensenbrenner
Goss	Manzullo	Shadegg
Graham	Martini	Shaw
Greenwood	McCollum	Shays
Gunderson	McCrery	Shuster
Gutknecht	McDade	Skeen
Hall (TX)	McHugh	Smith (MI)
Hancock	McInnis	Smith (TX)
Hansen	McIntosh	Solomon
Hastert	McKeon	Souder
Hastings (WA)	Metcalf	Spence
Hayes	Meyers	Stearns
Hayworth	Mica	Stump
Hefley	Miller (FL)	Talent
Heineman	Molinari	Tate
Herger	Montgomery	Tauzin
Hilleary	Moorhead	Taylor (NC)
Hobson	Morella	Thomas
Hoekstra	Myers	Thornberry
Hoke	Myrick	Tiahrt
Horn	Nethercutt	Upton
Hostettler	Neumann	Vucanovich
Houghton	Ney	Waldholtz
Hunter	Norwood	Walker
Hutchinson	Nussle	Walsh
Hyde	Oxley	Wamp
Inglis	Packard	Watts (OK)
Istook	Parker	Weldon (FL)
Johnson (CT)	Paxon	Weller
Johnson, Sam	Petri	White
Jones	Pombo	Whitfield
Kasich	Porter	Wicker
Kelly	Portman	Wolf
Kim	Pryce	Young (AK)
King	Quillen	Young (FL)
Kingston	Quinn	Zeliff
Klug	Radanovich	Zimmer

NOT VOTING—11

Bryant (TX)	Filner	Smith (WA)
Collins (IL)	Fowler	Stokes
Diaz-Balart	McNulty	Weldon (PA)
Fields (LA)	Ros-Lehtinen	

□ 1537

Mr. GILMAN changed his vote from "no" to "aye."

So the question of consideration was decided in the negative.

The result of the vote was announced as above recorded.

Mr. MOAKLEY. Mr. Speaker, I would like to clarify for the RECORD inaccurate claims made by those on the Republican side of the aisle that this motion contains an unfunded intergovernmental mandate. The fact of the matter is, Mr. Speaker, it does not. They suggested that the Congressional Budget Office has determined that this motion regarding the minimum wage contained an unfunded mandate. CBO did not make any such determination. In fact, CBO has determined just the opposite, that this motion does not contain any unfunded mandates. The document to which the Republicans referred did not cite this language at all but rather referred to a letter written by CBO last year to a Member of the other body on another piece of legislation under consideration by that Chamber. That legislation contained specific language which would have directly increased the minimum wage. To equate that legislation with this modest motion is to compare apples and oranges—make that grapes and watermelons.

I want to place at this point in my statement, a letter from the Congressional Budget Office that states that this motion does not contain an unfunded mandate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 1996.

Hon. JOHN JOSEPH MOAKLEY,
Ranking Minority Member, Committee on Rules, House of Representatives, Washington, DC.

DEAR CONGRESSMAN: As you requested, we have reviewed the motion made by Mr. Bonior to determine whether it contains an intergovernmental mandate as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). The motion would require H.R. 3136, the Contract with America Advancement Act of 1996, to be recommitted to the House Committee on Ways and Means, with instructions to add a new section to the bill. The new section would amend section 331 of Subtitle C to prohibit the administrative proceedings provisions of that subtitle from applying in any period during which the minimum wage was less than $4.70 per hour beginning on July 4, 1996, and $5.15 per hour after July 3, 1997.

The motion and the new section would not increase the minimum wage, but would make other provisions conditional on such an increase. Subsequent legislation would be necessary to increase the minimum wage. Public Law 104–4 defines an intergovernmental mandate as "any provision in legislation . . . that would impose an enforceable duty upon state, local, or tribal governments." The motion contains no such enforceable duty and thus does not contain an intergovernmental mandate.

If you wish further details on this matter, we would be pleased to provide them. The CBO staff contact is Theresa Gullo.

Sincerely,

JUNE E. O'NEILL,
Director.

It is very important that the membership of the House of Representatives, during this first formal raising of the unfunded mandate point-of-order, be aware of this attempt by the Republican majority to misuse, confuse, and distort the once laudable intention of this law. The unfunded mandates legislation enjoyed widespread bi-partisan support, passing the House by vote of 394 to 28. I was a member of the conference committee and a supporter of this measure. Members on both sides of the aisle supported this initiative because of growing concern over the imposition of unfunded Federal requirements on the public and private sector.

I am deeply concerned that the unfunded mandates law is being used not to curb the past practice of imposing financial burdens on State and local government entities and the private sector, but instead to stifle debate on certain legislative items.

During the consideration on the unfunded mandates legislation in January 1995, I expressed my concern on the section of the bill that implemented this new point-of-order. The legislation specifically prevents the Rules Committee from waiving the point-of-order that is triggered when there is an unfunded mandate—as defined by Public 104–4—in any bill, joint resolution, motion, conference report, or amendment. Only a small handful of House rules in the history of the House of Representatives have been given this special protection. If a member raises an unfunded mandates point-of-order, all he or she need do is to cite the provision in the measure under debate. There is an automatic 20 minutes of debate followed by a vote.

There is no parliamentary or budgetary ruling and there is no burden of proof on the

Member raising the point-of-order. It does not matter if the point-of-order is baseless, simply by raising the point-of-order, the House is required to vote on whether to consider the text that is challenged. A simple majority of the House, for any reason, regardless of whether there is any legitimate financial imposition or not, can deny the opportunity of a Member to proceed with an otherwise germane and viable legislative measure. I raised the concern at that time that this could be used both to stop legislation not containing unfunded mandates from being considered on the floor and as a dilatory tactic to disrupt the legislative process. I was always assured that this would not be used for this purpose. Even then, however, I did not anticipate that the very first use of this tactic would be to deny the minority the right to offer an entirely legitimate and germane motion to recommit.

One of the Republican leadership's first changes to the House rules on the 104th Congress guaranteed the minority the right to recommit with instructions. In fact, during the 102d and 103d Congresses in particular, we in the majority were crudely accused of "raping the rights of the minority" by, on rare occasion, denying them instructions on the motion to recommit. Now it appears they are grossly misusing the new unfunded mandates law and, on this first challenge out of the gate, we are being denied the very right that was so vital to the Republicans in previous Congresses.

I am deeply troubled that if this practice continues, it could simply become a backdoor approach used to gag legitimate debate, whether on the motion to recommit or on any other responsible and germane legislative initiatives. I urge the majority to carefully consider the ramifications of misusing the unfunded mandates point-of-order for purposes other than the legitimate intentions spelled out in Public Law 104–4. The unfunded mandates law should be used as tool to fix legislation that imposes unfair financial burdens on state and local governments and the private sector. It should not be used as a weapon to prevent the consideration of viable and responsible legislation initiatives.

MOTION TO RECOMMIT OFFERED BY MR. ORTON

Mr. ORTON. Mr. Speaker, I offer a motion to recommit.

The .SPEAKER pro tempore (Mr. HASTINGS of Washington). Is the gentleman opposed to the bill?

Mr. ORTON. I am in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ORTON moves to recommit the bill to the Committee on Ways and Means with instructions to report the bill forthwith with the following amendment:

On page 60, strike lines 5 through 15 and insert the following:

SEC. 205. EFFECTIVE DATES.

This title and the amendments made by it shall take effect and apply to measures enacted after the date of its enactment and shall have no force or effect on or after January 1, 2005.

PARLIAMENTARY INQUIRIES

Mr. ORTON. Mr. Speaker, before being recognized to speak on my motion to recommit, I have a parliamentary inquiry which is important to resolve, so people can understand the motion to recommit and how it fits into what we have been voting on.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. ORTON. Mr. Speaker, is it correct that the rule which was adopted providing for debate on this bill did automatically adopt the conference report on the line-item veto as a separate bill and authorize that to be sent to the President for his signature?

The SPEAKER pro tempore. The Chair would tell the gentleman that the answer to that is yes.

Mr. ORTON. Further parliamentary inquiry, Mr. Speaker. Is it correct that the rule provides that title II in this bill, which is the line-item veto title, would be stripped from this bill if unamended, and the bill would be sent without title II, but if amended, title II would remain in this bill and go to the Senate for their consideration?

The SPEAKER pro tempore. In response to the gentleman, if title II were amended as a result of a motion to recommit, then it would not be stricken from the engrossed bill. But the operation of section 2(b) of the House Resolution 391 would not be affected. The conference report on S. 4 would stand as adopted.

Mr. ORTON. Therefore, Mr. Speaker, the conference report, standing as adopted, would go to the President for his signature, regardless of whether this motion to recommit is adopted and the title is amended. The only effect of amending the title would be to keep title II in the bill as amended for Senate consideration of the title II as amended, is that correct?

The SPEAKER pro tempore. That is correct.

Mr. ORTON. So if we adopt the motion to recommit and amend this title II, the President would have the original conference bill under the rule for his signature, and assuming the Senate adopted this bill with the amendment, would also have title II as amended, under this bill for his signature, is that correct?

The SPEAKER pro tempore. That would be possible.

Mr. ORTON. I thank the Speaker.

The SPEAKER pro tempore. The gentleman from Utah [Mr. ORTON] is recognized for 5 minutes on the motion to recommit.

Mr. ORTON. Mr. Speaker, I will be as clear and concise as I can. This motion to recommit does one thing and one thing only to the bill we are considering. It simply says that the line-item veto provisions of the bill would become effective immediately upon enactment, rather than waiting until the next calendar year to become effective. That is all it does.

Therefore, the President will already get the opportunity to sign the conference report making line-item veto effective the beginning of next year.

□ 1545

This amendment will give him the opportunity, if adopted, to make it effective immediately and give the President the authority to veto items of specific spending between the date of enactment and the next calendar year. That is the only difference.

Now, Mr. Speaker, let me just in explanation suggest that not only I but many of my colleagues on both sides of the aisle support this line-item veto. The line-item veto has not been partisan. It is supported by both Democrats and Republicans, by the Congress and the President. In fact, during floor debate in the other body on March 23, 1995, the majority leader said the following: "During the 1980's, opponents of the line-item veto used to say that Republicans supported it only because the President happened to be a Republican at the time. Now, we are in the majority and we are prepared, nearly all of us on this side, to give this authority to a Democratic President."

The Senate majority whip said the following: "Why be afraid of allowing this current President to use his power? We on this side of the aisle, the Republicans, are ready to give this opportunity to President Clinton so he can have the opportunity to pare spending."

In this body in February 1995 during debate on this line-item veto bill, the Chairman of the Committee on Rules, Mr. SOLOMON, said the following: "Well, here we are. We get a Democrat President, and here is SOLOMON up here fighting for the same line-item veto for the Democrat President."

Finally, the gentleman from Florida [Mr. GOSS] during the same debate said, "Let us give it to the President whether the President is Democrat or Republican. Let us stop the games. Let us get into budget management."

That is what this amendment is about. It is about budget management. It is about stopping the partisan games. It is about saying we are for line-item veto now, not next year or next decade; we want it to be effective upon enactment.

Mr. Speaker, that is all this amendment will do. If passed, it will send it to the other body for consideration and the President's signature, which would then give us all the opportunity to drop partisan rhetoric and actually have the opportunity to cut spending.

Now someone suggests we do not really need it because we are cutting spending. This is the 1996 congressional pig book put out by the Citizens Against Government Waste. They have identified over $12.5 billion in the eight appropriation bills that we have already passed for 1996 of questionable spending which, if the President had this authority right now, he could veto. That is for 1996. We have lost that opportunity. Let us not lose the opportunity for 1997. Let us give him the opportunity during the appropriation process of 1997.

Mr. Speaker, I yield to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. Mr. Speaker, I thank the gentleman from Utah for yielding.

I would say this is a very simple motion. I voted for a line-item veto for President Bush. I voted for the rule to give the line-item veto immediately to the President 2 hours ago. This motion will say, do not wait until 1997, do not play politics, do not do what the American people do not want us to do. Let the President cut $25 billion out of spending now.

Mr. Speaker, it would be interesting to see and explain to our constituents why we did not extend the line-item veto to the President of the United States tomorrow.

Mr. ORTON. Mr. Speaker, in closing let me just say we do not want to make this a partisan fight. This motion to recommit is not partisan. This motion to recommit does nothing to the bill which we are adopting except one thing: making the line-item veto effective immediately upon enactment so that this President has not only the opportunity, but the responsibility, to look at each item of spending and veto those items that he believes are inappropriate, send them back under new legislation. It is appropriate, it is responsible, it is the thing to do. I would urge adoption of the motion to recommit.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Texas [Mr. ARCHER] is recognized for 5 minutes in opposition to the motion to recommit.

Mr. ARCHER. Mr. Speaker, I yield to the gentleman from New York [Mr. SOLOMON], the chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, I am a little concerned with what I am hearing here today because Senate Majority Leader DOLE and President Clinton chose the effective dates that are in this bill today. If we want to kill line-item veto, we will unbalance this very, very delicate document we have here today.

Mr. Speaker, our conferees have spent a year now working together with people who did not want a line-item veto over in the other body. There were a lot of them. But finally, with the leadership of BOB DOLE we got them to move, and they conceded to us on almost everything, almost everything. We have a real, true line-item veto here today, something we have always wanted.

Now, there are things in here I do not like. There is a sunset provision for 8 years. I wanted it to be permanent. Know what we did? We traded that off to get something that my colleagues and I want, and that is a lockbox provision, so that if any President vetoes an item and it sticks, that means that money cannot be reprogrammed. It means it is cut out of the budget and we have that satisfaction.

Mr. Speaker, Ronald Reagan told me once, JERRY, the art of compromise means success in politics; people have other views. We have worked diligently with Senator EXON and other good Democrats on the other side of the aisle in the Senate to put this together. We better vote down this motion to recommit and vote for this, and let us give the President a true line-item veto. That is what the American people want.

Mr. ARCHER. Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. CLINGER], the chairman of the Committee on Government Reform and Oversight.

Mr. CLINGER. Mr. Speaker, I served as chairman of the conference on the line-item veto. It was a difficult, contentious, hotly contested conference. We argued and debated over the issues long and hard. It took us a year, yes, it took us longer than any of us would have wanted.

It was not a partisan matter; in fact, there are those who support line-item veto, the gentleman from Utah being one of the staunchest supporters of the line-item veto on both sides of the aisle and in both Chambers, so this is not a partisan issue. But what we finally arrived at, I think, is the best that we can get. One of the items that was agreed to was an effective date. That was only finally resolved because there was an agreement reached between the President of the United States and the majority leader of the Senate to depoliticize the issue.

Mr. Speaker, I would point out that to change the effective date now would really put this right square in the middle of the Presidential debate. I think it would clearly distort what we are trying to do here. By putting it on January 1, obviously the gentleman from Utah [Mr. ORTON] and Members on the other side of the aisle feel very strongly that they will, in fact, reelect our President, their party leader. We, on the other hand, feel very strongly that we will elect our nominee, Mr. DOLE. This takes it out of the political spectrum. It gives the next President or the continuing President the ability to use this line-item veto.

So I would urge, and urge strongly, Members on both sides not to upset the apple cart here, because it really could do violence to what we had agreed to.

Our conference report is on its way to the President now. It was, in fact, passed as a result of the rule that passed. It was passed. Now, if we were to adopt this amendment, it would change a deal that has been made, an agreement that has been reached, bipartisan on both sides of the aisle and I think would possibly make it difficult for us actually to exercise the line-item veto.

So I would urge as strongly as I can, please, keep the effective date where it is, keep it out of the political and the Presidential campaign this year.

Mr. ARCHER. Mr. Speaker, to reiterate what was said in the earlier debate, that the President has within his power unilaterally to activate this authority immediately after his signature on the bill by signing and agreeing to a balanced budget for this country and does not have to wait until January 1, 1997.

Further, to say to the Members that the perfect can be the enemy of good movement for what has taken so very, very long, and I know it better than anybody else, because I initiated line-item veto as a proposal before the Congress. It is not agreed to, it can be signed into law. Let us not put it back into the maze of procedure that could further tie it up this year. I urge a vote against the motion to recommit.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. ORTON. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 159, nays 256, not voting 16, as follows:

[Roll No. 101]

YEAS—159

Ackerman	Gejdenson	Olver
Andrews	Gephardt	Orton
Baesler	Geren	Owens
Baldacci	Gibbons	Pallone
Barcia	Gonzalez	Payne (NJ)
Barrett (WI)	Gordon	Payne (VA)
Becerra	Graham	Pelosi
Bellenson	Green	Peterson (FL)
Bentsen	Gutierrez	Peterson (MN)
Berman	Hall (OH)	Pomeroy
Bevill	Hamilton	Poshard
Bishop	Harman	Reed
Bonior	Hefner	Richardson
Boucher	Hilliard	Rivers
Browder	Hinchey	Roemer
Brown (CA)	Holden	Rose
Brown (FL)	Hoyer	Roybal-Allard
Brown (OH)	Jacobs	Royce
Campbell	Johnson (SD)	Rush
Cardin	Johnson, E. B.	Sabo
Chapman	Johnston	Salmon
Clay	Kanjorski	Sawyer
Clement	Kaptur	Schroeder
Clyburn	Kennedy (MA)	Schumer
Coburn	Kennedy (RI)	Shadegg
Coleman	Kennelly	Shays
Collins (MI)	Kleczka	Sisisky
Condit	LaFalce	Skaggs
Conyers	Levin	Skelton
Costello	Lewis (GA)	Slaughter
Coyne	Lincoln	Scuder
Cramer	Lofgren	Stenholm
Danner	Lowey	Studds
de la Garza	Luther	Stupak
DeFazio	Maloney	Tanner
DeLauro	Manton	Taylor (MS)
Deutsch	Markey	Thompson
Dingell	Martinez	Thornton
Doggett	Mascara	Thurman
Dooley	Matsui	Torres
Doyle	McCarthy	Upton
Durbin	McDermott	Vento
Edwards	McHale	Visclosky
Ensign	Meehan	Volkmer
Eshoo	Menendez	Wamp
Farr	Miller (CA)	Ward
Fattah	Minge	Waters
Fazio	Mink	Waxman
Flake	Moakley	Wilson
Ford	Moran	Wise
Frank (MA)	Neal	Woolsey
Frost	Neumann	Wynn
Furse	Obey	Zimmer

NAYS—256

Abercrombie	Bachus	Barr
Allard	Baker (CA)	Barrett (NE)
Archer	Baker (LA)	Bartlett
Armey	Ballenger	Barton

Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clayton
Clinger
Coble
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Dellums
Diaz-Balart
Dickey
Dicks
Dixon
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Engel
English
Evans
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foglietta
Foley
Forbes
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kildee
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McKeon
McKinney
Meek
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Nadler
Nethercutt
Ney
Norwood
Nussle
Oberstar
Ortiz
Oxley
Packard
Parker
Pastor
Paxon
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Riggs
Roberts
Rogers
Rohrabacher
Roth
Roukema
Sanders
Sanford
Saxton
Scarborough
Schaefer
Schiff
Scott
Seastrand
Sensenbrenner
Serrano
Shaw
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Spence
Stark
Stearns
Stockman
Stump
Talent
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Towns
Traficant
Velazquez
Vucanovich
Waldholtz
Walker
Walsh
Watt (NC)
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Williams
Wolf
Yates
Young (AK)
Young (FL)
Zeliff

NOT VOTING—16

Bryant (TX)
Collins (IL)
Duncan
Fields (LA)
Filner
Fowler
Lantos
McIntosh
McNulty
Ros-Lehtinen
Smith (WA)
Spratt
Stokes
Tate
Torricelli
Weldon (PA)

□ 1614

The Clerk announced the following pair:

On this vote:

Mrs. Collins of Illinois for, with Mrs. Fowler against.

Mrs. MYRICK, Ms. JACKSON-LEE of Texas, Mrs. CLAYTON, Mr. WATT of North Carolina, and Mr. NADLER changed their vote from "yea" to "nay"

Messrs. PAYNE of New Jersey, SHADEGG, and SALMON changed their vote from "nay" to "yea."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CLINGER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 328, noes 91, not voting 12, as follows:

[Roll No. 102]

AYES—328

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (LA)
Baldacci
Ballenger
Barcia
Barrett (NE)
Barrett (WI)
Bass
Bateman
Beatsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Collins (GA)
Combest
Costello
Cox
Coyne
Cramer
Crane
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dixon
Doggett
Dooley
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Everett
Ewing
Farr
Fawell
Fazio
Fields (TX)
Flake
Flanagan
Foglietta
Foley
Ford
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hefley
Hefner
Heineman
Hilleary
Hinchey
Hobson
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee (TX)
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Jones
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Martini
Mascara
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Meehan
Menendez
Meyers
Mica
Miller (CA)
Miller (FL)
Minge
Moakley
Molinari
Montgomery
Moorhead
Moran
Morella
Myrick
Nadler
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Rose
Roth
Royce
Rush
Sawyer
Saxton
Schaefer
Schiff
Schumer
Scott
Seastrand
Sensenbrenner
Shaw
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Upton
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Woolsey
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—91

Abercrombie
Baker (CA)
Barr
Bartlett
Barton
Becerra
Beilenson
Berman
Borski
Bunn
Chenoweth
Clay
Clyburn
Coburn
Coleman
Collins (MI)
Condit
Conyers
Cooley
Crapo
Dellums
Dingell
Doolittle
Evans
Fattah
Forbes
Frank (MA)
Gonzalez
Hastings (FL)
Hayworth
Herger
Hilliard
Hoekstra
Jackson (IL)
Jacobs
Jefferson
Johnston
Kanjorski
Kingston
Klink
LaFalce
Largent
Lewis (CA)
Lofgren
Markey
Martinez
Matsui
McDermott
McKinney
Meek
Metcalf
Mink
Mollohan
Murtha
Myers
Neal
Oberstar
Olver
Owens
Payne (NJ)
Pelosi
Pombo
Rahall
Rangel
Roukema
Roybal-Allard
Sabo
Salmon
Sanders
Sanford
Scarborough
Schroeder
Serrano
Shadegg
Shays
Skaggs
Smith (MI)
Stark
Stockman
Studds
Stump
Taylor (MS)
Thompson
Towns
Traficant
Velazquez
Waters
Watt (NC)
Waxman
White
Yates

NOT VOTING—12

Bryant (TX)
Collins (IL)
Fields (LA)
Filner
Fowler
Lantos
McNulty
Ros-Lehtinen
Smith (WA)
Stokes
Torricelli
Weldon (PA)

□ 1632

The Clerk announced the following pairs:

Or this vote:

Mrs. Fowler for, with Mrs. Collins of Illinois against.

Ms. Ros-Lehtinen for, with Mr. Filner against.

Mrs. Smith of Washington for, with Mr. Stokes against.

Mr. CRAPO and Mr. BARTLETT of Maryland changed their vote from "aye" to "no."

Mr. FOGLIETTA changed his vote from "no" to "aye."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

104TH CONGRESS
2D SESSION

H. R. 3136

IN THE SENATE OF THE UNITED STATES

MARCH 28, 1996
Received

AN ACT

To provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Contract with America Advancement Act of 1996".

TITLE I—SOCIAL SECURITY EARNINGS LIMITATION AMENDMENTS

SEC. 101. SHORT TITLE OF TITLE.

This title may be cited as the "Senior Citizens' Right to Work Act of 1996".

SEC. 102. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66⅔,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the

taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 103. CONTINUING DISABILITY REVIEWS.

(a) AUTHORIZATION FOR APPROPRIATIONS FOR CONTINUING DISABILITY REVIEWS.—Section 201(g)(1)(A) of

the Social Security Act (42 U.S.C. 401(g)(1)(A)) is amended by adding at the end the following: "Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

"(i) for fiscal year 1996, $260,000,000;

"(ii) for fiscal year 1997, $360,000,000;

"(iii) for fiscal year 1998, $570,000,000;

"(iv) for fiscal year 1999, $720,000,000;

"(v) for fiscal year 2000, $720,000,000;

"(vi) for fiscal year 2001, $720,000,000; and

"(viii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 221(i) and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under title XVI, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296).".

(b) ADJUSTMENT TO DISCRETIONARY SPENDING LIMITS.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding the following new subparagraph:

"(H) CONTINUING DISABILITY REVIEWS.—

(i) Whenever a bill or joint resolution making appropriations for fiscal year 1996, 1997, 1998, 1999, 2000, 2001, or 2002 is enacted that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such reviews for that fiscal year and the additional outlays flowing from such amounts, but shall not exceed—

"(I) for fiscal year 1996, $15,000,000 in additional new budget authority and $60,000,000 in additional outlays;

"(II) for fiscal year 1997, $25,000,000 in additional new budget authority and $160,000,000 in additional outlays;

"(III) for fiscal year 1998, $145,000,000 in additional new budget au-

thority and $370,000,000 in additional outlays;

"(IV) for fiscal year 1999, $280,000,000 in additional new budget authority and $520,000,000 in additional outlays;

"(V) for fiscal year 2000, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays;

"(VI) for fiscal year 2001, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays; and

"(VII) for fiscal year 2002, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays.

"(ii) As used in this subparagraph—

"(I) the term 'continuing disability reviews' has the meaning given such term by section 201(g)(1)(A) of the Social Security Act;

"(II) the term 'additional new budget authority' means new budget authority

provided for a fiscal year, in excess of $100,000,000, for the Supplemental Security Income program and specified to pay for the costs of continuing disability reviews attributable to the Supplemental Security Income program; and

"(III) the term 'additional outlays' means outlays, in excess of $200,000,000 in a fiscal year, flowing from the amounts specified for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, including outlays in that fiscal year flowing from amounts specified in Acts enacted for prior fiscal years (but not before 1996).".

(c) BUDGET ALLOCATION ADJUSTMENT BY BUDGET COMMITTEE.—Section 606 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding the following new subsection:

"(e) CONTINUING DISABILITY REVIEW ADJUSTMENT.—

"(1) IN GENERAL.—(A) For fiscal year 1996, upon the enactment of the Contract with America Advancement Act of 1996, the Chairmen of the

Committees on the Budget of the Senate and House of Representatives shall make the adjustments referred to in subparagraph (C) to reflect $15,000,000 in additional new budget authority and $60,000,000 in additional outlays for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act).

"(B) When the Committee on Appropriations reports an appropriations measure for fiscal year 1997, 1998, 1999, 2000, 2001, or 2002 that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, or when a conference committee submits a conference report thereon, the Chairman of the Committee on the Budget of the Senate or House of Representatives (whichever is appropriate) shall make the adjustments referred to in subparagraph (C) to reflect the additional new budget authority for continuing disability reviews provided in that measure or conference report and the additional outlays flowing from such amounts for continuing disability reviews.

"(C) The adjustments referred to in this subparagraph consist of adjustments to—

"(i) the discretionary spending limits for that fiscal year as set forth in the most recently adopted concurrent resolution on the budget;

"(ii) the allocations to the Committees on Appropriations of the Senate and the House of Representatives for that fiscal year under sections 302(a) and 602(a); and

"(iii) the appropriate budgetary aggregates for that fiscal year in the most recently adopted concurrent resolution on the budget.

"(D) The adjustments under this paragraph for any fiscal year shall not exceed the levels set forth in section 251(b)(2)(H) of the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year. The adjusted discretionary spending limits, allocations, and aggregates under this paragraph shall be considered the appropriate limits, allocations, and aggregates for purposes of congressional enforcement of this Act and concurrent budget resolutions under this Act.

"(2) REPORTING REVISED SUBALLOCATIONS.—Following the adjustments made under paragraph (1), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to sections

302(b) and 602(b) of this Act to carry out this subsection.

"(3) DEFINITIONS.—As used in this section, the terms 'continuing disability reviews', 'additional new budget authority', and 'additional outlays' shall have the same meanings as provided in section 251(b)(2)(H)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(d) USE OF FUNDS AND REPORTS.—

(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, medicare, and medicaid programs.

(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

(A) the amount spent on continuing disability reviews in the fiscal year covered by the

report, and the number of reviews conducted, by category of review;

(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.

(e) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of the Social Security Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall

be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 104. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits

for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 105. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be

a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) of such Act (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is en-

acted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all

that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who

applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would termi-

nate by reason of the amendments made by this subsection. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 106. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social

Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the

aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(c) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(d) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

SEC. 107. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS

"SEC. 1145. (a) IN GENERAL.—No officer or employee of the United States shall—

"(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

"(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

"(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

"(b) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term 'public debt obligation' means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

"(c) FEDERAL FUND.—For purposes of this section, the term 'Federal fund' means—

"(1) the Federal Old-Age and Survivors Insurance Trust Fund;

"(2) the Federal Disability Insurance Trust Fund;

"(3) the Federal Hospital Insurance Trust Fund; and

"(4) the Federal Supplementary Medical Insurance Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 108. PROFESSIONAL STAFF FOR THE SOCIAL SECURITY ADVISORY BOARD.

Section 703(i) of the Social Security Act (42 U.S.C. 903(i)) is amended in the first sentence by inserting after "Staff Director" the following: ", and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,".

TITLE II—SMALL BUSINESS REGULATORY FAIRNESS

SEC. 201. SHORT TITLE.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 202. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

SEC. 203. PURPOSES.

The purposes of this title are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of chapter 6 of title 5, United States Code;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

Subtitle A—Regulatory Compliance Simplification

SEC. 211. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 212. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be

considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing information to small business concerns regarding compliance with regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996.".

(b) Nothing in this Act in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 215. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the states, develop guides that fully integrate requirements of both Federal and state regulations where regulations within an agency's area of interest at the Federal and state levels impact small entities. Where regulations vary among the

states, separate guides may be created for separate states in cooperation with State agencies.

SEC. 216. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle B—Regulatory Enforcement Reforms

SEC. 221. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are

subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C.App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the var-

ious regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small

businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their

homes or regular places of business in the performance of services for the Board.".

SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a state;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 224. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle C—Equal Access to Justice Act Amendments

SEC. 231. ADMINISTRATIVE PROCEEDINGS.

(a) Section 504(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 504(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (1)(B), by inserting before the semicolon "or for purposes of subsection (a)(4), a small entity as defined in section 601";

(3) at the end of paragraph (1)(D), by striking "and";

(4) at the end of paragraph (1)(E), by striking the period and inserting "; and"; and

(5) at the end of paragraph (1), by adding the following new subparagraph:

"(F) 'demand' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 232. JUDICIAL PROCEEDINGS.

(a) Section 2412(d)(1) of title 28, United States Code, is amended by adding at the end the following new subparagraph:

"(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment,

under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 2412(d) of title 28, United States Code, is amended—

(1) in paragraph (2)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (2)(B), by inserting before the semicolon "or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5";

(3) at the end of paragraph (2)(G), by striking "and";

(4) at the end of paragraph (2)(H), by striking the period and inserting "; and"; and

(5) at the end of paragraph (2), by adding the following new subparagraph:

"(I) 'demand' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maxi-

mum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 233. EFFECTIVE DATE.

The amendments made by sections 331 and 332 shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle.

Subtitle D—Regulatory Flexibility Act Amendments

SEC. 241. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) SECTION 603.—Section 603(a) of title 5, United States Code, is amended—

(A) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States"; and

(B) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the

Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.".

(2) SECTION 601.—Section 601 of title 5, United States Code, is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; and", and by adding at the end the following:

"(7) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

"(8) RECORDKEEPING REQUIREMENT.—The term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a state-

ment of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 242. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year,

such lesser period shall apply to an action for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to—

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date

of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 243. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of

publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 244. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.— Section 609 of title 5, United States Code is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities" by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility

analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(d) For purposed of this section, the term covered agency means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

"(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

"(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with re-

spect to the potential impacts of the rule and took such concerns into consideration.

"(2) Special circumstances requiring prompt issuance of the rule.

"(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

SEC. 245. EFFECTIVE DATE.

This subtitle shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.

Subtitle E—Congressional Review

SEC. 251. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.
"808. Effective date of certain rules.

"§ 801. Congressional review

"(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing--

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the Chairman and Ranking Member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

"(A) the later of the date occurring 60 days after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register, if so published;

"(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

"(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive Order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring--

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding

Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between

March 1, 1996, and the date of the enactment of this chapter.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the

period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register, if so published.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further

consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to

limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(g) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'rule' has the meaning given such term in section 551, except that such term does not include—

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or al-

lowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

"§ 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the

Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 808. Effective date of certain rules

"Notwithstanding section 801—

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

"(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 252. EFFECTIVE DATE.

The amendment made by section 351 shall take effect on the date of enactment of this Act.

SEC. 253. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

TITLE III—PUBLIC DEBT LIMIT

SEC. 301. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$5,500,000,000,000".

Passed the House of Representatives March 28, 1996.

Attest: ROBIN H. CARLE,
Clerk.

○

INCREASING THE PUBLIC DEBT LIMIT

Mr. ROTH. Mr. President, today the Senate considers H.R. 3136, a bill to increase the public debt limit to $5.5 trillion. The bill would also increase the earnings limit for all Social Security recipients as well as provide regulatory relief for small businesses. The regulatory relief package mirrors S. 942, which passed the Senate earlier this month by a vote of 100 to 0. As of last night, some details of that package were still being finalized. Senator BOND, chairman of the Small Business Committee, will explain that portion of this bill. I will focus my remarks on the Senior Citizens' Right to Work Act of 1996. However, before I do that, let me spend a few moments on the need for the debt-limit increase.

Earlier this year, we passed two bills, H.R. 2924 and H.R. 3021, to provide for temporary relief from the current debt limit. These two bills created new legal borrowing authority not subject to the debt limit for a short period of time. Today we will act on the long-term extension. According to the Congressional Budget Office, this increase should be sufficient through the end of fiscal year 1997.

Over the past decade, many have argued against raising the debt limit, however, let me remind my colleagues that last fall we passed a budget that would have achieved balance in 7 years. That legislation would have gone a long way to reduce the amount of debt limit increases which are always so painful to enact. Unfortunately, as we all know, President Clinton decided to veto the Balanced Budget Act of 1995.

If we fail to concur in the action of the House, or if President Clinton were to veto this bill, we would find ourselves in a fiscal and financial crisis. The Government could not borrow and bills would only be paid out of current receipts, leading to defaults on interest payments and payments to contractors as well as an inability to make all required benefit payments. These defaults would also lead to higher interest rates.

Congress has raised the debt limit 33 times between 1980 and 1995. Many of these increases were short-term temporary extensions. It is important to remember that the increase of $600 billion included in this bill is the third largest increase. The largest increase was in the 1990 budget deal and the second largest was in the 1993 Clinton tax-increase bill.

I hope that the Senate expeditiously enacts this critically important piece of legislation to preserve the full faith and credit of the U.S. Government.

Now let me turn to title I of this bill. The Senior Citizens' Right to Work Act is a big step toward providing greater economic opportunity and security for America's senior citizens.

Under current law, millions of men and women between the ages of 65 and 69 are discouraged from working because they face a loss of their Social Security benefits. If a senior citizen earns more than a certain amount—the so-called earnings limit—he or she loses $1 in Social Security benefits for every $3 earned. The current earnings limit is a very low amount—only $11,520.

Mr. President, this earnings limit is unfair to seniors and is a barrier to a prosperous economic future of all Americans.

For today's seniors, the earnings limit can add up to a whopping tax bite. According to both the Congressional Research Service and the Joint Committee on Taxation, seniors who have wages above the earnings limit can face marginal tax rates over 90 percent, when one factors in Federal and State taxes.

Mr. President, that is not right.

But as unfair as the earnings test is today, it will be an even bigger problem in the future, a future that is rapidly approaching.

We all know the statistics concerning the aging of America. In the same way, we realize more and more that much of our future economic growth will depend on the ability of older Americans to remain working.

Mr. President, why do we even have this earnings limit? Back in 1935, when the Social Security system was designed, it was widely believed that the economy could support only a limited number of workers. Perhaps this belief was understandable 60 years ago—when we were in the middle of the Great Depression. But today, few, if any, economists hold such a belief. In fact, most believe quite the opposite.

Mr. President, I also believe this bill will improve public confidence in the Social Security system.

Social Security is a contract with the American people. Everyone working today knows the taxes the Federal Government takes from them each payday will be returned by the Social Security program when they retire. For parents working to support a family, this sizable tax can be—and often is—overwhelming.

But what too many seniors find out, Mr. President, is that the Government can exact a high price when they reach 65. If they continue to work, seniors are allowed to earn very little before the Government starts taking back benefits. As I noted earlier, for every dollar a senior earns over the earnings limit—currently only $11,530—he or she loses 33 cents in benefits.

Mr. President, the bill now before the Senate would raise the earnings limit for seniors aged 65 to 69 to $12,500 this year, and to $30,000 by 2002. This legislation is entirely paid for with real savings, not gimmicks.

But we are not just spending money. This bill also provides $1.8 billion of deficit reduction over 7 years.

Even better, according to the Social Security Administration, title I of this bill actually improves the long-range health of the Social Security trust fund.

Mr. President, I ask unanimous consent that a memorandum from the Office of the Actuary of the Social Security Administration that makes this point be printed in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ROTH. Mr. President, we all know the Social Security trust fund has a long-range solvency problem. Beginning in 2013, payroll taxes will no longer be enough to cover benefits, and by 2031 the trust fund surplus will be depleted.

Although this bill is in no way a complete solution to that problem, every little bit helps.

Lastly, let me note that title I contains two other provisions important to the health of the Social Security system.

First, the bill provides funding for continuing disability reviews. These reviews are supposed to be done periodically to determine if individuals receiving disability benefits under Social Security or SSI continue to be disabled. Historically, this important program integrity activity has not been well funded, and the Social Security Administration has a backlog of over 1 million reviews waiting to be done. Social Security itself admits that billions of dollars have been lost from not doing these reviews, and even more money will be lost in the future.

This bill will help fix that urgent problem.

Incidentally, the continuing disability review provision is supported by the Administration, and a very similar proposal is continued in the President's 1997 budget.

Second, title I of this bill contains a provision to protect the Social Security and Medicare trust funds from underinvestment or disinvestment—which has been endorsed by the Treasury Department.

Title I of this bill was reported out of the Finance Committee unanimously and a similar measure passed the House by the overwhelmingly bipartisan vote of 411 to 4.

I am grateful to Senators DOLE and MCCAIN, both champions of raising the earnings limit, for their tireless efforts on this issue. I am proud to join them in this effort.

Raising the earnings limit is also strongly supported by AARP.

Mr. President, I ask unanimous consent that a letter from AARP be printed in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ROTH. Mr. President, in closing on the earnings limit, let me quote two distinguished experts from the Urban Institute, Eugene Steuerle and Jon Bakija. These experts have stated, "The simple fact is that the earnings test is a tattered remnant of a bygone era."

Mr. President, let us act now, and send the message to America's seniors that we value their experience and skills.

EXHIBIT 1

MARCH 22, 1996.

From: Stephen C. Goss, Deputy Chief Actuary.

Subject: Estimated, long-range OASDI financial effects of the Senior Citizens' Right to Work Act of 1966—Information.

To: Harry C. Ballantyne, Chief Actuary.

Enacting the "Senior Citizens' Right to Work Act of 1996" (Title II of H.R. 3136) would increase (improve) the long-range OASDI actuarial balance by a total amount estimated at 0.03 percent of taxable payroll. The long-range solvency of the OASDI program would thus be improved by reducing the long-range deficit from 2.17 percent of taxable payroll to 2.14 percent of taxable payroll. These estimates are based on the intermediate (alternative II) assumptions of the 1995 Trustees Report. The balance of this memorandum describes the long-range financial effects of the individual provisions of the title.

Sections 204 and 205 of this act would each increase (improve) the long-range OASDI actuarial balance by an estimated 0.01 percent of taxable payroll. Section 204 would require one-half support from a stepparent at time of filing for a stepchild to receive benefits on the stepparent's account, and terminate benefits to stepchildren upon the divorce of the stepparent and the natural parent. Section 205 would prohibit eligibility to DI (and SSI) disability benefits based on drug addiction or alcohol abuse, respectively. Section 202, which would raise the earnings test exempt amount for beneficiaries at or above the normal retirement age to $30,000 by 2002, would result in negligible (estimated at less than 0.005 percent of taxable payroll) changes in the long-range OASDI actuarial balance. Sections 206 (pilot study on information for OASDI beneficiaries), 207 (protection of the trust funds), and 208 (professional staff for the Social Security Advisory Board) would also result in negligible effects on the long-range actuarial balance.

Section 203 authorizes the appropriation of specific amounts to be made available for fiscal years 1996 through 2002 for continuing disability reviews. This provision will have the effect of increasing the number of continuing disability reviews through 2002, with the result that total costs of the DI program will be lower for the long-range period and that the solvency of the OASDI program will be improved throughout the long-range period. Additional savings will occur if continuing disability reviews continue at the same level beyond 2002 as is provided for in this provision through the year 2002. The effect of this provision, assuming the appropriation of the specified amounts through 2002, is estimated to be an additional increase (improvement) in the long-range actuarial balance estimated at 0.01 percent of taxable payroll.

STEPHEN C. GOSS.

EXHIBIT 2

AARP,
Washington, DC, March 27, 1996.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN ROTH: The American Association of Retired Persons supports the Senior Citizens Right to Work Act—the proposed increase in the Social Security earnings limit—on the pending debt limit bill. We should be encouraging, not penalizing, those who continue to work and contribute to the economy.

AARP has long supported an increase in the earnings limit. The current level of $11,520 penalizes beneficiaries age 65 through 69 who desire to continue in the workforce. Your proposal, which would increase the limit to $30,000 over a 7-year period, is a fiscally responsible way of enabling many moderate and middle-income beneficiaries to improve their economic situation. AARP commends you and your committee for your leadership in the effort to finally address this long-overdue reform.

AARP believes that the earnings limit increase should be financed in an appropriate manner in order to maintain the integrity of the Social Security trust funds. While tradeoffs within the program are necessary, such financing is the responsible course. Towards this end, the Association notes that the Social Security actuaries have projected that your proposal would result in an improvement in the long range actuarial balance of the Social Security trust funds.

The proposed increase in the earnings limit would also send a strong signal to working beneficiaries that their skills, expertise and enthusiasm are welcome in the workplace. The public policy of this nation should be to encourage older workers to remain in the workforce. Your proposal would further that goal.

The Association remains committed to increasing the earnings limit, and we are pleased that Congress and the Administration have agreed to raise the earnings limit in the 104th Congress. Again, we thank you for your leadership.

Sincerely,

HORACE B. DEETS,
Executive Director.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I express the appreciation and relief of all Members of this body and Americans everywhere that we shall, in very short order, under this agreement extend the debt ceiling to $5.5 trillion. That will take us through this fiscal year and past the next election to about September 30, 1997. This particular drop-dead date is out of our way. We can have a good national debate on other issues.

I make the point, Mr. President, that while, again, we have to extend the debt ceiling, for the first time since the 1960's, the United States has a primary surplus in its budget, which is to say that the revenues from taxes and other activities exceed the costs of the operations of the Federal Government.

Debt service makes for a continuing deficit, but it is coming down. The total deficit this fiscal year will be approximately 2 percent of gross domestic product. It was 5.7 percent just a few years ago. This is a good development. It is a bipartisan one. The vote was bipartisan in the House. It is responsible behavior. I thank all concerned.

Finally, Mr. President, I particularly want to thank my colleague, the chairman of the Committee on Finance.

Mr. President, my friend and distinguished associate, Senator JEFF BINGAMAN, has some very laudable concerns to raise the earnings limit for the blind so that in future years it will increase in parallel with the increase for retirees under Social Security, a provision included in this bill.

In that regard, I would like to take this opportunity to thank Senator MCCAIN for his thoughtfulness in pressing a matter of concern to him. The earnings limitation is an obsolete provision from the 1930's. We are gradually going to get rid of it now. Senator MCCAIN deserves great credit for that, and I would like to so express my appreciation.

With that, I yield the floor, and I thank the managers of this legislation for allowing us to interrupt. Otherwise, it was default by midnight—well, midnight tomorrow. Even so, we have averted that, and we can go on to the proper business of the Senate. I thank the Chair.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, I certainly thank our colleague from New York for his cordial management of this very important issue that had to be resolved.

Mr. BINGAMAN. Mr. President, I had hoped to offer an amendment to the debt limit bill that would have rectified an unjust situation in the legislation concerning the Social Security earnings limit increase for retirees. My amendment would have reestablished the linkage between earnings limit increases for retirees and the blind, a linkage that has existed since 1977. Unfortunately the bill we are considering ends that linkage which I believe is unfair and not supported by adequate policy considerations. However, Mr. President, I understand that passage of this amendment would have potentially damaged completion of the debt limit bill, a bill that has too long been delayed by extremist politics, so therefore I do not feel that now is an appropriate time to pursue my amendment.

However, Mr. President, it is my understanding that the ranking member of the Senate Finance Committee, Mr. MOYNIHAN, has given me his commitment to support my efforts in the Finance Committee and on the floor of the Senate, if necessary, to support an amendment that reestablishes some linkage between the blind and retirees on the next bill reported out of the Finance Committee that amends the Social Security Act. Am I correct in that understanding?

Mr. MOYNIHAN. The Senator from New Mexico is correct.

Mr. BINGAMAN. I also understand that my friend and colleague, Senator MOYNIHAN, will work with me to develop appropriate offsets that will insure that this amendment will not violate the provisions of the Budget Act when the amendment comes before the Senate during this Congress. Am I correct in that understanding?

Mr. MOYNIHAN. Yes, the Senator from New Mexico is correct.

Mr. BINGAMAN. I thank the Senator.

Mr. KYL. Mr. President, I rise in opposition to this bill to increase the public debt limit.

Twice last year, Congress passed legislation that properly coupled a debt limit increase with the steps necessary to balance the budget and thus preclude the need for additional debt limit increases in the future. Twice, the President vetoed the bills.

Let us be clear. If there is any possibility that the Federal Government will default on its obligations, it is a result of the President's insatiable appetite to spend the taxpayers' money.

President Clinton opposed the Balanced Budget Amendment last year. He vetoed the Balanced Budget Act—the first balanced budget to have passed the Congress in 26 years. He vetoed appropriations bills that comply with the strict budget limits for the current fiscal year.

It is the President's spending plan that, more than anything else, threatens to bankrupt the Nation and condemn future generations to a forever declining standard of living.

Mr. President, there is nothing in this bill that will ensure progress toward a balanced budget. The only reason the debt limit increase is going to pass is that it has been coupled with an increase in the Social Security earnings limitation and regulatory reform for small businesses.

Senior citizens and small businesses should not be held hostage to a debt limit increase. We should not have to vote to lead the Nation down the road to bankruptcy in order to ensure that seniors can keep more of their hard-earned income or to relieve small businesses of the regulatory burden that is hindering them.

My constituents know where I stand on the earnings limitation. I have cosponsored legislation in the past to repeal it. I voted four times last year on proposals relating to the repeal or raising of the earnings test, most recently on November 2, 1995.

No American should be discouraged from working, yet that is what the earnings limitation is specifically designed to do. The policy violates the very principles of self-reliance and personal responsibility on which America was founded. It is wrong. Not only does the earnings limit deny seniors the opportunity to work and supplement their retirement incomes, it denies American businesses a lifetime of expertise that many seniors bring to their work. The earnings limitation ought to be repealed.

The regulatory relief provisions of this bill passed the Senate just last week by a vote of 100 to 0. The vote was unanimous. It was unanimous for a reason: small businesses are being overwhelmed by federal rules and regulations.

Obviously, the regulatory relief measure could stand on its own merit. The only reason to include it here is that it will help win votes for the passage of the debt limit increase.

Mr. President, senior citizens, and small businessmen and women deserve better than to be made scapegoats for another debt limit increase. The earnings limit and regulatory reform provisions should be stripped from this bill and passed on their own merit. We should not, however, agree to any further increase in the debt limit until we first put the budget on a path to balance, and obviate the need for future debt limit increases.

Mr. MCCAIN. Mr. President, once again we are debating whether or not to raise the Social Security earnings limit. The debt limit increase bill before the Senate contains what is basically the text of S. 1470, the Senior Citizens Right to Work Act.

I have discussed this issue many times on the Senate floor and I do not want to force my colleagues to listen to the same arguments that I have

made here for the last 8 years. Therefore, I will be brief.

Passage of this bill will change a depression-era law that is designed to keep seniors out of the workplace. It is long overdue that we take this action.

Mr. President, this bill would raise the Social Security earnings limit from today's level of $11,280 per year to $30,000 per year over a 7-year period. Currently, if a senior citizen earns over the $11,280 earnings limit, the senior loses 1 of every $3 he or she earns. By raising the limit to $30,000, seniors who need to work would be allowed to do so without facing this onerous penalty.

Let me emphasize, this bill does not repeal the earnings limit. Although I would like to see the limit repealed in its entirety, this bill does not do that. It merely raises the limit to $30,000. And, Mr. President, I don't think anyone here in the Senate believes that $30,000 per year is much money.

Rich seniors—those who live of lucrative investments, stock benefit, trust accounts—are not effected by the earnings limit. Their income is safe and sound. The earnings limit only effects seniors who are forced to survive from earned income. Therefore, this bill has no effect on well-off seniors.

On the other hand, a working senior—one who works at McDonalds, or Disney or anywhere just to make ends meet—will benefit greatly by passage of this bill. And the 1.4 million seniors who are burdened by this onerous earnings test will be able to use the money they save due to its change to make their lives a little better.

Again, Mr. President, I don't want to belabor my colleagues with a long dissertation on this matter. They have all heard the arguments again and again. And I believe, if one is to believe the lofty statements that sometimes appear in the RECORD, that virtually every Member of this Senate supports taking action on this matter.

But year after year there have been one reason or another for Members to defeat this bill. There is always some excuse. Well, Mr. President, the time for excuses is over.

The bill before the Senate is not perfect. Many have concerns over technical aspects of it. But, Mr. President, now is the time to pass this measure. If any Members object to a pay for in this bill, then let them suggest an alternative. The sponsors of this bill are open to suggestions. But let me make the record completely clear, any Member who comes to the floor and argues on some technical parliamentary issue is working to defeat this bill.

Unlike the last time this bill was brought before the Senate, we pay for this bill without touching discretionary spending.

This bill is paid for. It is paid for 10 years. It is paid for out of mandatory spending. And specifically, it is paid for out of Social Security.

This bill is paid for by the following changes I will outline:

This bill pays for the increase in the earnings limit through two major changes in present law.

First, the bill ends entitlement to SSDI and SSI disability benefits if drug addiction or alcoholism are the contributing factors material to the determination of disability. Those individuals with drug addiction or alcoholism who have another severe disabling condition will still be able to qualify for benefits based on that disability. So the only individuals who will lose benefits are those whose sole disabling condition is drug addiction or alcoholism.

In fiscal years 1997 and 1998, $50 million of the savings from this change will be added to the Substance Abuse Prevention and Treatment Block Grant, providing additional funds for treatment services. This approach recognizes that while drug addicts and alcoholics need treatment, they are not in fact helped by cash benefits which can be used to pay for their addiction or drinking.

I would like to emphasize that those individuals with a drug addiction or alcoholism condition who have another severe disabling condition will still be able to qualify for benefits based on that disability. In these cases, the bill requires that benefits be paid to a representative payee if the Commissioner of Social Security finds that this would serve the interest of the individual. In addition, the bill requires that individuals whose benefits are paid to a representative payee be referred to the appropriate State agency for substance abuse treatment services. This approach recognizes that such individuals not only need substance abuse treatment but often need the assistance of others to ensure that their cash benefits are not used to sustain their addiction. Over a 5-year period, this change will save approximately $3.5 billion.

Second, the bill makes several changes in the entitlement of stepchildren to Social Security benefits. For a stepchild to receive benefits on the stepparent's account, the bill requires that a stepparent provide at least 50 percent of the stepchild's support, and for stepchildren to receive survivor's benefits, the bill requires that the stepparent provided at least 50 percent of the child's support immediately prior to death. In addition, a stepchild's Social Security benefits are terminated following the divorce of natural parent and the stepparent. These changes will ensure that benefits are only paid to stepchildren who are truly dependent on the stepparent for their support, and only as long as the natural parent and stepparent are married. Over a 5-year period, these changes will save approximately $870 million.

Taken together, these two changes will not only offset the cost of raising the earnings test limit, but will also improve the long term solvency of the Social Security system. In addition, the bill permits adjustments to the discretionary spending caps, so that spending for Continuing Disability Reviews [CDR's] can be increased. If these cap adjustments are fully used and the additional reviews are conducted, an additional savings of approximately $3.5 billion could result. Although these savings are not needed to pay for the increase in the earnings test limit, they would also increase the long term solvency of the Social Security System.

Mr. President, current law applies such an onerous and unfair tax to working seniors that they are effectively forced to stop working. This is unconscionable and it must be changed. Basically, passage of this bill will allow seniors who do not have enough in savings or pensions to work to make ends meet.

It does not help rich seniors who have stocks and bonds. Money derived from those sources is currently exempt from the earnings limit. This limit only affects earned income—money earned by seniors who go to work everyday for an hourly wage.

Mr. President, this bill would raise the Social Security earnings limit from today's level of $11,280 per year to $30,000 per year over a 7 year period.

I strongly believe this reform will result in a change in the behavior of our Nation's seniors. When we raise the earnings limit, seniors will work more, and thus pay more in taxes. I hope that all my colleagues understand this point. This bill will benefit working seniors—those most in need of our help.

Unfortunately, under a static scoring model—one used by the Congressional Budget Office—this amendment would be scored at costing just over $7 billion dollars.

And once again, I want to repeat, this bill is fully paid for without touching discretionary spending.

Mr. President, the Social Security earnings test was created during the depression era when senior citizens were being discouraged from working. This may have been appropriate then when 50 percent of Americans were out of work, but it is certainly not appropriate today. It is not appropriate today when seniors are struggling to get ahead and survive on limited incomes. Many of these seniors are working to survive and make it day to day.

Most people are amazed to find that older Americans are actually penalized by the Social Security earnings test for their productivity. For every $3 earned by a retiree over the $11,280 limit, they lose $1 in Social Security benefits. Due to this cap on earnings, our senior citizens, many of whom are existing on low incomes, are effectively burdened with a 33.3 percent tax on their earned income. Combined with Federal, State, and other Social Security taxes, it will amount to a shocking 55- to 65-percent tax bite, and sometimes even more—Federal tax—15 percent, FICA—7.65 percent, earnings test penalty—33.3 percent, State and local tax—5 percent. Obviously, this earnings cap is punitive, and serves as a tremendous disincentive to work. No one who is struggling along at $11,000 a year should

have to face an effective marginal tax rate which exceeds 55 percent.

This is an issue of fairness. Why are we forcing people not to work? Why are we punishing people for trying to "make it." No American should be discouraged from working. Unfortunately, as a result of the earnings test, Americans over the age of 65 are being punished for attempting to be productive. The earnings test doesn't take into account an individual's desire or ability to contribute to society. It arbitrarily mandates that a person retire at age 65 or suffer the consequences.

Perhaps most importantly, the earnings cap is a serious threat to the welfare of low-income senior citizens. Once the earnings cap has been reached, a person with a job providing just $5 an hour would find that the after tax value of that wage drops to less than $3. A person with no private pension or liquid investments—which, by the way, are not counted as "earnings"—from his or her working years may need to work in order to meet the most basic expenses, such as shelter, food and health-care costs.

There is also a myth that repeal of the earnings test would only benefit the rich. Nothing could be further from the truth. The highest effective marginal rates are imposed on the middle income elderly who must work to supplement their income. Plus these middle income seniors are precisely the group that was hit hardest by the 85-percent tax increase included in President Clinton's Budget Reconciliation Act of 1993. This tax increase hits hardest those seniors who were frugal during their working lives in order to save toward their retirement since the tax affects both their Social Security and their savings. The 85 percent increase has hit a group of seniors who are far from rich with a triple whammy and is a further disincentive to these seniors who could further contribute to our economic growth by working.

We have a massive Federal deficit. Studies have found that repealing the earnings test could net $140 million in extra Federal revenue. Furthermore, the earnings test is costing us $15 billion a year in reduced production. Taxes on that lost production would go a long way toward reducing the budget deficit. Nor, as it continues to become tougher to compete globally, can America afford to pursue any policy that adversely affects production or effectively prevents our citizens from working.

Mr. President, let me also note that changes to the earnings test will in no way jeopardize the solvency of the Social Security trust funds. Let me clarify for the record that the Social Security system will in no way be at risk if we alter the status quo in regards to the earnings test. To claim it would is a red herring and is unfortunately nothing more than a cruel scare tactic.

Let me also point out that one very disturbing consequence of the President's tax increase on Social Security is that it continues to punish those seniors who do work—what little they can due to the earnings test—in order to make ends meet. They are hit with both the tax on their benefits and the Social Security earnings test penalty. This is completely unfair.

It is certainly true that our Nation's seniors—as a group —are better off today that they were when Social Security was created in 1935. It is also true that many other groups in our society are suffering from declining standards of living. Deficit reduction and economic growth are of paramount concern for this Nation. But increasing the taxation of Social Security benefits is neither an appropriate nor effective way to achieve these goals.

Finally, it is simply outrageous to continue two separate policies that both keep people out of the work force who are experienced and want to work. We have been warned to expect a labor shortage. Why should we discourage our senior citizens from meeting that challenge? As the U.S. Chamber of Commerce, which strongly supports this legislation, has pointed out, "retraining older workers already is a priority in labor intensive industries, and will become even more critical as we approach the year 2000."

A number of our Nation's prominent senior organizations are lining up in favor of repealing both of these measures. Among these groups are the National Committee to Preserve Social Security and Medicare and the Seniors Coalition.

Mr. President, before I finish, I want to discuss the issue of delinking the blind. Let me clarify for the record that I support what my colleague from New Mexico, Mr. BINGAMAN had wanted to accomplish. The Social Security earnings limit effects more than just the elderly, it also effects the earnings of blind individuals who receive Government benefits. Unfortunately, the provisions of S. 1470 which were added to the debt ceiling bill breaks the link between the blind and the earnings limit.

Now we must act on the debt ceiling, which we must soon pass in order to ensure that the Government is not forced to close. There is not time to amend this bill and call a conference committee. We must send the debt ceiling to the White House as soon as possible. I was not pleased that the rule in the House did not allow for this issue to be fully addressed. But the House has acted and we are now limited by such action. This leaves us with few options.

I would hope, Mr. President, that perhaps the chairman of the Finance Committee, the Senator from New Mexico, and myself could agree on some date certain for the Finance Committee to address this issue. We could give our assurances to the blind community that the Finance Committee would act and that if they did not, then Mr. BINGAMAN and I would offer this amendment to another bill.

I would hope that we could take that path.

I know it is not the perfect solution. But I am doubtful that we will be able to solve this problem today.

Further, the Senator from New Mexico's amendment would not have fully relinked the blind to the earnings limit. The provisions of the Senior Citizens Freedom to Work Act raises the earnings limit from approximately $11,000 to $30,000 over a 7 year period. The Bingaman amendment would only raise the earnings limit for the blind from $11,000 to $14,000. Although this amendment offers the blind some relief, it does not offer full linkage.

I would hope that we could fully relink the blind to the earnings limit at the appropriate time.

I want all my friends in the blind community to know that I will work with them to see to it that this issue is properly addressed. I know that all of my colleagues are keenly aware of the problems associated with employment for the blind. But as I noted, we must pass this debt ceiling bill now. We cannot wait. We cannot risk closing the Government.

And I again, give every assurance I can to the blind community that we will address this issue and we will do it very soon.

Mr. President, in closing, America cannot afford to continue to pursue two separate policies that adversely effect production and are unfairly burdensome to one particular segment of society. Our Nation would be better served if we eliminate the burdensome earnings test and the grossly unfair tax increase and provide freedom, opportunity and fairness for our Nation's senior citizens.

For 8 long years I have fought to relax the Social Security earnings test. When the President signs this bill tonight or tomorrow, the battle will have been won and America's seniors have a right to rejoice.

Mr. COHEN. Mr. President, today, we are considering legislation which will extend the current $4.9 trillion debt ceiling to $5.5 trillion. I am pleased that the administration and the leadership on both sides were able to come together to take permanent action on this issue. However, I want to focus my comments on another important change included in this bill: Senator MCCAIN's proposal to raise the Social Security earnings limit.

This has been a priority for many years because of the earning limit's detrimental impact on retirees with low and moderate incomes who have to work out of necessity to maintain a decent standard of living. I hope that raising the limit will help these senior citizens who are just barely getting by with a Social Security check and whatever other income they can scrape together.

It is also clear that more and more retirees will need to work in the future. Retirement forecasters report that baby boomers did not get an early

start on saving for retirement, so even more senior citizens will find it necessary to supplement their retirement savings and benefits with work to maintain a decent standard of living in the future.

To minimize the impact on the financial health of the trust fund that will occur when the limit is raised, we have had to accept tradeoffs. We will eliminate drug addiction and alcoholism as a basis for disability under the Supplemental Security Income Program and the Disability Insurance Program. This change is estimated to save about $5.5 billion in spending.

The operation of these two programs has a direct effect on the stability of Social Security. The public's positive perception of Social Security as our most successful Federal program is being threatened—not only because of the risk of insolvency—but also because of fraud and program inefficiencies in the Federal disability programs.

I want to remind my colleagues that we are already shifting payroll taxes away from the retirement side of Social Security to shore up the disability insurance trust fund. This reallocation has represented a shift of more than $38 billion in the last 2 years. By 2004, more than $190 billion will be transferred to the Disability Insurance Program. We must continue to guard against the abuse of these Federal benefits, particularly when we are taking funds out of retirement and putting funds into a program that is deeply troubled.

A blatant example of how our Federal disability programs have gone haywire came to light more than 2 years ago in an investigation of SSI and SSDI benefits being paid to drug addicts and alcoholics. The investigation was conducted by my staff on the Special Committee on Aging with the General Accounting Office.

We found that the word on the street is that SSI benefits are an easy source of cash for drugs and alcohol. The message of the disability programs had been: "If you are an addict or an alcoholic, the money will keep flowing as long as you stay addicted. If you get off the addiction, the money stops."

Rather than encouraging rehabilitation and treatment, the disability programs' cash payments have perpetuated and enabled drug addiction and dependency.

At a hearing of the Senate Special Committee on Aging I chaired, we heard from Bob Cote, the director of a homeless shelter in Denver. Mr Cote told the committee in riveting testimony that he personally knew 46 drug addicts who had died from drug overdoses from the drugs they bought with SSI checks. Mr. Cote went on to testify that a liquor store down the street from his shelter was the representative payee for over $200,000 in SSI checks, and a bar just two doors down from his shelter was the representative payee for $160,000 in SSI checks.

Taxpayers were outraged to learn that situations like these have been going on for years with almost no oversight by the Social Security Administration on how these tax dollars and trust fund moneys have been used.

Congress took steps to place better protections on the disability payments made to addicts and alcoholics. We mandated that all persons receiving disability benefits due to alcohol or drug abuse must receive treatment, imposed a 3-year cutoff for benefits for addicts and alcoholics, and toughened the representative payee rules in order to get cash out of the hands of addicts.

These reforms are now in effect and early examination suggests that this carrot and stick approach has worked to stem abuses in the disability program. The referral and monitoring system which was overhauled in 1994 more than pays for itself and will save the Federal Government more than $25 million in 1996.

The legislation before us today allows the Commissioner of the Social Security Administration to continue to refer drug addicts and alcoholics to treatment. Eliminating drug addiction and alcoholism as a disability will result in only 25 percent of recipients diagnosed as drug addicts or alcoholics actually leaving the program. A substantial portion will stay on the rolls, continuing to receive checks without receiving treatment. It is very important that the treatment money be made available to the States to rehabilitate substance abusers.

The legislation continues to require the use of responsible representative payees who will ensure that the Federal checks are being used for living expenses—not drugs and not alcohol.

The legislation also takes the necessary step to allocate funding to conduct continuing disability reviews [CDR's]. Until now, our hands have been tied because of the appropriations caps on discretionary spending. I commend Senator MCCAIN's acknowledgment that it is short-sighted to ignore the need to provide more resources to SSA to comply with the mandate to perform CDR's. In the SSDI program, the agency is experiencing a backlog rate of more than 1.4 million cases. With that type of backlog, getting on disability means a lifetime of benefits, even for persons who could return to work. A recent HHS Inspector General report concluded that $1.4 billion could be saved if we could perform CDR's just on those backlogged cases.

Finally, we need to turn our attention to the current return to work policies in these two programs. Last year, the Senate Aging Committee began to review the record of SSA to promote rehabilitation for people with disabilities. Appallingly, only about 1 in every 1,000 persons on the disability rolls gets off the program through the SSA's rehabilitation efforts. The Federal disability programs have failed to keep pace with a more accessible workplace being created through the Americans With Disabilities Act and advances in medical technology.

More must be done to ensure that people with disabilities who can and want to return to the work force are given some assistance. There are a significant number of disabled recipients who want to work. Unfortunately, the program now discourages recipients from even trying to work, because they fail to take into consideration how recipients can be retrained and rehabilitated to eventually leave the rolls. I believe that we must pursue a policy which will put a greater emphasis on rehabilitation and return to work. At the same time we are acknowledging the benefits of allowing senior citizens to retain more of their earnings—a work incentive—we need to be open to the same ideas for people with disabilities.

Mr. DASCHLE. Mr. President, it is important that my colleagues recognize two very important aspects of the legislation we are considering today.

First, this legislation increases spending on Social Security and offsets that spending, in part, by using savings that had been identified as necessary to bring about a balanced budget. The language was changed at the last minute so that a point of order against using non-Social Security savings to pay for Social Security spending could be avoided. But I do think my colleagues should be aware that this legislation uses savings that had been identified for reducing the deficit.

Second, the savings in this legislation exceeds the level that is needed to pay for the spending increase. According to the Congressional Budget Office, this legislation achieves $3.5 billion in on-budget savings, and $1.8 billion in net savings over 7 years.

The impact of these provisions on the deficit would actually be higher than the CBO numbers indicate. This is because the bill would allow the discretionary spending caps to be increased in order to conduct more continuing disability reviews. These reviews are conducted to verify that beneficiaries are still entitled to disability benefits. Because of budgetary pressures, and competing priorities, the Social Security Administration has not been able to conduct as many CDRs as they would like. CBO estimates that, if fully utilized, this provision could result in net savings of $800 million dollars by the year 2002.

Finally, the savings are understated because CBO does not take into consideration the fact that raising the earnings limit means that beneficiaries who work will receive higher Social Security benefits. Under current law, if their income is high enough, they will be obligated to pay higher taxes. Actuaries at the Social Security administration estimate the impact to be $726 million over the 7-year budget window.

In sum, Mr. President, the net impact of the legislation we are adopting today is, in effect, to make a down payment on deficit reduction of more than $3 billion over 7 years.

SENIOR CITIZENS' RIGHT TO WORK ACT

Mr. GRAHAM. Mr. President, in this Congress, we have talked a lot about reforming welfare, about empowering people to help themselves, about removing disincentives to work for able-bodied citizens. Well, Mr. President, here is our chance.

Here are citizens who are not looking for hand-outs, who are not looking for favors, who are not even looking for help. These people are not looking for anything but the right to contribute—as working, tax-paying citizens—to their country. Are we going to continue to say, no, you cannot work. No, you cannot contribute. No, you cannot be considered a valuable part of our Nation's workforce?

Mr. President, I submit to you that our senior citizens can be a valuable part of our workforce. They have the experience, the maturity, and the desire to contribute to the workforce. And many of them are able to work and contribute significantly.

Mr. President, the Social Security earnings test may be our Nation's biggest disincentive to allowing those who want to work, who have asked to work, to continue to contribute meaningfully. Isn't it ironic that we have been talking about removing disincentives to work for those who are on welfare, yet preventing our Nation's seniors from contributing in any meaningful way?

These seniors are not on welfare; rather, they have spent a lifetime contributing to the Social Security Program—they have earned their benefits. We should not use the reduction of these benefits to prevent our seniors from working.

For every $3 that seniors aged 65 to 69 earn over $11,520 this year, the Federal Government takes away $1 in Social Security benefits. According to the Social Security Administration, about 930,000 seniors in this age group are affected by the earnings cap. But let me bring this policy issue away from the statistics.

Each month, I take a different job to stay in touch with the people I represent. In 1991, I took a job bagging groceries at the Winn-Dixie supermarket in Pace, FL, which is near Pensacola. I worked with a man by the name of Jim Young, who is a father of three and grandfather of two. And Jim needs to work. Like many Americans, Jim is looking ahead to the legal age of retirement with full benefits, but without a big retirement savings account. Listen to Jim Young explain this issue: "I don't have retirement savings, and there are a lot of other people who don't either."

Jim Young would like to work past the age of 65. He needs to work past the age of 65. And by current law, if Jim makes $18,000 when he turns 65—just $18,000, he will lose $1200 of his Social Security benefits. To people like Jim Young, to most older Americans, that's a lot of money. Why should the Government put up a barrier to block Jim Young from working, from supporting his family?

Some opponents of this legislation may make the argument that reform isn't needed because older Americans are well-off and therefore, don't need to work. To those people, I say: Talk to Jim Young, who now works in the produce department at Winn-Dixie. Talk to Winn-Dixie and find out whether employers want to hire the talents of older Americans like Jim Young.

True, when the Social Security earnings test was designed, it may have made sense to discourage older Americans from working, under the rationale that keeping seniors out of the job market would free up jobs for younger people who needed work.

But times have changed. The declining birth rate after the post-World War II baby boomer generation means that fewer teens are in the job market. Many employers are looking for seniors to fill jobs. And people like Jim Young are ready to work. They need to work. And to these people, we should say, "Go ahead. Support your family. Help yourself to improve your quality of life. We won't stand in your way."

Social Security was not designed to be the sole support of our senior citizens, but now, many seniors—like Jim Young—have little savings to supplement their benefits. And we have been saying to those seniors who can work, to those senior who want to work, that we want to penalize them for their efforts? This policy is unfair to our seniors. And even worse, it doesn't make sense.

Without the earnings cap, more seniors would likely choose to continue working. Additional revenue would be generated through Social Security and income taxes paid on their wages. This would substantially offset the increase in benefit payments.

In addition, we have been struggling to find ways to improve the long-term solvency of the Old Age, Survivors, and Disability Insurance Program. The Social Security Administration estimates that the offsets in this legislation would pay for the increase in the earnings limit. But the offsets would also improve the long-term solvency of the OASDI program by about 0.03 percent. That's not a lot, but it's a step in the right direction.

So you see, Mr. President, we cannot afford to discourage our older population from working. We need their experience. We need their skills. And we need to allow them to provide for their families.

When I go home to Florida and I see Jim Young and all of the other Jim Youngs who are working to support themselves and their loved ones, I want to say, we are proud of your efforts. We salute your efforts. And we thank you for your valuable contributions to this great Nation of ours.

So as we continue to talk about welfare reform and look for ways to help able-bodied people get back to work, I say: Let us take this issue out of the welfare arena and apply it to those who are not on welfare, to those who simply want to receive the benefits they have earned while continuing to be a part of the workforce. Let us look to our mothers, our fathers, our grandparents. Let us look to Jim Young.

Mr. President, approving this legislation to allow our seniors to work is good policy. It is fiscally sound. And it is the right thing to do.

Mr. NICKLES. Mr. President, clearly, the American people believe that Washington has too much control over their everyday lives. They attribute much of this to a Federal bureaucracy that has grown out of control over the last several decades. Today, the Senate will take a major step toward holding regulatory agencies accountable for the rulemakings they issue. In an effort to return common sense to Federal regulations, we are sending to the President legislation which will provide a formal Congressional review process of regulations issued by Federal agencies.

The Congressional Review Act before us is similar to S. 219, the Regulatory Transition Act that passed the Senate 100–0 a year ago this week. I fully concur with changes made by the House to the Senate bill and believe this represents a workable consensus agreement.

It is estimated that the direct cost to the public and private sectors complying with Federal regulations was $668 billion in 1995. This translates into a cost of $6,000 annually for the average American household. This means higher prices for the cars we drive, the houses we live in, and the food we consume. It also means diminished wages, increased taxes, and reduced government services.

The Congressional Review Act provides for a 60-day review period following the issuance of any Federal agency final rule during which the Congress may enact a joint resolution of disapproval, under a fast-track procedure in the Senate. If the joint resolution passes both Houses, it must be presented to the President for his action.

As in the Senate-passed version, the Congressional Review Act provides for a formal congressional review procedure following the issuance of any final rule by a Federal agency, during which the Congress has an opportunity to review the rule and, if it chooses, enact a joint resolution of disapproval. An expedited review procedure is provided in the Senate for 60 session days beginning on the later of the date Congress receives the agency's report on the rule, or the date the final rule is published in the Federal Register.

Upon issuing a final rule, a Federal agency must send to Congress and GAO a report containing a copy of the rule and also send to GAO or if requested, to Congress, the complete cost-benefit analysis, if any, prepared for the rule and the agency's analyses required by the Regulatory Flexibility and Unfunded Mandates Acts.

For major final rules, GAO shall provide within 15 days to the appropriate committee an assessment of the agency's compliance with the regulatory flexibility, unfunded mandates, and cost-benefit analyses performed by the agency.

Any Senator or Representative may introduce a resolution of disapproval of an agency final rule. The joint resolution of disapproval, which declares that the rule has no force or effect, will be referred to the committees of jurisdiction.

As provided in the Senate version the agreement contains the look-back provision provided to permit congressional review of major final rules issued between March 1, 1996, and the date of enactment.

With regard to concerns raised about unnecessary legal challenges to rules, this act, as in the Senate-passed version, provides that "no determination, finding, action, or omission under this title shall be subject to judicial review."

The agreement does not provide for expedited procedures in the House, but terminates the use of the Senate procedures on the 60th session day, instead of the 45-calendar-day review that was provided in the Senate version.

The Senate expedited procedures can be used to consider a resolution of disapproval that may be introduced with respect to most Federal agency final rules. All final rules that are published less than 60 session days before a session of Congress adjourns sine die, or that are published during sine die adjournment, shall be eligible for review and for fast-track disapproval procedures in the Senate for 60 session days beginning on the 15th session day following the date the new session of Congress convenes.

If the Senate committees of jurisdiction have not reported the resolution of disapproval within 20 calendar days from the date Congress receives the agency's report on the rule, or on the date the final rule is published in the Federal Register, whichever is later, a petition signed by 30 Senators may discharge the committee from further consideration and place the resolution of disapproval directly on the calendar.

Under the Senate procedures, the motion to proceed to the joint resolution is privileged and is not debatable. Once the Senate has moved to proceed to the resolution of disapproval, debate on the resolution is limited to 10 hours, equally divided, with no motions—other than a motion to further limit debate—or amendments in order. If the resolution passes one body, it is eligible for immediate consideration on the floor of the other body.

As provided in the Senate version, the Congressional Review Act declares that no court or agency shall infer any intent of the Congress from any action or inaction of the Congress with regard to a rule unless the Congress enacts a joint resolution of disapproval regarding that rule. As all of my colleagues are well aware, the Congress at any time can review and change, or decide not to change, rules or their underlying statutes. Accordingly, it is my belief that the courts should not treat the mere introduction of a joint resolution of disapproval as grounds for granting a stay to any greater or lesser extent than the courts now take cognizance of any other bills that are introduced.

Major final rules, which the Congressional Review Act defines as final rules that meet the criteria for "major rules" set forth in the Reagan Administration's Executive Order 12291, may not take effect until at least 60 calendar days after the rule is published. However, major final rules addressing imminent threats to health and safety, or other emergencies, criminal law enforcement, matters of national security, or issued pursuant to any statute implementing an international trade agreement may be exempted by Executive Order from the 60-day minimum delay in the effective date. The decision by the President to exempt any major final rule from the delay is not subject to judicial review.

Major final rules would not go into effect after the 60-day period if the joint resolution of disapproval has passed both Houses within that time. If the joint resolution of disapproval is vetoed, the effective date of the final rule will continue to be postponed until 30 session days have passed after the veto, or the date on which either House fails to override the veto, whichever is earlier.

To address statutory or judicial deadlines that apply to disapproved rules, these deadlines are extended for one year after the date of enactment of the joint resolution.

Currently, Congress must approve tax increases, and thanks to the Unfunded Mandates Act passed last year must also focus its attention on any major unfunded mandate. But Congress has virtually no formal role, other than oversight, over the promulgation of a Federal regulation, even if its impact on the economy is measured in billions of dollars. There may have been a time in our Nation's history where congressional review wasn't important. But agencies are now very large, with broad authorities and individual agendas. This new act will help Congress carry out its responsibility to the American people to ensure that Federal regulatory agencies are carrying out congressional intent.

Finally, I wish to extend my sincere appreciation to Senator HARRY REID who has worked tirelessly on this issue since its inception.

MIA'S IN NORTH KOREA—SECTION 1607—UNITED STATES-NORTH KOREA AGREED FRAMEWORK

Mr. MURKOWSKI. Mr. President, as we prepare to vote on the conference report on H.R. 1561, the Foreign Relations Revitalization Act of 1995, I would like to direct my colleagues' attention to one provision of the act that relates to what, I believe, is an often-overlooked issue. That issue is the fate of more than 8,100 American servicemen from the Korean war.

We have always demanded the fullest possible accounting in Vietnam for those listed as missing in action, and the question that I think must be asked is, why not North Korea as well?

Of the 8,100 servicemen not accounted for after the Korean war, at least 5,433 of these were lost north of the 38th parallel. In Vietnam, by contrast, the number of unresolved cases is 2,168, and Vietnam has cooperated in 39 joint field activities.

The United States Government recently announced plans to contribute $2 million through United Nations agencies to relieve starvation in North Korea. The donation was consistent with other instances where the United States seeks to relieve human suffering, despite disagreements with the government of the receiving country.

What is inconsistent with United States policy is our failure to ensure that the Democratic People's Republic of Korea addresses the humanitarian issue of greatest concern to the American people—the resolution of the fate of servicemen missing in action since the end of the Korean war.

I think the families of the servicemen see that same inconsistency. I would refer my colleagues to a March 26, 1996, front page story in the Washington Post, "The Other MIAs, Americans Seek Relatives Lost in Korea." In that story, the President of the Korean/Cold War Family Association of the Missing was quoted as saying: "North Korea wants humanitarian assistance, yet they won't give it themselves. Our families are starving to know what happened to their loved ones. We want an accounting for these men. They deserve an accounting. It's grossly dishonorable to walk away from them." I could not say it better.

I remind my colleagues that relations between the United States and Vietnam did not even begin to thaw until the Government of Vietnam agreed to joint field operations with the United States military to search for missing servicemen. The pace and scope of normalization was commensurate with Vietnam's cooperation on the MIA issue and other humanitarian concerns. In every discussion between United States Government officials and their Vietnamese counterparts, the MIA issue war paramount. The Vietnamese received very clear signals that progress in normalizing relations with the United States would come only after progress was made on the MIA issue.

In contrast to our Vietnam policy, United States policy toward North Korea lacks this focus. The recent announcement regarding food aid did not mention our interest in the MIA issue. The agreed framework between the United States and the DPRK does not talk about cooperation on MIA's—even though the framework commits the United States to give the DPRK free

oil and supply two highly advanced light-water reactors; a total package that exceeds $5 billion—$4 billion for the reactors and $500 million for the oil, not counting potential future aid for the grid system to distribute the power that the reactors will produce. The agreed framework also envisions the United States lifting trade restrictions and normalizing relations—regardless of any movement on the MIA issue.

The most obvious difference between Vietnam and North Korea is North Korea's nuclear program. The United States has an overriding national security interest in stopping the North Korea nuclear program. Nevertheless, I do not believe we should have ignored the MIA issue. That is why I have introduced legislation (S. 1293) that would prevent establishing full diplomatic relations or lifting the trade embargo until the DPRK has agreed to joint field operations.

The conference report before us is consistent with S. 1293. Section 1607 states the sense of the Congress that:

> the President should not take further steps toward upgrading diplomatic relations with North Korea beyond opening liaison offices or relaxing trade and investment barriers imposed against North Korea without . . . obtaining positive and productive cooperation from North Korea on the recovery of remains of Americans missing in action from the Korean war without consenting to exorbitant demands by North Korea for financial compensation.

I urge the Clinton administration to pursue the policy that is laid out in section 1607.

I recently had the opportunity to sit down with our dedicated armed services personnel in Hawaii who are responsible for negotiating with the North Koreans on the MIA issue. It was clear from that briefing that joint field operations would have a high probability of considerable success because, unlike Vietnam, the United States has concrete evidence of the sites of mass U.N. burial grounds and prisoner-of-war camp locations. But United States personnel have no access in North Korea to these sites. The only thing preventing our personnel from going in and making these identifications is the North Koreans.

The North Koreans have been unilaterally turning over some remains. Unfortunately, the North Koreans, without training in the proper handling of remains, have turned over excavated remains that have not been properly handled, making identification vastly more difficult, if not impossible. Of the 208 sets of remains turned over since 1990, only 5 sets have been identified.

Despite United States aid flowing to North Korea, the Koreans have repeatedly attempted to link progress on the remains issue to separate compensation—amounts of money seemingly far in excess of reimbursement costs for recovery, storage, and transportation of remains. The U.S. Government must stand by its policy not to buy remains—this would degrade the honor of those who died in combat. Instead, the United States has offered to reimburse North Korea for reasonable expenses, as we do in Southeast Asia. Talks to try to move the MIA remains repatriation issue forward at this moment appear stalled.

While the United States has been careful not to link the nuclear issues with other policy concerns in North Korea, it is not unreasonable for the United States to consider North Korea's behavior on other issues, such as the MIA issue, when considering whether to provide humanitarian aid to the closed nation. For the families of the 5,433 soldiers and airmen still missing more than 40 years after the end of the conflict there is no more humane action that North Korea could take than to let America have sufficient access to try to resolve as many of these cases as possible.

We have demanded fullest accountability from the Government of Vietnam on the MIA issue. We should demand the same of the Government of North Korea.

CONGRESSIONAL REVIEW AND SMALL BUSINESS REGULATORY FAIRNESS BILL

Mr. LEVIN. Mr. President, it has been 17 years that I have fought for and supported a mechanism for congressional review of agency rules before they take effect. Believe it or not I ran for the Senate in 1978 on the need for legislative veto. That's what we called the right of Congress to review important regulations and stop the ones that don't make sense before they take effect. After the Chadha case, we changed the name from legislative veto to legislative review since the Supreme Court ruled that legislative vetoes—involving only one or two houses of Congress without the President—were unconstitutional. This bill uses a joint resolution of disapproval which is a constitutional mechanism and which was the cornerstone of a bill I introduced with Senator David Boren from Oklahoma back in the early 1980's.

My proposal was adopted with respect to the Federal Trade Commission and the Consumer Product Safety Commission. It was passed by the Senate, with respect to all Federal agencies, on the omnibus regulatory reform bill, S. 1080, in the 96th Congress. But it didn't become law then, and despite repeated efforts over the year, it hadn't become law until this time.

As a longtime member of the Governmental Affairs Committee, I have worked on various regulatory reform proposals, but none has been as significant to me as legislative veto or legislative review. That's because it, alone, puts important regulatory decisions in the hands of the politically accountable, only directly elected branch of the Government, and that is the Congress. And that's where I think these important public policy decisions belong.

The provision we are adopting today, which is similar to the proposal we passed on S. 219 last year, is not exactly what I would have chosen to support, but it's close enough. I think it would have been wiser to have the legislative review apply only to major rules and not every rule issued by Federal agencies. We want to concentrate our energies—at least in the beginning—on the rules that have the greatest impact and not be overwhelmed with requests to review hundreds of rules at the same time. It's been estimated that over 4,000 rules are issued in any 1 year. That amount could simply overtake our ability to be effective with respect to any one rule. That is why I think it would be preferable to have this legislation apply to only major rules—that is, rules that have an economic impact of over $100 million of costs in any 1 year.

I am also concerned about the requirement that each agency physically send to each house of Congress and to the GAO a copy of the final rule, a description of the rule, and notice of the effective date. That is a large and unnecessary paperwork burden that must be met before any rule can take effect. That means for even a small, routine rule, the agency will have to send us the rule and required description. Almost all rules are already published in the Federal Register and we can read that as readily as the public can. I think this will prove to be an unnecessary requirement that needlessly generates paper, and takes precious staff time at both the agencies and in the office of the Secretary of the Senate and the Clerk of the House.

I am also concerned about the change the House made with respect to counting days as calendar days. The bill we have before us would allow a major rule to take effect within 60 calendar days, but would allow the expedited procedure for congressional review to occur within 60 legislative or session days. That's a very big difference in time. At the end of a session of Congress, that could mean we would have the opportunity to disapprove a rule possibly 6 months after it took effect. I think that opens the rulemaking process to unintended and unnecessary mischief. The rule would be in effect, the regulated community would be expected to comply with the rule, and then Congress could come along, using expedited procedures, and repeal the rule. That will create a great deal of uncertainty for businesses and governments alike.

Moreover, Mr. President, the fact that Congress retains the legal right, using expedited procedures, to overturn a rule should not be used by a court to stay the effective date of a rule or to allow a regulated person to delay compliance. That would violate the intent of this legislation. We are very clear in this legislation that major rules take effect within 60 calendar days and nonmajor rules take effect in after the rule is sent to Congress and in accordance with the agency's normal procedures. There is no basis in this legislation for delaying the effective date or

the requirements for compliance with a rule other than what I just described. So a court would not have any basis for delaying compliance based on the longer period for expedited procedures.

The expedited procedures are Congress' internal mechanism for prompt consideration of a joint resolution to disapprove a rule. We could disapprove rules now, by using a joint resolution of disapproval. But being aware of that possibility does not permit a court to waive compliance or delay the effective date of a rule and it shouldn't just because we've added expedited procedures.

I expect we will monitor the implementation of these requirements carefully and make the necessary changes as we identify real-life problems. That will certainly be my intention.

These procedural problems aside, though, Mr. President, I am pleased with this legislation. No longer will be able to tell our constituents who complain about regulations that do not make sense, "talk to the agency," or "your only recourse is the courts." Now we are in a position to do something ourselves. If an agency is proposing a rule that just does not make sense from a cost perspective it will be easier for us to stop it. If a rule doesn't make sense based on practical implementation, we can stop it. If a rule goes too far afield from the intent of Congress in passing the statute in the first place, we can stop it. That's a new day, and one a long time in coming.

How much time these new responsibilities will take and how often the resolution of disapproval will be exercised, no one can predict. We may be surprised in either direction. But as we work with this process and learn from this process, we can make the necessary adjustments in the law. The important thing is that we get this review authority in place and I am very pleased that we are going to be able to do that in this legislation.

I'd like to comment on title III of this bill as well. As a member of both the Small Business Committee and the Governmental Affairs Committee, I am particularly familiar with and interested in the small business regulatory fairness provisions. I support adding judicial review to the Regulatory Flexibility Act and, like legislative review it's been a long time in coming. It will be the stick that forces the regulatory agencies to pay attention to their responsibilities with respect to small governments and small businesses

I have previously commented on my concerns about the provision establishing the SBA Enforcement Ombudsman. While I can support this provision, I do not think it goes far enough in using the traditional role of ombudsman to resolve enforcement disputes, and I will be pursuing legislation in the vein in the Governmental Affairs Committee. I am relieved, however, that we have made it clear that while a responsibility of the ombudsman is to evaluate and rate agencies based on their responsiveness to small business in the area of enforcement, it is not the responsibility of the ombudsman to rate individual personnel of those agencies. This is an important issue because, while we certainly want to promote and ensure fair treatment of small business with respect to regulatory enforcement, we do not want to weaken or intimidate our enforcement personnel so they fail to do the job we require of them. Senator BOND made those assurances in a colloquy we had when this bill initially passed the Senate.

I also want to note that the Small Business Regulatory Fairness Board created by this legislation is subject to the requirements of the Federal Advisory Committee Act. This ensures that the business conducted by this panel is open to the public and that any potential conflicts of interest are known. Obviously, since the bill limits membership, the requirements of FACA for balanced membership would not apply. But to the extent the requirements of FACA can apply, they are expected to apply, and that is why this provision is acceptable.

The provision granting the small business advocacy review panel the opportunity to see a proposed rule before it is published in the Federal Register is a novel step. While the panel is comprised of Federal employees, the panel is directed to obtain comments and input from small entities. The purpose of this comment and review is to assess whether the agency lived up to its responsibilities under the Regulatory Flexibility Act. It is my understanding that the panel is not permitted or expected to share a copy of the draft proposed rule with the small entities with whom it confers, but rather to field comments and concerns about the nature of the rulemaking and its possible effects on small entities. This is an important limitation because to allow otherwise would be to give a unique advantage to one group that is not permitted to other persons affected by the proposed rule.

Mr. President, because this bill is attached to the debt ceiling bill, some of these provisions will take effect immediately. There will be start-up problems with some of these provisions, in particular the congressional review process, because there is no preparation time. We should recognize the reality of these problems and work diligently to mitigate them.

WAIVING CERTAIN ENROLLMENT REQUIREMENTS

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 168 received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 168) waiving certain enrollment requirements with respect to two bills of the One Hundred Fourth Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. HELMS. Mr. President, I ask unanimous consent that the joint resolution be considered, read a third time, and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The joint resolution (H.J. Res. 168) was passed.

Mr. HELMS. I thank the Chair, and I thank the Senator.

H.R.3136 As finally approved by the House and Senate (Enrolled)

H. R. 3136
One Hundred Fourth Congress

of the

United States of America
A T T H E SECOND S E S S I O N
Begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six

An Act
To provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Contract with America Advancement Act of 1996".

TITLE I--SOCIAL SECURITY EARNINGS LIMITATION AMENDMENTS

SEC. 101. SHORT TITLE OF TITLE.

This title may be cited as the "Senior Citizens' Right to Work Act of 1996".

SEC. 102. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) Increase in Monthly Exempt Amount for Individuals Who Have Attained Retirement Age.--Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be--

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66 2/3,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33 1/3,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66 2/3,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66 2/3,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33 1/3, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) Conforming Amendments.--

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended--

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or

the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted".

(c) Effective Date.--The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 103. CONTINUING DISABILITY REVIEWS.

(a) Authorization for Appropriations for Continuing Disability Reviews.--Section 201(g)(1)(A) of the Social Security Act (42 U.S.C. 401(g)(1)(A)) is amended by adding at the end the following: "Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews--

"(i) for fiscal year 1996, $260,000,000;

"(ii) for fiscal year 1997, $360,000,000;

"(iii) for fiscal year 1998, $570,000,000;

"(iv) for fiscal year 1999, $720,000,000;

"(v) for fiscal year 2000, $720,000,000;

"(vi) for fiscal year 2001, $720,000,000; and

"(viii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 221(i) and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under title XVI, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296).".

(b) Adjustment to Discretionary Spending Limits.--Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding the following new subparagraph:

"(H) Continuing disability reviews.--(i) Whenever a bill or joint resolution making appropriations for fiscal year 1996, 1997, 1998, 1999, 2000, 2001, or 2002 is enacted that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such reviews for that fiscal year and the additional outlays flowing from such amounts, but shall not exceed--

"(I) for fiscal year 1996, $15,000,000 in additional new budget authority and $60,000,000 in additional outlays;

"(II) for fiscal year 1997, $25,000,000 in additional new budget authority and $160,000,000 in additional outlays;

"(III) for fiscal year 1998, $145,000,000 in additional new budget authority and $370,000,000 in additional outlays;

"(IV) for fiscal year 1999, $280,000,000 in additional new budget authority and $520,000,000 in additional outlays;

"(V) for fiscal year 2000, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays;

"(VI) for fiscal year 2001, $317,500,000 in additional new

budget authority and $520,000,000 in additional outlays; and

"(VII) for fiscal year 2002, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays.

"(ii) As used in this subparagraph--

"(I) the term 'continuing disability reviews' has the meaning given such term by section 201(g)(1)(A) of the Social Security Act;

"(II) the term 'additional new budget authority' means new budget authority provided for a fiscal year, in excess of $100,000,000, for the Supplemental Security Income program and specified to pay for the costs of continuing disability reviews attributable to the Supplemental Security Income program; and

"(III) the term 'additional outlays' means outlays, in excess of $200,000,000 in a fiscal year, flowing from the amounts specified for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, including outlays in that fiscal year flowing from amounts specified in Acts enacted for prior fiscal years (but not before 1996).".

(c) Budget Allocation Adjustment by Budget Committee.--Section 606 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding the following new subsection:

"(e) Continuing Disability Review Adjustment.--

"(1) In general.--(A) For fiscal year 1996, upon the enactment of the Contract with America Advancement Act of 1996, the Chairmen of the Committees on the Budget of the Senate and House of Representatives shall make the adjustments referred to in subparagraph (C) to reflect $15,000,000 in additional new budget authority and $60,000,000 in additional outlays for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act).

"(B) When the Committee on Appropriations reports an appropriations measure for fiscal year 1997, 1998, 1999, 2000, 2001, or 2002 that

specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, or when a conference committee submits a conference report thereon, the Chairman of the Committee on the Budget of the Senate or House of Representatives (whichever is appropriate) shall make the adjustments referred to in subparagraph (C) to reflect the additional new budget authority for continuing disability reviews provided in that measure or conference report and the additional outlays flowing from such amounts for continuing disability reviews.

"(C) The adjustments referred to in this subparagraph consist of adjustments to--

"(i) the discretionary spending limits for that fiscal year as set forth in the most recently adopted concurrent resolution on the budget;

"(ii) the allocations to the Committees on Appropriations of the Senate and the House of Representatives for that fiscal year under sections 302(a) and 602(a); and

"(iii) the appropriate budgetary aggregates for that fiscal year in the most recently adopted concurrent resolution on the budget.

"(D) The adjustments under this paragraph for any fiscal year shall not exceed the levels set forth in section 251(b)(2)(H) of the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year. The adjusted discretionary spending limits, allocations, and aggregates under this paragraph shall be considered the appropriate limits, allocations, and aggregates for purposes of congressional enforcement of this Act and concurrent budget resolutions under this Act.

"(2) Reporting revised suballocations.--Following the adjustments made under paragraph (1), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to sections 302(b) and 602(b) of this Act to carry out this subsection.

"(3) Definitions.--As used in this section, the terms 'continuing disability reviews', 'additional new budget authority', and 'additional outlays' shall have the same meanings as provided in section

251(b)(2)(H)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(d) Use of Funds and Reports.--

(1) In general.--The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs.

(2) Report.--The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes--

(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.

(e) Office of Chief Actuary in the Social Security Administration.--

(1) In general.--Section 702 of the Social Security Act (42 U.S.C. 902) is amended--

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"CHIEF ACTUARY

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) Effective date of subsection.--The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 104. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) Requirement of Actual Dependency for Future Entitlements.--

(1) In general.--Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) Effective date.--The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) Termination of Child's Insurance Benefits Based on Work Record of Stepparent Upon Natural Parent's Divorce From Stepparent.--

(1) In general.--Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended--

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) Notification.--Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)--

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) Effective dates.--

(A) The amendments made by paragraph (1) shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 105. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) Amendments Relating to Title II Disability Benefits.--

(1) In general.--Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) Representative payee requirements.--

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) of such Act (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) Treatment referrals for individuals with an alcoholism or drug addiction condition.--Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).".

(4) Conforming amendment.--Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) Effective dates.--

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the

entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(b) Amendments Relating to SSI Benefits.--

(1) In general.--Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) Representative payee requirements.--

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) Treatment referrals for individuals with an alcoholism or drug addiction condition.--Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"Sec. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).".

(4) Conforming amendments.--

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) Effective dates.--

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(c) Conforming Amendment.--Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) Supplemental Funding for Alcohol and Substance Abuse Treatment Programs.--

(1) In general.--Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x-33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) Additional funds.--Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x-33) and shall be allocated pursuant to such section 1933.

(3) Use of Funds.--A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities

relating to the treatment of the abuse of alcohol and other drugs.

SEC. 106. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) In General.--During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) Annualized Statements.--During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(c) Inclusion With Matter Otherwise Distributed to Beneficiaries.--The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(d) Report to the Congress.--The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

SEC. 107. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) In General.--Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS

"Sec. 1145. (a) In General.--No officer or employee of the United States shall--

"(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

"(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

"(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

"(b) Public Debt Obligation.--For purposes of this section, the term 'public debt obligation' means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

"(c) Federal Fund.--For purposes of this section, the term 'Federal fund' means--

"(1) the Federal Old-Age and Survivors Insurance Trust Fund;

"(2) the Federal Disability Insurance Trust Fund;

"(3) the Federal Hospital Insurance Trust Fund; and

"(4) the Federal Supplementary Medical Insurance Trust Fund.".

(b) Effective Date.--The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 108. PROFESSIONAL STAFF FOR THE SOCIAL SECURITY ADVISORY BOARD.

Section 703(i) of the Social Security Act (42 U.S.C. 903(i)) is amended in the first sentence by inserting after "Staff Director" the following: ", and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,".

TITLE II--SMALL BUSINESS REGULATORY FAIRNESS

SEC. 201. SHORT TITLE.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 202. FINDINGS.

Congress finds that--

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

SEC. 203. PURPOSES.

The purposes of this title are--

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of chapter 6 of title 5, United States Code;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

Subtitle A--Regulatory Compliance Simplification

SEC. 211. DEFINITIONS.

For purposes of this subtitle--

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 212. COMPLIANCE GUIDES.

(a) Compliance Guide.--For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to

develop and distribute such guides.

(b) Comprehensive Source of Information.--Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) Limitation on Judicial Review.--An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

(a) General.--Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) Program.--Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) Reporting.--Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended--

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing information to small business concerns regarding compliance with regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996.".

(b) Nothing in this Act in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 215. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency's area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

SEC. 216. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle B--Regulatory Enforcement Reforms

SEC. 221. DEFINITIONS.

For purposes of this subtitle--

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended--

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) Definitions.--For purposes of this section, the term--

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA Enforcement Ombudsman.--

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall--

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) Regional Small Business Regulatory Fairness Boards.--

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall--

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) Powers of the Boards.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) In General.--Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) Conditions and Exclusions.--Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to--

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) Reporting.--Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 224. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle C--Equal Access to Justice Act Amendments

SEC. 231. ADMINISTRATIVE PROCEEDINGS.

(a) Section 504(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 504(b) of title 5, United States Code, is amended--

(1) in paragraph (1)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (1)(B), by inserting before the semicolon "or for purposes of subsection (a)(4), a small entity as defined in section 601";

(3) at the end of paragraph (1)(D), by striking "and";

(4) at the end of paragraph (1)(E), by striking the period and inserting "; and"; and

(5) at the end of paragraph (1), by adding the following new subparagraph:

"(F) 'demand' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 232. JUDICIAL PROCEEDINGS.

(a) Section 2412(d)(1) of title 28, United States Code, is amended by adding at the end the following new subparagraph:

"(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 2412(d) of title 28, United States Code, is amended--

(1) in paragraph (2)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (2)(B), by inserting before the semicolon "or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5";

(3) at the end of paragraph (2)(G), by striking "and";

(4) at the end of paragraph (2)(H), by striking the period and inserting "; and"; and

(5) at the end of paragraph (2), by adding the following new subparagraph:

"(I) 'demand' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 233. EFFECTIVE DATE.

The amendments made by sections 331 and 332 shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle.

Subtitle D--Regulatory Flexibility Act Amendments

SEC. 241. REGULATORY FLEXIBILITY ANALYSES.

(a) Initial Regulatory Flexibility Analysis.--

(1) Section 603.--Section 603(a) of title 5, United States Code, is amended--

(A) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States"; and

(B) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.".

(2) Section 601.--Section 601 of title 5, United States Code, is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; and", and by adding at the end the following:

"(7) the term 'collection of information'--

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either--

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

"(8) Recordkeeping requirement.--The term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.".

(b) Final Regulatory Flexibility Analysis.--Section 604 of title 5, United States Code, is amended--

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 242. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"Sec. 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than--

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to--

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 243. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code, is amended--

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 244. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) Small Business Outreach and Interagency Coordination.-- Section 609 of title 5, United States Code, is amended--

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities" by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter--

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(d) For purposes of this section, the term 'covered agency' means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

"(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

"(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

"(2) Special circumstances requiring prompt issuance of the rule.

"(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

(b) Small Business Advocacy Chairpersons.--Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

SEC. 245. EFFECTIVE DATE.

This subtitle shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.

Subtitle E--Congressional Review

SEC. 251. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8--CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.

"801. Congressional review.

"802. Congressional disapproval procedure.

"803. Special rule on statutory, regulatory, and judicial deadlines.

"804. Definitions.

"805. Judicial review.

"806. Applicability; severability.

"807. Exemption for monetary policy.

"808. Effective date of certain rules.

"Sec. 801. Congressional review

"(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing--

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress--

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of--

"(A) the later of the date occurring 60 days after the date on which--

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register, if so published;

"(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date--

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

"(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is--

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted

in accordance with subsection (a)(1)(A) during the period beginning on the date occurring--

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though--

"(i) such rule were published in the Federal Register (as a rule that shall take effect) on--

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though--

"(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"Sec. 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the __ relating to __, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which--

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register, if so published.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule--

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution--

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(g) This section is enacted by Congress--

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"Sec. 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"Sec. 804. Definitions

"For purposes of this chapter--

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term 'major rule' means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in--

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'rule' has the meaning given such term in section 551, except that such term does not include--

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

"Sec. 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"Sec. 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"Sec. 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"Sec. 808. Effective date of certain rules

"Notwithstanding section 801--

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

"(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 252. EFFECTIVE DATE.

The amendment made by section 351 shall take effect on the date of enactment of this Act.

SEC. 253. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking..... 801".

TITLE III--PUBLIC DEBT LIMIT

SEC. 301. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$5,500,000,000,000".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

Public Law 104–121
104th Congress

An Act

To provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

Mar. 29, 1996
[H.R. 3136]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Contract with America Advancement Act of 1996.
5 USC 601 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Contract with America Advancement Act of 1996".

TITLE I—SOCIAL SECURITY EARNINGS LIMITATION AMENDMENTS

Senior Citizens' Right to Work Act of 1996.

SEC. 101. SHORT TITLE OF TITLE.

42 USC 1305 note.

This title may be cited as the "Senior Citizens' Right to Work Act of 1996".

SEC. 102. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66⅔,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted".

42 USC 403 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 103. CONTINUING DISABILITY REVIEWS.

(a) AUTHORIZATION FOR APPROPRIATIONS FOR CONTINUING DISABILITY REVIEWS.—Section 201(g)(1)(A) of the Social Security Act (42 U.S.C. 401(g)(1)(A)) is amended by adding at the end the following: "Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

"(i) for fiscal year 1996, $260,000,000;
"(ii) for fiscal year 1997, $360,000,000;
"(iii) for fiscal year 1998, $570,000,000;
"(iv) for fiscal year 1999, $720,000,000;
"(v) for fiscal year 2000, $720,000,000;
"(vi) for fiscal year 2001, $720,000,000; and
"(viii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 221(i) and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under title XVI, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).".

(b) ADJUSTMENT TO DISCRETIONARY SPENDING LIMITS.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding the following new subparagraph:

2 USC 901.

"(H) CONTINUING DISABILITY REVIEWS.—(i) Whenever a bill or joint resolution making appropriations for fiscal year 1996, 1997, 1998, 1999, 2000, 2001, or 2002 is enacted that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, the adjustments

for that fiscal year shall be the additional new budget authority provided in that Act for such reviews for that fiscal year and the additional outlays flowing from such amounts, but shall not exceed—

"(I) for fiscal year 1996, $15,000,000 in additional new budget authority and $60,000,000 in additional outlays;

"(II) for fiscal year 1997, $25,000,000 in additional new budget authority and $160,000,000 in additional outlays;

"(III) for fiscal year 1998, $145,000,000 in additional new budget authority and $370,000,000 in additional outlays;

"(IV) for fiscal year 1999, $280,000,000 in additional new budget authority and $520,000,000 in additional outlays;

"(V) for fiscal year 2000, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays;

"(VI) for fiscal year 2001, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays; and

"(VII) for fiscal year 2002, $317,500,000 in additional new budget authority and $520,000,000 in additional outlays.

"(ii) As used in this subparagraph—

"(I) the term 'continuing disability reviews' has the meaning given such term by section 201(g)(1)(A) of the Social Security Act;

"(II) the term 'additional new budget authority' means new budget authority provided for a fiscal year, in excess of $100,000,000, for the Supplemental Security Income program and specified to pay for the costs of continuing disability reviews attributable to the Supplemental Security Income program; and

"(III) the term 'additional outlays' means outlays, in excess of $200,000,000 in a fiscal year, flowing from the amounts specified for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, including outlays in that fiscal year flowing from amounts specified in Acts enacted for prior fiscal years (but not before 1996).".

(c) BUDGET ALLOCATION ADJUSTMENT BY BUDGET COMMITTEE.—Section 606 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding the following new subsection: 2 USC 665e.

"(e) CONTINUING DISABILITY REVIEW ADJUSTMENT.—

"(1) IN GENERAL.—(A) For fiscal year 1996, upon the enactment of the Contract with America Advancement Act of 1996, the Chairmen of the Committees on the Budget of the Senate and House of Representatives shall make the adjustments referred to in subparagraph (C) to reflect $15,000,000 in additional new budget authority and $60,000,000 in additional outlays for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act).

"(B) When the Committee on Appropriations reports an appropriations measure for fiscal year 1997, 1998, 1999, 2000,

2001, or 2002 that specifies an amount for continuing disability reviews under the heading 'Limitation on Administrative Expenses' for the Social Security Administration, or when a conference committee submits a conference report thereon, the Chairman of the Committee on the Budget of the Senate or House of Representatives (whichever is appropriate) shall make the adjustments referred to in subparagraph (C) to reflect the additional new budget authority for continuing disability reviews provided in that measure or conference report and the additional outlays flowing from such amounts for continuing disability reviews.

"(C) The adjustments referred to in this subparagraph consist of adjustments to—

"(i) the discretionary spending limits for that fiscal year as set forth in the most recently adopted concurrent resolution on the budget;

"(ii) the allocations to the Committees on Appropriations of the Senate and the House of Representatives for that fiscal year under sections 302(a) and 602(a); and

"(iii) the appropriate budgetary aggregates for that fiscal year in the most recently adopted concurrent resolution on the budget.

"(D) The adjustments under this paragraph for any fiscal year shall not exceed the levels set forth in section 251(b)(2)(H) of the Balanced Budget and Emergency Deficit Control Act of 1985 for that fiscal year. The adjusted discretionary spending limits, allocations, and aggregates under this paragraph shall be considered the appropriate limits, allocations, and aggregates for purposes of congressional enforcement of this Act and concurrent budget resolutions under this Act.

"(2) REPORTING REVISED SUBALLOCATIONS.—Following the adjustments made under paragraph (1), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to sections 302(b) and 602(b) of this Act to carry out this subsection.

"(3) DEFINITIONS.—As used in this section, the terms 'continuing disability reviews', 'additional new budget authority', and 'additional outlays' shall have the same meanings as provided in section 251(b)(2)(H)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

42 USC 401 note.

(d) USE OF FUNDS AND REPORTS.—

(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs.

(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.

(e) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of the Social Security Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"CHIEF ACTUARY

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act. 42 USC 902 note.

SEC. 104. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted. 42 USC 402 note.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

42 USC 402 note.

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 105. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) of such Act (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of

such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.— 42 USC 405 note.

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

42 USC 1383e.

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

42 USC 1382 note.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is finally adjudicated by the Commissioner of Social Security with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been finally adjudicated by the Commissioner with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed after the third month following the month in which this Act is enacted.

(C) Within 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 106. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

42 USC 402 note.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically

valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(c) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(d) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

SEC. 107. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS

42 USC 1320b–15.

"SEC. 1145. (a) IN GENERAL.—No officer or employee of the United States shall—

"(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

"(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

"(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

"(b) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term 'public debt obligation' means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

"(c) FEDERAL FUND.—For purposes of this section, the term 'Federal fund' means—

"(1) the Federal Old-Age and Survivors Insurance Trust Fund;

"(2) the Federal Disability Insurance Trust Fund;

"(3) the Federal Hospital Insurance Trust Fund; and

"(4) the Federal Supplementary Medical Insurance Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act. 42 USC 1320b–15 note.

SEC. 108. PROFESSIONAL STAFF FOR THE SOCIAL SECURITY ADVISORY BOARD.

Section 703(i) of the Social Security Act (42 U.S.C. 903(i)) is amended in the first sentence by inserting after "Staff Director" the following: ", and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,".

TITLE II—SMALL BUSINESS REGULATORY FAIRNESS

Small Business Regulatory Enforcement Fairness Act of 1996.

SEC. 201. SHORT TITLE. 5 USC 601 note.

This title may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 202. FINDINGS. 5 USC 601 note.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

SEC. 203. PURPOSES. 5 USC 601 note.

The purposes of this title are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of chapter 6 of title 5, United States Code;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

5 USC 601 note.

Subtitle A—Regulatory Compliance Simplification

SEC. 211. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 212. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency

which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing information to small business concerns regarding compliance with regulatory requirements; and

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996.".

(b) Nothing in this Act in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

SEC. 215. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency's area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

SEC. 216. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

5 USC 601 note.

Subtitle B—Regulatory Enforcement Reforms

SEC. 221. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

15 USC 631 note.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

15 USC 657.

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report

to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.— Establishment.

"(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

"(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

"(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to the Committee on Small Business and Committee on Governmental Affairs of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

SEC. 224. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle.

Subtitle C—Equal Access to Justice Act Amendments

SEC. 231. ADMINISTRATIVE PROCEEDINGS.

(a) Section 504(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess

of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 504(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (1)(B), by inserting before the semicolon "or for purposes of subsection (a)(4), a small entity as defined in section 601";

(3) at the end of paragraph (1)(D), by striking "and";

(4) at the end of paragraph (1)(E), by striking the period and inserting "; and"; and

(5) at the end of paragraph (1), by adding the following new subparagraph:

"(F) 'demand' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

SEC. 232. JUDICIAL PROCEEDINGS.

(a) Section 2412(d)(1) of title 28, United States Code, is amended by adding at the end the following new subparagraph:

"(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.".

(b) Section 2412(d) of title 28, United States Code, is amended—

(1) in paragraph (2)(A), by striking "$75" and inserting "$125";

(2) at the end of paragraph (2)(B), by inserting before the semicolon "or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5";

(3) at the end of paragraph (2)(G), by striking "and";

(4) at the end of paragraph (2)(H), by striking the period and inserting "; and"; and

(5) at the end of paragraph (2), by adding the following new subparagraph:

"(I) 'demand' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.".

5 USC 504 note.

SEC. 233. EFFECTIVE DATE.

The amendments made by sections 331 and 332 shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle.

Subtitle D—Regulatory Flexibility Act Amendments

SEC. 241. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) SECTION 603.—Section 603(a) of title 5, United States Code, is amended—

(A) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States"; and

(B) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.".

(2) SECTION 601.—Section 601 of title 5, United States Code, is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; and", and by adding at the end the following:

"(7) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

"(8) RECORDKEEPING REQUIREMENT.—The term 'recordkeeping requirement' means a requirement imposed by an agency on persons to maintain specified records.".

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue

laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 242. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of

this chapter, an action for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to—

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 243. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

Federal Register, publication.

(b) Section 612 of title 5, United States Code, is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 244. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.— Section 609 of title 5, United States Code, is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities" by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(d) For purposes of this section, the term 'covered agency' means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

"(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking

record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

"(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

"(2) Special circumstances requiring prompt issuance of the rule.

"(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

5 USC 609 note.

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

5 USC 601 note.

SEC. 245. EFFECTIVE DATE.

This subtitle shall become effective on the expiration of 90 days after the date of enactment of this subtitle, except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.

Subtitle E—Congressional Review

SEC. 251. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.
"808. Effective date of certain rules.

"§ 801. Congressional review

Reports.

"(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule, including whether it is a major rule; and

"(iii) the proposed effective date of the rule.

"(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B). Reports.

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of— Effective dates.

"(A) the later of the date occurring 60 days after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register, if so published; Federal Register, publication.

"(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1). Effective date.

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802. Effective dates.

"(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

"(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a

rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

Federal Register, publication.

"(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

Effective date.

"(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register on the date of enactment of this chapter; and Federal Register, publication.

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register, if so published. Federal Register, publication.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed

to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"(g) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term 'major rule' means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

"(3) The term 'rule' has the meaning given such term in section 551, except that such term does not include—

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

"§ 805. Judicial review

"No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held

invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 808. Effective date of certain rules

"Notwithstanding section 801—

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

"(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 252. EFFECTIVE DATE.

5 USC 801 note.

The amendment made by section 351 shall take effect on the date of enactment of this Act.

SEC. 253. TECHNICAL AMENDMENT.

The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

TITLE III—PUBLIC DEBT LIMIT

SEC. 301. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$5,500,000,000,000".

Approved March 29, 1996.

LEGISLATIVE HISTORY—H.R. 3136 (S. 942):

CONGRESSIONAL RECORD, Vol. 142 (1996):
Mar. 15, 19, S. 942 considered and passed Senate.
Mar. 28, H.R. 3136 considered and passed House and Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):
Mar. 29, Presidential statement.

○

Statement on Signing the Contract With America Advancement Act of 1996

March 29, 1996

Today I have signed into law H.R. 3136, a bill providing for an increase in the public debt limit, an increase of the Social Security earnings limit, and increased flexibility for small businesses to comply with regulations.

I applaud yesterday's bipartisan congressional vote to maintain the Nation's creditworthiness and financial integrity. With the signing of this bill, millions of Americans will, once again, be secure that this great Nation will stand behind its obligations to pay not only beneficiaries of Federal programs but bondholders as well.

Over 8 months ago, Secretary of the Treasury Rubin wrote to the leaders of the Congress, urging them to pass an increase in the debt limit sufficient to extend through the current political season. Secretary Rubin pointed out that attempting to use the prospect of a Federal Government default to achieve leverage in a budget debate was not in the best interests of the American people. Now that we no longer need to focus our efforts on avoiding a default, we can turn our full attention to continuing to bring down the budget deficit as we have successfully done for the last 3 years.

When I took office, the deficit was $290 billion—and rising. By the end of fiscal 1995, the deficit was $164 billion. As a share of the economy, we have cut the deficit by more than half. And just yesterday, the Congressional Budget Office announced its estimate that the deficit for the current fiscal year will fall to $140 billion—thus cutting the deficit that I inherited in half and fulfilling my commitment to do so in my first term.

We should now continue this progress—and limit future increases in the public debt—by reaching an agreement to balance the budget by 2002. Over the last several months, I have worked closely with congressional leaders to reach agreement on balancing the budget. In fact, we have about $700 billion in common savings, enough to balance the budget and provide a modest, targeted tax cut. Let me reiterate: I am committed to reaching an agreement with the Congress to balance the budget—and to reaching that agreement this year.

I also am pleased that this legislation increases the Social Security earnings limit. Currently, retired workers ages 65 through 69 who earn wages above a certain amount have their Social Security benefits reduced by $1 for every $3 in earnings. Over 900,000 Social Security beneficiaries lose some or all of their benefits. This reduction in benefits discourages work by senior citizens who are able and willing to do so. Raising the earnings test will increase the standard of living of the elderly and help the Nation's economy.

This legislation also responds to the legitimate concerns of small businesses regarding regulatory burdens. The bill includes several recommendations of the White House Conference on Small Business that I have supported. In addition, it codifies a number of my reinvention initiatives that will help small businesses comply with Federal regulations and, just as important, enable them to become meaningful partners in the regulatory process.

Finally, this legislation increases congressional accountability for regulations, providing expedited procedures for the Congress to review those regulations. I have long supported this concept, and my Administration endorsed the Senate's efforts of last year in this regard. I am, however, concerned about changes that the House made to this bill, which will unduly complicate and extend this

congressional review process. We will work with the Congress to resolve these concerns.

William J. Clinton

The White House,
March 29, 1996.

NOTE: H.R. 3136, approved March 29, was assigned Public Law No. 104–121. This item was not received in time for publication in the appropriate issue.

SOCIAL SECURITY

Office of the Commissioner

March 28, 1996

Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

This represents the views of the Social Security Administration on Title I of H.R. 3136, the Contract with America Advancement Act of 1996. Title I may be cited as the Senior Citizens Right to Work Act of 1996.

This legislation contains three major provisions relating to the Social Security Administration (SSA). These include an increase in the retirement earnings limit for seniors before Social Security benefits are reduced; elimination of disability benefit eligibility for drug and alcohol addicts; and funding for continuing disability reviews.

Current law sets the earnings limit at $11,520 before Social Security benefits are reduced by $1 for every $3 earned for those 65 to 70 years old. Under the provisions contained in H.R. 3136 the earnings limit would increase in 1996 to $12,500, in 1997 to $13,500, in 1998 to $14,500, in 1999 to $15,500, in 2000 to $17,000, in 2001 to $25,000, and in 2002 to $30,000. By comparison under current law the earnings limit in the year 2002 would have been $14,760 based on the intermediate assumptions in the Social Security Trustees Report.

H.R. 3136 provides for administrative resources for SSA to perform additional continuing disability reviews (CDRs). These reviews are conducted to verify that individuals receiving Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) disability benefits remain eligible to continue receiving those benefits. As part of the FY 1997 budget, the Administration requested a special funding mechanism which would provide resources to allow the Social Security Administration to review, as is required by law, the cases of over one million people to determine if they still meet basic medical and other eligibility criteria.

Safeguards to protect beneficiaries' rights are built into the review process and those safeguards are retained. They include: a process to screen out cases that have a high likelihood of continuing eligibility; a statutory standard requiring the agency to show medical improvement related to the person's ability to work before benefits can cease; and continuation of benefits while a case is being appealed. It is essential to the Social Security Administration and to the integrity of the disability programs that these resources are provided to conduct continuing disability reviews.

H.R. 3136 would amend eligibility criteria for both the Supplemental Security Income (SSI) program and the Social Security Disability Insurance (DI) program by eliminating eligibility for those whose drug and alcohol addiction is material to a finding of disability. In the past few years, the number of individuals receiving SSI and DI benefits based on drug and alcohol addiction has increased significantly. Because the Administration believes that federal benefits received by this population may provide a disincentive for these recipients to help themselves by seeking treatment, the Administration requested the elimination of eligibility for this group as part of the FY 1997 budget. The bill would provide an additional $50 million per year for drug and alcohol treatment.

The Congressional Budget Office estimates that Title I of H.R. 3136 complies with the Budget Enforcement Act of 1990. Within the first five years the cumulative effect of all trust fund related provisions discussed below would result in a net savings to the trust fund of $26 million. In addition, according the Office of the Actuary, Social Security Administration, the long range OASDI actuarial balance will be increased (improved) by an estimated .03% of taxable payroll.

The Social Security Administration recommends support for Title I of H.R. 3136, the Contract with America Advancement Act of 1996. We defer to the agencies with relevant jurisdiction for views on other provisions in the legislation.

Sincerely,

Shirley Chater

Shirley S. Chater
Commissioner
of Social Security

104TH CONGRESS
1ST SESSION

H. R. 2684

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 1995

Mr. BUNNING of Kentucky (for himself, Mr. HASTERT, Mr. ARCHER, Mr. JACOBS, Mr. SAM JOHNSON of Texas, Mr. COLLINS of Georgia, Mr. PORTMAN, Mr. ENGLISH of Pennsylvania, Mr. CHRISTENSEN, Mr. LAUGHLIN, Mr. CRANE, Mr. THOMAS, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. HOUGHTON, Mr. HERGER, Mr. MCCRERY, Mr. HANCOCK, Mr. CAMP, Mr. RAMSTAD, Mr. ZIMMER, Mr. NUSSLE, Ms. DUNN of Washington, Mr. ENSIGN, Mr. MCCOLLUM, Mr. MCINTOSH, Mr. KNOLLENBERG, Mr. GOSS, Mrs. SMITH of Washington, Mr. MCDADE, Mr. EMERSON, Mr. FRELINGHUYSEN, Mr. BUNN of Oregon, Mr. CHABOT, Mr. KOLBE, Mr. BALLENGER, Mr. BACHUS, Mr. SOLOMON, Mr. CUNNINGHAM, Mr. LATOURETTE, Mr. METCALF, Mr. CALVERT, Mr. FUNDERBURK, Mr. LEWIS of Kentucky, Mr. BURTON of Indiana, Mr. GUNDERSON, Mr. BLUTE, Mr. MYERS of Indiana, Mr. GALLEGLY, Mr. HEINEMAN, Mr. COBLE, Mr. FOLEY, Mr. BARTLETT of Maryland, Mrs. FOWLER, Mr. HANSEN, Mr. SAXTON, Mr. BOEHNER, Mr. FIELDS of Texas, Mr. STEARNS, Mr. BEREUTER, Mr. BARTON of Texas, Mr. BLILEY, Mr. HAYWORTH, Mr. COOLEY, Mr. BASS, Mrs. KELLY, Mr. LARGENT, Mr. INGLIS of South Carolina, Mr. EWING, Mr. LUCAS, Mr. SCHAEFER, Mr. TORKILDSEN, Mr. MILLER of Florida, Mr. FOX of Pennsylvania, Mr. BOEHLERT, Mr. CLINGER, Mr. GREENWOOD, Mr. NETHERCUTT, Mr. STUMP, Mr. JONES, Mr. FRISA, Mrs. MORELLA, Mr. NORWOOD, Mr. TALENT, Mr. WELDON of Pennsylvania, Mr. EHRLICH, Mr. ROYCE, Mr. SALMON, Mrs. VUCANOVICH, Mr. SMITH of New Jersey, Mr. DORNAN, Mr. HOSTETTLER, Mr. BUYER, Mr. ROBERTS, Mr. SHAYS, Mr. UPTON, and Mr. CLEMENT) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Right to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after

1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY

BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from con-

tinuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Secu-

rity Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of clause (F);

(B) by striking the period at the end of clause (G) and inserting "; or"; and

(C) by inserting after clause (G) the following new clause:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the sixth month after the month in which the Commissioner of Social Security receives formal notification of such divorce.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

SEC. 5. RECOMPUTATION OF BENEFITS AFTER NORMAL RETIREMENT AGE.

(a) IN GENERAL.—Section 215(f)(2)(D)(i) of the Social Security Act (42 U.S.C. 415(f)(2)(D)(i)) is amended to read as follows:

"(i) in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—

"(I) the second year following the year with respect to which the recomputation is made, in any such case in which the individual has attained retirement age (as defined in section 216(l)) as of the end of the year preceding

the year with respect to which the recomputation is made and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(II) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(b) CONFORMING AMENDMENTS.—

(1) Section 215(f)(7) of such Act (42 U.S.C. 415(f)(7)) is amended by inserting ", and as amended by section 5(b)(2) of the Senior Citizens' Right to Work Act of 1995," after "This subsection as in effect in December 1978".

(2) Subparagraph (A) of section 215(f)(2) of the Social Security Act as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978 is amended—

(A) by striking "in the case of an individual who did not die" and all that follows and inserting "in the case of an individual who did not die in the year with respect to which the re-

computation is made, for monthly benefits beginning with benefits for January of—"; and

(B) by adding at the end the following:

"(i) the second year following the year with respect to which the recomputation is made, in any such case in which the individual has attained age 65 as of the end of the year preceding the year with respect to which the recomputation is made and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(ii) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to recomputations of primary insurance amounts based on wages paid and self employment income derived after 1994 and with respect to benefits payable after December 31, 1995.

SEC. 6. ELIMINATION OF THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION IN PROCESSING ATTORNEY FEES.

(a) ACTIONS BEFORE THE COMMISSIONER.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended—

(1) in paragraph (1), by striking the fourth and fifth sentences;

(2) by striking paragraphs (2), (3), and (4);

(3) by inserting after paragraph (1) the following new paragraph:

"(2)(A) No person, agent, or attorney may charge in excess of $4,000 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

"(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

"(C) Any agreement in violation of this paragraph shall be void.

"(D) Whenever the Commissioner makes a favorable determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of—

"(i) the determination,

"(ii) the dollar amount of any benefits payable to the claimant, and

"(iii) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim."; and

(4) by redesignating paragraph (5) as paragraph (3).

(b) JUDICIAL PROCEEDINGS.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

(1) in the first sentence of subparagraph (A), by striking "representation," and all that follows and inserting the following: "representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.";

(2) in the second sentence of subparagraph (A), by striking "or certified for payment";

(3) by striking subparagraph (B); and

(4) by striking "(b)(1)(A)" and inserting "(b)(1)".

(c) CONFORMING AMENDMENTS.—

(1) Section 223(h)(3) of such Act (42 U.S.C. 423(h)(3)) is amended by striking all that follows "obtained)" and inserting a period.

(2) Section 1127(a) of such Act (42 U.S.C. 1320a–6(a)) is amended by striking the last sentence.

(3) Section 1631(d)(2)(A) of such Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(A) by striking "(other than paragraph (4) thereof)"; and

(B) by striking all that follows "title II" and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) any claim for benefits under the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, or the black lung program under part B of the

Black Lung Benefits Act that is initially filed on or after the 60th day following the date of the enactment of this Act, and

(2) any claim for such benefits filed before such 60th day by a claimant who is first represented by any person, agent, or attorney in connection with such claim on or after such 60th day.

SEC. 7. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(ii)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is

amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to monthly insurance benefits under title II of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are entitled to such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits

for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to supplemental security income benefits under title XVI of the social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are eligible for such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title

XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 8. REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE.

(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1)

of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1995. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1995, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of

the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding section 1402 (c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1995, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

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104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 104–379

SENIOR CITIZENS' RIGHT TO WORK ACT OF 1995

DECEMBER 4, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 2684]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2684) to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended be passed.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Right to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security

Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the sixth month after the month in which the Commissioner of Social Security receives formal notification of such divorce.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

SEC. 5. RECOMPUTATION OF BENEFITS AFTER NORMAL RETIREMENT AGE.

(a) IN GENERAL.—Section 215(f)(2)(D)(i) of the Social Security Act (42 U.S.C. 415(f)(2)(D)(i)) is amended to read as follows:

"(i) in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—

"(I) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained retirement age (as defined in section 216(l)) as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(II) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(b) CONFORMING AMENDMENTS.—

(1) Section 215(f)(7) of such Act (42 U.S.C. 415(f)(7)) is amended by inserting ", and as amended by section 5(b)(2) of the Senior Citizens' Right to Work Act of 1995," after "This subsection as in effect in December 1978".

(2) Subparagraph (A) of section 215(f)(2) of the Social Security Act as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978 is amended—

(A) by striking "in the case of an individual who did not die" and all that follows and inserting "in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—"; and

(B) by adding at the end the following:

"(i) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained age 65 as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(ii) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to recomputations of primary insurance amounts based on wages paid and self employment income derived after 1994 and with respect to benefits payable after December 31, 1995.

SEC. 6. ELIMINATION OF THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION IN PROCESSING ATTORNEY FEES.

(a) ACTIONS BEFORE THE COMMISSIONER.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended—

(1) in paragraph (1), by striking the fourth and fifth sentences;

(2) by striking paragraphs (2), (3), and (4);

(3) by inserting after paragraph (1) the following new paragraph:

"(2)(A) No person, agent, or attorney may charge in excess of $4,000 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

"(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

"(C) Any agreement in violation of this paragraph shall be void.

"(D) Whenever the Commissioner makes a favorable determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of—

"(i) the determination,

"(ii) the dollar amount of any benefits payable to the claimant, and

"(iii) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim."; and

(4) by redesignating paragraph (5) as paragraph (3).

(b) JUDICIAL PROCEEDINGS.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

(1) in the first sentence of subparagraph (A), by striking "representation," and all that follows and inserting the following: "representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.";

(2) in the second sentence of subparagraph (A), by striking "or certified for payment";

(3) by striking subparagraph (B); and

(4) by striking "(b)(1)(A)" and inserting "(b)(1)".

(c) CONFORMING AMENDMENTS.—

(1) Section 223(h)(3) of such Act (42 U.S.C. 423(h)(3)) is amended by striking all that follows "obtained)" and inserting a period.

(2) Section 1127(a) of such Act (42 U.S.C. 1320a–6(a)) is amended by striking the last sentence.

(3) Section 1631(d)(2)(A) of such Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(A) by striking "(other than paragraph (4) thereof)"; and

(B) by striking all that follows "title II" and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) any claim for benefits under the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, or the black lung program under part B of the Black Lung Benefits Act that is initially filed on or after the 60th day following the date of the enactment of this Act, and

(2) any claim for such benefits filed before such 60th day by a claimant who is first represented by any person, agent, or attorney in connection with such claim on or after such 60th day.

SEC. 7. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals With an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to monthly insurance benefits under title II of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are entitled to such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the enti-

tlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are eligible for such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration

under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 8. REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE.

(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1995. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1995, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1995, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

SEC. 9. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(b) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this subsection are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(c) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

The "Senior Citizens' Right To Work Act" would raise the earnings limit for seniors between the ages of 65 and 69 to $30,000 by the year 2002. The legislation would preserve the long-term financial integrity of the Social Security Trust Funds and would offset the cost of the legislation by changes within the Social Security system. These changes would include: establishing a Disability Insurance Continuing Disability Review Administration Revolving Fund; basing entitlement of stepchildren to child's benefits based on actual dependency on stepparent support; altering recomputations of benefits after normal retirement age; eliminating the role of the Social Security Administration (SSA) in processing attorney fees; eliminating benefits based on disability to drug addicts and alcoholics; and allowing members of the clergy to revoke their exemption from Social Security coverage. The legislation also provides for a two-year pilot study to test the efficacy of sending individualized benefit and contribution statements to Social Security recipients.

B. BACKGROUND AND NEED FOR LEGISLATION

Since the creation of the Social Security program in 1935, payment of benefits based on attainment of retirement age has been restricted by the so-called "retirement test"—a limit on the amount of earned income from wages or self employment which, if exceeded, causes loss of some or all benefits. However, there has never been a corresponding limit on so-called "unearned" income—income from sources including pensions, savings, and investments.

The earnings limit discourages older workers from remaining in the work force and sharing their experience, knowledge, and skills with younger workers. According to the Social Security Administration, 925,000 seniors between age 65 and 69 lose some or all of their benefits because of the current earnings limit.

In general, today's retirees enjoy increased longevity and improved health, retiring younger with a projected longevity on aver-

age of 20 to 25 years. This trend is expected to continue. With the impending retirement of the baby boom generation comes the prospect of an aging society, and a slower-growing work force. Given these demographics, it is important to develop policies that tap one of society's most valued and underutilized resources: older workers. Older workers should be encouraged and enabled to remain productive for as long as they wish.

It is equally important to enable beneficiaries—particularly those with lower or middle income—to supplement Social Security with earned income from wages or self employment, just as others do with so-called "unearned" income from dividends and interest, and other investment-related income.

According to the American Association of Retired Persons, 10 percent of seniors depend totally on Social Security for income in retirement; one in four, for 90 percent of retirement income, and three out of five, for at least 50 percent of retirement income. Allowing seniors who work to keep more of what they earn is especially critical to this group, who, like all those age 65 to 69, are currently penalized with a loss of $1 in benefits for every $3 earned above the limit.

Finally, loss of Social Security benefits because of earnings above the current earnings limit, coupled with the tax on Social Security benefits imposed on individuals with incomes above $25,000, or couples with incomes above $32,000, can result in older workers realizing little or no additional income as a result of their labor.

C. Legislative History

On January 9, 1995, the Subcommittee on Social Security held a public hearing on the "Contract With America" provision contained in H.R. 8, the "Senior Citizens' Equity Act," to raise the Social Security earnings limit to $30,000. The Subcommittee received testimony in support of raising the earnings limit from senior advocates, economists, academics, business representatives, and senior citizens. According to testimony presented by SSA, 925,000 beneficiaries age 65 to 69 lose some or all of their benefits because of the effects of the earnings limit. The provision was subsequently incorporated into H.R. 1215, the "Tax Fairness and Deficit Reduction Act," which was favorably reported by the Committee on Ways and Means and later passed the House of Representatives on April 5, 1995, by a vote of 246 to 188.

On November 28, 1995, the Subcommittee on Social Security ordered favorably reported to the Full Committee, as amended, draft legislation entitled the "Senior Citizens' Right to Work Act of 1995," by a voice vote, with a quorum present.

On November 30, 1995, the Full Committee ordered favorable reported, as amended, H.R. 2684 by a roll call vote of 31 yeas and 0 nays, with a quorum present.

During the Full Committee markup, five amendments were offered. The first, offered by Mr. Gibbons, would delete the provision on recomputation and would increase the earnings limit at a slightly less rapid rate than under the Subcommittee bill. This amendment failed by voice vote.

The second amendment offered by Mr. Payne, on behalf of Mrs. Kennelly, would retain current law link between senior citizens

and the blind for purposes of the Social Security earnings test through the year 2000. The amendment also includes a sense of the Congress resolution that Congress should retain the link beyond the year 2000. This amendment was defeated by a roll call vote of 13 yeas and 21 nays.

The third amendment, offered by Ms. Dunn, would require the Commissioner of Social Security to undertake a two-year pilot study on the efficacy of providing individualized information to recipients of monthly insurance benefits. This amendment passed by voice vote, as amended by Mr. Gibbons and Mr. Hancock to allow an individual to also be informed of the amount of their employer contributions.

The fourth amendment, offered by Mr. Kleczka, would strike the provision related to attorneys' fees. This amendment failed by a voice vote.

The fifth amendment, offered by Mr. Rangel, would strike the provision relating to denial of disability benefits to drug addicts and alcoholics. This amendment failed by voice vote.

II. EXPLANATION OF PROVISIONS

(SEC. 1) SHORT TITLE

The short title of the bill "Senior Citizens' Right to Work Act of 1995."

(SEC. 2) INCREASES IN THE SOCIAL SECURITY EARNINGS LIMIT

Present law

Senior citizens age 70 and older receive full Social Security benefits regardless of the amount of earnings they have from wages or self-employment. Those between the full retirement age (currently age 65) and age 70 receive full benefits only if their earnings are lower than an earnings limit amount determined by law. In 1995, the limit for those age 65 to 69 is $11,280. The limit is indexed, increasing annually in proportion to the rate of average wage growth in the economy.

Year:	*Current law*
1996	$11,520
1997	11,880
1998	12,240
1999	12,720
2000	13,200
2001	13,800
2002	14,400

Senior citizens between the age of full retirement (currently age 65) and 70 who earn more than the earnings limit lose $1 in benefits for every $3 in wages of self-employment income they earn over the limit.

Beneficiaries under age 65 who are entitled to receive disability benefits must have a severe disability or disabilities that prevent them from performing work at a substantial gainful level—so-called "substantial gainful activity" (SGA). For individuals under age 65 disabled by blindness, the 1995 SGA amount is currently linked to the monthly earnings limit exempt amount for those now age 65 to 69—$940, and wage-indexed in the future. For individ-

uals with disabilities other than blindness, the monthly SGA amount is $500, and is not indexed.

Explanation of provision

The proposal would gradually raise the earnings limit for those between full retirement age (currently age 65) and 70 to $30,000 by the year 2002. The increase would be phased in over 7 years as follows:

Year:	*Proposed earning limit*
1996	$14,000
1997	15,000
1998	16,000
1999	17,000
2000	18,000
2001	25,000
2002	30,000

Senior citizens between full retirement age (currently age 65) and 70 who earn over the given earnings limit for the year would continue to lose $1 in benefits for every $3 earned over the limit. After 2002, the annual exempt amounts would be indexed to growth in average wages.

The substantial gainful activity (SGA) amount applicable to individuals under 65 who are eligible for disability benefits on the basis of blindness would no longer be inked to the earnings limit amount for those now age 65 to 69. As under current law, the SGA amount for blind individuals would continue to be wage-indexed in the future.

Reason for change

According to SSA, 925,000 beneficiaries between age 65 and 69 lose some or all of their benefits as a result of the earnings limit. Given the combined effects of Federal, State and local income taxes, Social Security payroll taxes, income taxes on benefits, and the earnings limit, senior citizens who earn even moderate amounts over the limit may realize very little financial gain from their labor. These rates are a severe disincentive to work and penalize retirees who often need to work out of economic need. Raising the earnings limit also would ease the administrative burdens of the Social Security Administration, which spends over $200 million a year to monitor and update the earnings limit. SSA estimates that 60 percent of all overpayments, and 45 percent of all underpayments, result from the earnings limit.

Effective date

The proposal would be effective beginning in 1996.

(SEC. 3) ESTABLISHMENT OF A DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING FUND

Present law

The administrative costs of conducting continuing disability reviews (CDRs) of Social Security disability beneficiaries are provided through an appropriation of trust fund monies, and are counted as discretionary spending subject to the domestic discretionary cap of the "Budget Enforcement Act."

Explanation of provision

A Social Security CDR administrative revolving fund account would be established in the Disability Insurance Trust Fund as a source of non-appropriated administrative funds to finance all disability CDRs. At the start of each fiscal year, the revolving fund account would be credited with an amount equal to the estimated present value of savings to the Disability Insurance and Medicare Trust Funds achieved as a result of CDRs of disability recipients conducted in the prior fiscal year. The amounts would be calculated by SSA's Chief Actuary, with adjustments made annually in subsequent years, except in the first year, when $300 million would be credited to the account, based on the Congressional Budget Office estimate of savings that would result from FY 1995 CDRs. Amounts credited to the fund account would be available for all expenditures related to conducting CDRs by SSA and the State agencies.

Since this proposal requires an explicit annual certification by the Chief Actuary, the position of Chief Actuary in SSA, now provided for administratively, would be established by statute.

Reason for change

Limited administrative resources have prevented SSA from keeping up with CDRs. According to General Accounting Office (GAO), for every $1 spent conducting CDRs, $6 are saved in benefits that would otherwise be paid to individuals who are no longer disabled. GAO estimates that at least 200,000 individuals who are no longer disabled continue to receive disability benefits, at a cost of nearly $2 billion in cash and Medicare benefits over the lifetime of the claims. The proposed revolving fund would be a source of non-appropriated administrative resources to finance CDRs, enabling SSA to perform this essential program-integrity work.

Effective date

The proposal is effective for CDRs conducted after FY 1995. The revolving fund account would expire after FY 2002.

(SEC. 4) ENTITLEMENT OF STEPCHILDREN TO CHILD'S BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT

Present law

A child, including a stepchild, may become entitled to Social Security benefits as the child of a worker when the worker retires, becomes disabled, or dies. To do so, the child must be dependent upon the worker. Natural children are deemed dependent on their natural parents.

A stepchild is deemed dependent on the stepparent if he or she is living with or receiving one-half support from the stepparent. Benefits continue to be paid to the stepchild even if the child's natural parent and the stepparent divorce.

When stepchildren qualify for benefits, payment of those benefits reduces the amount available for payment to any other children entitled on the worker's record.

Explanation of provision

The proposal requires that in all cases benefits would be payable to a stepchild only if it is established that the stepchild is dependent upon the stepparent for at least one-half of his or her financial support. In addition, benefits to the stepchild would be terminated if the stepchild's natural parent and stepparent were divorced.

Reason for change

This change would result in the payment of benefits only to stepchildren who are truly dependent on the stepparent for their support, and only as long as the natural parent and stepparent are married. As a result other children entitled on the worker's record will not be unnecessarily disadvantaged by entitlement of stepchildren who have other means of support.

Effective date

The dependency requirement would be effective for stepchildren who become entitled or re-entitled to benefits three months after the month of enactment. In cases of a subsequent divorce, benefits to stepchildren would terminate 6 months after the notice of divorce occurring between natural parent and the stepparent (entitled worker) is received by SSA.

(SEC. 5) RECOMPUTATIONS OF BENEFITS AFTER NORMAL RETIREMENT AGE

Present law

Social Security benefits are based on the average of an individual's "high" years of earnings. For workers born in 1929 or later, 35 "high" years of earnings are averaged. For those born before 1929, the number of "high" years averaged is proportionately fewer (for example, for those born in 1919, 25 "high" years are averaged).

If a retiree continues to work after entitlement to benefits, his or her monthly benefit may be increased if the new yearly earnings are greater than one of the years used in the initial determination of benefits. Currently, recomputations of benefits are effective in the year immediately following the year of the earnings. However, because of the lag between when wages are earned and when they are reported and recomputations are processed, most recomputations are actually paid in a lump-sum payment near the end of the year that they are effective. Subsequently, the adjustment is reflected in the new regular monthly benefit amount.

Explanation of provision

Recomputation of benefits resulting from earnings in the year after a worker reaches normal retirement age (currently age 65) and later would be reflected in the recipient's benefit check, effective with the January of the second year after the year of the earnings. An exception would be provided for recipients who have one or more "zero" years of earnings in their wage averaging computation. Earnings would continue to be credited as under current law for purposes of establishing entitlement.

Reason for change

Since earnings are not reported until well into the year following the year in which they are earned, there is no administrative lead time built into the process for SSA to adjust payments on a timely basis. The adjustments almost always have to be provided to beneficiaries through end-of-year lump-sum payments (and are sometimes delayed until the next year). As a result, the current recomputation process is labor intensive for SSA, and because most recipients do not expect these increases, many are confused by receipt of the lump-sum checks. Many of those affected by the delay in recomputation are among those likely to benefit from the proposed increases in the earnings limitation.

Under the proposal, SSA's ability to manage the recomputation process would be greatly enhanced by having ample lead time between the year of the earnings and the point at which they are reflected in benefit levels. The benefit check that the recipient relies on to meet regular monthly expenses would not be affected by delaying the recomputation.

Beneficiares who lack earnings in one or more of the "high" years, and who are therefore most likely to have the lowest Social Security benefits, would receive retroactive recomputations and past-due benefits as under current law.

Effective date

The proposal would be effective for earnings beginning in 1995.

(SEC. 6) ELIMINATING THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION IN PROCESSING ATTORNEY FEES

Present law

The Social Security Administration (SSA) currently approves the fee that may be charged by an attorney or non-attorney to represent an applicant in administrative proceedings before SSA (most commonly, appeal of a denied claim for disability benefits). When an appeal is decided in the applicant's favor, SSA generally withholds the lesser of $4,000 or 25 percent of past-due Social Security or black lung benefits for direct payment to the applicant's attorney, before forwarding the balance to the applicant.

Explanation of provision

SSA would no longer withhold past-due benefits and pay attorneys or representatives. Attorneys would be free to negotiate fees of up to $4,000 with applicants in the same manner that fees for other legal services are negotiated. Present-law protection of beneficiaries through sanctions against attorneys who violate the established fee cap are preserved.

Reason for change

This proposal is one of the Administration's "Reinventing Government" Phase II initiatives. It is an unusual function for a Federal agency administering benefit payments to routinely intercede in the payment of fees between an attorney and his or her client. SSA's adjudication of attorney fees is a costly component of the appellate process and is not critical to SSA's mission, which is to de-

cide and make benefit payments. SSA currently spends over 400 "work years" annually to determine and withhold attorney fees. A substantial percentage of this work is done by SSA's 1100 Administrative Law Judges and their staffs, which already have an enormous backlog of basic disability appeals to resolve.

Currently, 96 percent of all fees to attorneys are under $4,000. 54 percent are under $2,500. Limiting fees to $4,000 will protect applicants from being charged excessive fees. The proposal will in no way affect an applicant's ability to obtain representation. It will simply result in applicants contracting for Social Security representation as they do for any other legal service. According to SSA, 73 percent of applicants for Social Security benefits are represented at administrative hearings. 64 percent of all applicants for Supplemental Security Income (SSI) benefits are represented, even though attorney fees are not withheld from past-due benefits in SSI cases. The proposal will also speed payment to successful applicants, who may already have waited up to a year to even be scheduled for a hearing. Payments are currently delayed an average of 45 days because of the existing attorney fee approval and payment process.

Effective date

The proposal would be effective for claims filed 60 days or more after enactment.

(SEC. 7) DENIAL OF BENEFITS BASED ON DISABILITY TO DRUG ADDICTS AND ALCOHOLICS

Present law

Individuals whose drug addiction or alcoholism is the contributing factor material to their disability (that is, they would not be considered disabled if they stopped using drugs or alcohol), are eligible to receive Social Security and Supplemental Security Income (SSI) disability cash benefits through a representative payee for up to three years. These recipients must participate in an approved treatment program when available and appropriate, and must allow their participation in a treatment program to be monitored. Benefits end after 36 months unless the individual is disabled for some reason other than substance abuse. Medicare continues beyond the 36-month period so long as the terminated individual continues to be disabled based on another severe disability.

Explanation of provision

An individual would not be considered disabled for purposes of entitlement to cash Social Security and SSI disability benefits if drug addiction or alcoholism is the contributing factor material to his or her disability. Individuals with drug addiction and/or alcoholism who have another severe disabling condition (such as AIDS, cancer, cirrhosis) can qualify for benefits based on that disabling condition.

If a person qualifying for benefits based on another disability is also determined to be an alcoholic or drug addict, a representative payee will be appointed to receive and manage the individual's checks. In most cases, payment to a representative payee best serves the interest of the beneficiary because alcoholism or drug

addiction prevents the beneficiary from properly managing his or her own benefits.

Recipients who are unable to manage their own benefits as a result of alcoholism or drug addiction will be referred to the appropriate State agency for substance abuse treatment services approved under the Public Health Service Act Substance Abuse Prevention and Treatment Block Grant.

For each of two years beginning with FY 1997, $100 million will be spent to fund additional drug (including alcohol) treatment programs and services to supplement State and Tribal programs funded under Section 1933 of the Public Health Service Act. The Subcommittee intends that States will use funds made available under this provision to provide treatment to current and former Social Security and SSI disability recipients on a priority basis.

Reason for change

Under current law, individuals whose sole severe disabling condition is drug addiction or alcoholism are eligible to receive monthly cash Social Security and SSI disability benefits and medical coverage (Medicare or Medicaid) if they are unable to work because of their addictions. The result is a perverse incentive that affronts working taxpayers and fails to serve the interests of addicts and alcoholics, many of whom use their disability checks to purchase drugs and alcohol, thereby maintaining their addictions.

The proposal would convert part of the savings to taxpayers into additional Federal funding to States for drug and alcohol treatment, providing an incentive for States to provide treatment to former recipients. The intent of this proposal is to eliminate payment of cash Social Security and SSI disability benefits to drug addicts and alcoholics, to ensure that beneficiaries with other severe disabilities who are also addicts or alcoholics are paid benefits through a representative payee and referred for treatment, and to provide additional funding to States to enable recipients to continue to be referred to treatment sources.

Effective date

Generally, changes apply to benefits for months beginning on or after the date of enactment. However, an individual entitled to benefits before the month of enactment would continue to be eligible for benefits until January 1, 1997. The Commissioner of Social Security must notify such individuals within three months of the date of enactment. Those who wish to reapply for benefits must do so within four months after the date of enactment in order to qualify for priority redetermination of eligibility. The Commissioners must make these determinations within one year after the date of enactment for individuals who reapply.

In addition, in the case of an individual with an alcoholism or drug addiction condition who is entitled to Social Security or SSI disability benefits on the date of enactment, the representative payee and referral to treatment requirement will apply on or after the first continuing disability review occurring after enactment.

(SEC. 8) REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE

Present law

Practicing members of the clergy are automatically covered by Social Security as self-employed workers unless they file for an exemption from Social Security coverage within a period ending with the due date of the tax return for the second taxable year (not necessarily consecutive) in which they begin performing their ministerial services. Members of the clergy seeking the exemption must file statements with their church, order, or licensing or ordaining body stating their opposition to the acceptance of Social Security benefit is on religious principles. If elected, this exemption is irrevocable.

Explanation of provision

The proposal would provide a two-year "open season," beginning January 1, 1996, for members of the clergy who want to revoke their exemption from Social Security. This decision to join Social Security would be irrovacable. A member of the clergy choosing such coverage would become subject to self employment taxes and his or her subsequent earnings would be credited for Social Security (and Medicare) benefit purposes.

Reason for change

Some members of the clergy elected not to participate in Social Security (and Medicare) early in their careers, before they fully understood the ramifications of doing so. Because the election is irrevocable, there is no way for them to gain access to the program under current law. Clergy typically have modest earnings throughout their working life times and would be among those most likely to rely on Social Security (and Medicare) for much of their basic health care and living expenses in retirement. This proposal gives them a limited opportunity to enroll in the system, similar to those provided by Congress in 1977 and 1986.

Effective date

The proposal would be effective January 1, 1996, for a period of two years.

(SEC. 9) PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS

Present law

There is no provision in present law.

Explanation of provision

The proposal would require the Commissioner of Social Security to undertake a two-year pilot study on the efficacy of providing individualized information to recipients of monthly insurance benefits as a way of improving public understanding of contributions and benefits under the Social Security system. The number of recipients involved in the study would be enough to generate a statistically

valid sample, but would not exceed 600,000. The Commissioner would report the results of the pilot study to the Congress within 60 days of completion of the pilot.

Reason for change

Many Social Security recipients have little or no information on the amount of their and their employers' contributions into the system, or the amount of benefits they have received relative to those contributions. According to the Congressional Research Service, workers retiring in 1995 who had average lifetime earnings recover all of their contributions (plus interest) in 6.8 years—or in 13.6 years, when both employer and employee contributions are taken into account. Employee contributions based on average earnings would have totaled $20,290 ($52,648 with interest), matched by employer contributions of an equal amount.

The pilot study will enable SSA to test public reaction to this information, and determine its usefulness to the broad population of recipients.

Effective date

The proposal would be effective for a two-year pilot commencing as soon as practicable in 1996.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule IX of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee in its consideration of the bill:

Motion to report the bill

The bill, as amended, was ordered favorably reported on November 30, 1995, by a roll call vote of 31 yeas and 0 nays, with a quorum present. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer	X			Mr. Gibbons	X		
Mr. Crane	X			Mr. Rangel	X		
Mr. Thomas	X			Mr. Stark	X		
Mr. Shaw	X			Mr. Jacobs	X		
Mrs. Johnson				Mr. Ford	X		
Mr. Bunning	X			Mr. Matsui	X		
Mr. Houghton				Mrs. Kennelly			
Mr. Herger	X			Mr. Coyne	X		
Mr. McCrery	X			Mr. Levin	X		
Mr. Hancock	X			Mr. Cardin	X		
Mr. Camp	X			Mr. McDermott			
Mr. Ramstad	X			Mr. Kleczka	X		
Mr. Zimmer	X			Mr. Lewis	X		
Mr. Nussel	X			Mr. Payne			
Mr. Johnson	X			Mr. Neal	X		
Ms. Dunn	X						
Mr. Collins	X						
Mr. Portman	X						
Mr. Laughlin							
Mr. English	X						
Mr. Ensign	X						
Mr. Christensen	X						

Votes on amendments

The Committee defeated an amendment (13 yeas and 21 nays) by Mr. Payne, on behalf of Mrs. Kennelly, to retain the current law link between senior citizens and the blind for the purpose of the Social Security earnings limit through the year 2000. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer		X		Mr. Gibbons	X		
Mr. Crane		X		Mr. Rangel	X		
Mr. Thomas		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Jacobs	X		
Mrs. Johnson		X		Mr. Ford	X		
Mr. Bunning		X		Mr. Matsui	X		
Mr. Houghton		X		Mrs. Kennelly			
Mr. Herger		X		Mr. Coyne	X		
Mr. McCrery		X		Mr. Levin	X		
Mr. Hancock		X		Mr. Cardin	X		
Mr. Camp		X		Mr. McDermott			
Mr. Ramstad		X		Mr. Kleczka	X		
Mr. Zimmer		X		Mr. Lewis	X		
Mr. Nussel		X		Mr. Payne	X		
Mr. Johnson		X		Mr. Neal	X		
Ms. Dunn		X					
Mr. Collins		X					
Mr. Portman		X					
Mr. Laughlin							
Mr. English		X					
Mr. Ensign		X					
Mr. Christensen		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made:

The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO) which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states the Committee bill results in net decreased budget authority for direct spending programs relative to current law, and no new or increased due tax expenditures. Revenues are increased to the revocation by members of the clergy of exemption from Social Security coverage.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 2(l)(3)(C) of rule XI of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 4, 1995.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has prepared the enclosed cost estimate for H.R. 2684, the Senior Citizens' Right to Work Act of 1995, as ordered reported by the House Committee on Ways and Means on November 30, 1995.

The bill would affect direct spending and receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2684.
2. Bill title: Senior Citizens' Right to Work Act of 1995.
3. Bill status: As ordered reported by the Committee on Ways and Means on November 30, 1995.
4. Bill purpose: The bill would increase the exempt earnings amount for Social Security beneficiaries aged 65–69 in stages to reach $30,000 in 2002, delay for one year certain benefit recomputations for workers over age 65, eliminate Social Security and Supplemental Security Income benefits for certain substance abusers, eliminate Social Security benefits for certain stepchildren, create a revolving fund within the Disability Insurance Trust Fund from which continuing disability reviews (CDRs) would be funded, and alter the current practice for paying attorneys' fees.
5. Estimated cost to the Federal Government: The following table summarizes the on-budget and off-budget effects of the changes in revenues and direct spending attributable to this bill. Changes in authorizations of appropriations would be subject to actions in future appropriation bills. Table I (attached) provides detail on the off-budget costs and savings associated with individual provisions affecting Social Security benefit payments and revenues. The estimated impact on the Social Security scorecard tracked by the House of Representatives also is included. Table II (attached) details the total budgetary effects of H.R. 2684.

H.R. 2684 would provide ad hoc increases in the exempt earnings limit for Social Security recipients who have reached the normal retirement age until, by 2002, the exempt amount would be $30,000. Additional Social Security benefit payments would total $0.3 billion in 1996 and $2.0 billion in 2002. The bill would reduce other Social Security benefit payments by $0.1 billion in 1996 and by $1.7 billion in 2002. In addition, the mandatory administrative costs of the additional CDRs would total $4.7 billion over the seven-year period, and savings in other mandatory programs would amount to $5.3 billion. Consequently, the bill is estimated to decrease the off-budg-

et surplus by about $4.3 billion during the period while reducing the on-budget deficit by $5.3 billion, for a net reduction of $1.0 billion in the total deficit.

ESTIMATED BUDGETARY EFFECTS OF H.R. 2684, THE SENIOR CITIZENS' RIGHT TO WORK ACT OF 1995

[By fiscal years, in billions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
Projected Spending Under Current Law:								
On-Budget Direct Spending:								
Supplemental Security Income	24.3	24.5	29.9	33.0	36.1	42.6	39.3	46.5
Medicare [1]	158.1	178.7	197.5	215.9	237.3	260.8	286.6	315.2
Medicaid	89.2	99.3	110.0	122.1	134.8	148.1	162.6	177.8
Family Support	18.2	18.5	19.0	19.5	20.1	20.8	21.5	22.2
Food stamps	26.2	26.9	28.6	30.2	31.7	33.4	35.0	36.6
Funding for substance abuse treatment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Subtotal, On-Budget	316.1	348.0	385.0	420.6	460.1	505.7	545.0	598.3
Off-Budget Direct Spending:								
Old-Age and Survivors Insurance	293.4	309.3	322.9	338.8	355.3	372.8	390.7	409.5
Disability Insurance	40.3	43.8	47.7	51.9	56.2	60.8	65.6	70.6
Subtotal, Off-Budget	333.7	353.1	370.6	390.7	411.6	433.6	456.2	480.1
Total, Direct Spending	649.8	701.1	755.6	811.3	871.7	939.2	1001.2	1078.4
Proposed Changes:								
On-Budget Direct Spending:								
Supplemental Security Income	0.0	(2)	−0.3	−0.4	−0.4	−0.5	−0.5	−0.5
Medicare [1]	0.0	(2)	−0.1	−0.2	−0.4	−0.5	−0.6	−0.8
Medicaid	0.0	(2)	−0.1	−0.1	−0.1	−0.1	−0.1	−0.1
Family Support	0.0	0.0	(2)	(2)	(2)	(2)	(2)	(2)
Food stamps	0.0	(2)	0.1	0.1	0.1	0.1	0.1	0.1
Funding for substance abuse treatment	0.0	0.0	(2)	0.1	0.1	(2)	0.0	0.0
Subtotal, On-Budget	0.0	(2)	−0.4	−0.6	−0.8	−1.0	−1.1	−1.4

ESTIMATED BUDGETARY EFFECTS OF H.R. 2684, THE SENIOR CITIZENS' RIGHT TO WORK ACT OF 1995—Continued

[By fiscal years, in billions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002
Off-Budget Direct Spending:								
Old-Age and Survivors Insurance	0.0	0.3	0.4	0.5	0.5	0.5	1.0	1.5
Disability Insurance	0.0	0.3	0.2	(2)	(2)	−0.1	−0.2	−0.3
Subtotal, Off-Budget	0.0	0.6	0.6	0.5	0.5	0.4	0.7	1.1
Total, Direct Spending	0.0	0.5	0.2	−0.1	−0.3	−0.6	−0.4	−0.2
Projected Spending Under H.R. 2684:								
On-Budget Direct Spending:								
Supplemental Security Income	24.3	24.5	29.6	32.6	35.6	42.1	38.8	46.0
Medicare [1]	158.1	178.7	197.4	215.7	237.0	260.3	285.9	314.4
Medicaid	89.2	99.3	109.9	122.0	134.7	148.0	162.5	177.7
Family Support	18.2	18.5	19.1	19.5	20.1	20.8	21.5	22.2
Food stamps	26.2	26.9	28.7	30.2	31.8	33.5	35.1	36.7
Funding for substance abuse treatment	0.0	0.0	(2)	0.1	0.1	(2)	0.0	0.0
Subtotal, On-Budget	316.1	348.0	384.7	420.1	459.3	504.7	543.8	596.9
Off-Budget Direct Spending:								
Old-Age and Survivors Insurance	293.4	309.6	323.3	339.3	355.8	373.2	391.6	411.0
Disability Insurance	40.3	44.1	47.9	51.9	56.3	60.7	65.3	70.3
Subtotal, Off-Budget	293.4	309.6	323.3	339.3	355.8	373.2	391.6	411.0
Total, Direct Spending	609.5	657.5	707.9	759.3	815.1	877.9	935.4	1007.9
Changes to Revenues:								
On-Budget	0.0	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Off-Budget	0.0	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Total, Revenues	0.0	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Deficit Effects:								
On-Budget	0.0	(2)	−0.4	−0.6	−0.8	−1.0	−1.1	−1.4

Off-Budget	0.0	0.6	0.6	0.5	0.5	0.3	0.7	1.1
Total, Deficit	0.0	0.5	0.2	−0.1	−0.3	−0.6	−0.4	−0.2

[1] Hospital Insurance, Supplementary Medical Insurance, and premium receipts.
[2] Indicates less than $50 million.

6. Basis of estimate: These estimates incorporate the economic and technical assumptions of CBO's March 1995 baseline and assume an enactment date of December 31, 1995.

Earnings Limit. H.R. 2684 would relax the current limitations on the receipt of Social Security benefits for those aged 65–69 with earnings above a certain level. Under current law, individuals entitled to Social Security cash benefits may have their benefits reduced, or withheld completely, if their earnings exceed a specified exempt amount. In 1995, the law provides that Social Security beneficiaries under age 65 may earn up to $8,160 a year in wages or self-employment income without having their benefits affected. Those aged 65–69 can earn up to $11,280. The earnings test currently reduces benefits for those under age 65 by $1 for each $2 of earnings above the exempt amount. Those aged 65–69 lose $1 in benefits for each $3 of earnings above the exempt amount. The test does not apply to recipients over age 69. (A different and more stringent earnings restriction applies to recipients of Disability Insurance (DI) benefits and would be unaffected by proposed changes in the earnings test.) The exempt amounts rise each year at the same rate as average wages in the economy.

The bill would affect beneficiaries who have reached the normal retirement age, currently 65. Under this bill, the annual exempt amount for beneficiaries aged 65–69 would be increased in stages during the 1996–2002 period to $30,000 in 2002. The exempt amount would be increased automatically thereafter based on the increase in average wages. The *ad hoc* increases in the exempt amount under the proposal are compared in the following table with the exempt amounts that are estimated to occur under current law.

Calendar year	Current law	H.R. 2684
1995	$11,280	$11,280
1996	11,520	14,000
1997	11,880	15,000
1998	12,240	16,000
1999	12,720	17,000
2000	13,200	18,000
2001	13,800	25,000
2002	14,400	30,000

The legislation is estimated to increase benefit outlays by $320 million in 1996 and by $7.0 billion over the 1996–2002 period. According to the Social Security Administration (SSA), in 1996 an estimated 720,000 Social Security beneficiaries would receive additional benefits under the proposal. In 2002, when the proposal would be fully phased in, roughly 800,000 beneficiaries would be affected.

Although implementing the earnings test is costly from an administrative perspective—over $200 million annually—the changes entailed in H.R. 2684 would have only a marginal impact on SSA's administrative costs. All of those still under the normal retirement age would continue to be treated the same as under current law, and the exempt level increases would still leave many older workers with some benefits withheld as a result of the earnings test. CBO estimates that SSA would save about $5 million in adminis-

trative resources in 1996 and about $95 million over the estimating period.

Raising the earnings test exempt amount could result in behavioral responses that lead to an increase in earnings of those 65 and over, although the response is likely to be relatively small. Any additional work effort would have no significant effect on total Social Security benefits over the projection period. This conclusion is based on three considerations. First, the earnings test is only one of many factors that determine work effort; other factors include the level of Social Security and private pension benefits that would be received, the employment of a spouse, the availability of suitable work, and the health of the worker. Second, empirical research that is available provides little support for the notion that older workers would increase their work effort significantly. Finally, more than half of all workers begin collecting benefits as soon as they become eligible at age 62, even though they will receive reduced benefits throughout their retirement.

Under H.R. 2684 the substantial gainful activity (SGA) amount applicable to the blind would, in the future, be wage-indexed from the present amount of $940 per month in 1995 and would no longer be linked to the earnings test exempt amount for individuals who have reached the normal retirement age. This provision of H.R. 2684 yields the same SGA level for the blind that would prevail under current law and, hence, has no cost or saving.

Revolving Fund for Continuing Disability Review. Section 3 of the bill would establish a new account within the Federal Disability Insurance (DI) Trust Fund that would contain monies to be used only for the CDRs required under Section 221 (i) of the Social Security Act. These reviews are intended to ensure that persons who are no longer severely disabled would not continue to receive benefits. In 1996, the account would be initially funded at $300 million. The fund would also receive annual payments based upon the estimates by SSA's Chief Actuary as to the present value of the DI savings and Medicare savings expected to accrue from the CDRs conducted in the previous fiscal year. The bill would terminate the revolving fund at the end of 2002.

CBO assumes that the ultimate termination rates for CDRs—after all appeals are exhausted—would be about 6 percent initially, but that the termination rate from subsequent reviews of the same disabled persons would fall to 4 percent. Because SSA already conducts some CDRs, not all of the reviews funded out of the revolving fund would be additional reviews. CBO assumes that, based on SSA's plan for CDRs over the next 5 years, the number of CDRs in 2002 would reach more than 500,000. The savings attributable to the new funding through the revolving fund would be only those accruing from the additional reviews made possible by the increased funding. In total, CBO expects that the number of reviews over the 1996–2002 period would rise from 2.7 million under current plans to 4.7 million under the proposal. The CBO estimates that the additional DI benefit savings during the seven-year period would amount to $2.6 billion.

CBO assumes that the average cost of a CDR is about $1,000. Although some reviews are inexpensive because that disabled beneficiary is screened out of the complete medical work-up, others may

cost several thousand dollars if the process results in numerous appeals. The additional administrative costs—which would now be considered direct spending—are estimated to be $310 million in 1996 and $4.7 billion over the 1996–2002 period. CDRs are nevertheless viewed as cost-effective by most analysts, because their initial cost is more than offset by a stream of benefit savings in later years.

In addition to the effects on Social Security outlays, CDR's would also generate savings in the SSI and Medicare programs. Some of the DI cases reviewed would also be concurrent cases with SSI benefits. Because the two programs rely on the same definition of disability, a person found to be no longer sufficiently disabled to receive DI benefits would also no longer receive SSI benefits. Moreover, the person would lose eligibility for Medicare benefits as well. The seven-year savings in SSI and would amount to $68 million and in Medicare would total $1.7 billion,.

Entitlement to Benefits as Stepchildren. H.R. 2684 would introduce two new conditions for the receipt of Social Security benefits as a stepchild of a deceased, disabled, or retired worker. Under current law, stepchildren are eligible to receive Social Security benefits upon the death, disablement, or retirement of a stepparent if the child is less than 18 years old, or less than 19 years old and still in secondary school, and the stepparent either provided support for the child or was living with the child. The support test requires that the stepparent provide at least one-half of the income used to support the child. The child's entitlement to benefits continues even if the child's parents divorce. H.R. 2684 would require that a stepchild be eligible for benefits only if the stepparent provided for the support of the child, and that any stepchild's benefits would be terminated six months after the SSA was notified that the child's stepparent and natural parent has divorced.

Based on data from SSA and the Census Bureau, CBO estimates that about two percent of all awards of benefits to children would be affected by the new support test, resulting in benefit savings of about $1.1 billion over the 1996–2002 period. The estimated number of affected children would be 16,000 in 1996, rising to about 60,000 a year by 2002.

The termination of benefits in cases where the parents divorce would affect children currently receiving benefits as well as some of those who would come on the rolls in the future. According to Census Bureau data, about 40 percent of remarriages end in divorce, and the average length of remarriages that end in divorce is 4 years. CBO estimated that about 23,000 stepchildren receiving Social Security could be affected in 1996. Because SSA does not automatically receive notifications of divorce, CBO reduced the potential number of affected children by one-half. The reduction was based on SSA information that it receives notifications of marriages in about 70 percent of cases and that, because children would lose benefits in these cases, the notification rate would be lower in the case of divorce. On average, the affect children are assumed to lose about $225 per month in 1996, with the total savings amounting to $490 million over the 1996–2002 period.

Delay Benefit Recomputations. Section 5 of the bill would reduce Social Security benefit payments by delaying for one year the re-

computation of benefits to certain beneficiaries with post-entitlement earnings. Savings are estimated to total $910 million for the 1996–2002 period.

Under current law, if a retiree continues to work after entitlement to benefits, his or her monthly benefit may be increased if the new year's earnings are greater than one of the years used in the most recent determination of benefits. Recomputation of benefits are effective in the year immediately following the year of the earnings. This proposal would delay the recomputation of benefits for workers age 66 and over by making the increase in benefits effective in January of the second year after the year of earnings. An exception would be provided for recipients who have one or more zero years of earnings among their computation years. The proposal would be effective for earnings beginning in 1995.

The legislative is estimated to reduce outlays by $10 million in fiscal year 1996 and by $150 million in each year between 1997 and 2002. Savings in 1996 occur because a small number of workers with earnings in 1995 would, under current law, request on their own a benefit recomputation before the end of fiscal year 1996. Automatic recomputation performed by SSA usually occur after the end of the fiscal year. According to SSA, about 1.2 million primary beneficiaries or families annually would experience a delay in their benefit increase.

Eliminate Processing of Attorney's Fees. Under current law, SSA facilitates the payment of certain attorney's fees when a lawyer successfully represents a claimant in administrative proceedings. In the most common cases where a finding of disability is in question, SSA will withhold the lesser of $4,000 or 25 percent of the past-due benefits to which the claimant becomes entitled. SSA will pay the attorney with that share of the past-due benefits and pay the remainder directly to the claimant. This process assures the attorney that he will be paid, thereby avoiding any potential shortage of legal aid to the disabled which might occur if the attorney's had to collect their payments directly from the claimant and face the possible failure of the claimant to pay the legal fees.

H.R. 2684 would eliminate the SSA's involvement with payment of attorney's fees, but would limit the maximum fee that could be charged a claimant to no more than $4,000. Such a change would allow SSA to use about 400 work years that currently are spent reviewing attorney's fees on other priorities of the agency. In addition, it would speed up the payment of past-due benefits to claimants by an average of the six weeks it takes SSA to process the attorney's fees now. The speed-up of payments would increase benefits outlays by $30 million in 1997, but only $2 million to $3 million annually after that. The administrative cost savings would total an estimated $137 million over the 1996–2002 period.

Termination of Benefits for Alcoholics and Drug Addicts. H.R. 2684 would eliminate DI and SSI eligibility for persons with substance abuse problems if the person is found to be disabled because they are addicted. Those addicts whose eligibility for benefits does not hinge on their current substance abuse could continue to receive benefits.

For many years, SSA has been required to identify certain drug addicts and alcoholics (DA&As) in the SSI program, when sub-

stance abuse is a material factor contributing to SSA's finding of disability. As a result of Public Law 103–296, SSA is now also required to identify those Social Security recipients for whom substance abuse is a material factor contributing to the finding of disability. Special provisions apply to those recipients: they must comply with treatment if available, they must have representative payees, and (beginning in 1998) they may be terminated from the program if they have received more than 36 months of benefits.

CBO assumes that, under current law, the DA&A caseload in the SSI program would grow from about 160,000 in 1996 to 200,000 in 2002, and the comparable caseload in Social Security would climb from about 90,000 to 150,000 over the same timespan. Under the bill, awards to DA&As in each program would stop immediately, and those already receiving benefits would be removed from the rolls on January 1, 1997, unless they had another seriously disabling condition.

Estimating the number of DA&As who already have or will soon develop another disabling condition is a thorny issue. Most cases include indicators that these recipients also have other significant health problems in addition to their addiction. In order to be worth noting on the claimant's file, these secondary conditions must be quite severe—but not necessarily disabling in their own right. On the other hand, there is no requirement to record secondary conditions; some recipients for whom none was recorded undoubtedly had them. And the health of many DA&A recipients certainly deteriorates over time, with or without continued substance abuse. Thus, CBO assumes that only about one-quarter of DA&A recipients would be permanently terminated from the program; the rest could requalify by documenting that they have another sufficiently disabling condition.

The proposed restrictions are estimated to eliminate Social Security benefits for about 5,000 DA&As is 1996, and about 40,000 in 2002. Multiplying the number of recipients terminated times their average benefit yields savings of $20 million in 1996 and $1.9 billion during the 1996–2002 period. The proposed changes in SSI would result in an estimated 4,000 fewer recipients in 1996 and an annual caseload reduction of about 50,000 in years after 1998. The resulting SSI savings are $19 million in 1996 and $1.45 billion over the next seven years.

Besides saving on benefits, the Social Security Administration would also be freed from the requirement to maintain contracts with referral and monitoring agencies (RMAs) for its DA&A caseloads. Those agencies monitor addicts' and alcoholics' treatment status and often serve as representative payees. Savings are estimated at about $200 million a year in 1998 through 2002 in SSI and nearly $100 million in DI during those years. There are no savings in 1996, and combined savings of just $144 million in 1997, because the bill would preserve RMA services through January 1, 1997 for current recipients. The bill would also plow an extra $200 million over two years (1997 and 1998) into an existing block grant program to states for the treatment of substance abuse.

The legislation would also eliminate Medicare and Medicaid coverage for DA&As terminated from the Social Security and SSI programs. The estimated Medicare savings grow from $43 million in

1997 to $213 million in 2002. The comparable Medicaid savings amount to $80 million in 1997 and $136 million in 2002.

The termination of benefits for drug addicts and alcoholics would cause increased costs in other federal benefit programs. Because terminated beneficiaries would experience reductions in their case income, food stamp costs are estimated to increase slightly—by approximately $50 million in 1997 and by nearly $400 million over the 1996–2002 timespan. In addition, some individuals removed from SSI could qualify for benefits under the Aid to Families With Dependent Children (AFDC) program, increasing annual federal outlays in that program by $5 million.

Social Security and Medicare Coverage For Certain Clergy. Under current law, ministers of a church generally are treated as self-employed individuals for the purpose of the Social Security payroll tax. However, ministers who are opposed to participating in the Social Security program on religious principles may elect to be permanently exempt from taxes under the Self-Employment Contributions Act (SECA) by filing with the Internal Revenue Service within two years of beginning their ministry. H.R. 2684 would offer clergy who have filed to be exempt from SECA an opportunity to revoke their exemptions.

H.R. 2684 would provide clergy who have previously opted out of Social Security coverage with a two-year window during which they could revoke their exemptions. In 1977 and 1986, the clergy were offered a similar opportunity to opt back in to Social Security. Based on that experience and trends in the number of clergy since 1986, CBO estimates that an additional 1,600 ministers would avail themselves of the opportunity to enroll in Social Security.

CBO estimates that those clergy who opt for Social Security would pay about $2 million in Social Security taxes in 1996 and about $5 million a year by 2002. Although the clergy would also have to pay Hospital Insurance taxes as well as Social Security, the CBO estimates that these additional revenues would be offset by the reduced income taxes owed by the ministers. (As self-employed individuals, they are allowed to take an income tax credit against a portion of their SECA payments.)

Social Security Benefits Statement Pilot Project. H.R. 2684 would require SSA to send to a limited number of old-age and survivor beneficiaries an estimate of the total benefits paid to the retiree and his or her dependents and survivors, as well as an estimate of the total employee and employer contributions made by the individual on whose income the benefits were based. The pilot project would last 2 years, and SAA would be required to report to the Congress within 60 days an analysis of the results of the pilot project. CBO estimates that the pilot project would incur discretionary costs of less than $500,000 in 1996, $2 million in 1997 and $3 million in 1998.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Changes in Social Security outlays and revenues are exempt from pay-as-you-go procedures, but are constrained under separate limitations in each house of the Congress. The so-called "Social Security Scorecard" for the House of Rep-

resentatives is displayed in the attached Table I. The pay-as-you-go effects of the bill are as follows:

[By fiscal years, in millions of dollars]

	1996	1997	1998
Change in Outlays	−34	−385	−576
Change in Receipts	0	0	0

8. Estimated cost to state and local governments: H.R. 2684 would have both direct and indirect effects on the budgets of state and local governments, but precise estimates of the potential cost impacts are difficult to determine. Payments for the state's share of Medicaid and SSI supplements would be reduced however. The removal of certain recipients from Social Security, SSI, Medicare, and Medicaid through additional CDRs and the restrictions on drug addicts and alcoholics would likely increase the demand for general cash assistance and medical assistance provided in some states and localities. Some states may respond by redirecting some of their Medicaid and SSI savings to provide additional assistance through their own state programs. The state's share of the Medicaid savings from the bill is estimated to total about $0.5 billion during the next seven years. The additional AFDC costs for the states would amount to $25 million over the period. Although there would be additional savings to the States from the DA&A provisions, CBO can not estimate the SSI effects by states because it has no state data on the geographical distribution of the DA&As removed from the SSI program.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Wayne Boyington (Social Security Retirement and Survivors) and Kathy Ruffing (Social Security Disability, SSI, and related issues).

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

TABLE I: SOCIAL SECURITY BENEFIT AND REVENUE EFFECTS OF H.R. 2684

[In millions of dollars, by fiscal year]

	1996	1997	1998	1999	2000	2001	2002	5-year total	7-year total
DIRECT SPENDING									
Increase Earnings Limit:									
OASDI Benefit Outlays	320	650	790	850	910	1460	2030	3520	7010
CDR Revolving Fund:									
OASDI Benefit Outlays	−20	−90	−210	−360	−510	−650	−790	−1190	−2630
Modify Dependency Requirement for Stepchild Benefits:									
OASDI Benefit Outlays	−20	−100	−190	−250	−310	−350	−390	−870	−1610
Delay Benefit Recomputations One Year for Earnings after 65:									
OASDI Benefit Outlays	−10	−150	−150	−150	−150	−150	−150	−610	−910
Eliminate DI Benefits to Addicts and Alcoholics:									
OASDI Benefit Outlays	−20	−210	−280	−310	−340	−360	−380	−1160	−1900
Limit SSA Role in Adjudicating Attorney Fees:									
OASDI Benefit Outlays	(1)	30	2	2	3	3	3	37	43
Subtotal: Selected Mandatory Spending—Off-budget.									
OASDI Benefit Outlays	250	130	−38	−218	−397	−47	323	−273	3
REVENUES									
Election of OASDI by Members of Clergy:									
Off-budget Revenues	2	4	4	4	5	5	5	19	29
Memoranda									
Social Security Scorecard Balance as of November 29, 1995:									
Surplus (−Deficit)	117	98	203	189	0	(2)	(2)	607	(2)
New Social Security Scorecard Balance Assuming Enactment of H.R. 2684:									
Surplus (−Deficit)	−131	−28	245	411	402	(2)	(2)	899	(2)

[1] Less than $1 million.
[2] Not applicable.

OASDI=Old-Age, Survivors, and Disability Insurance.

TABLE II: TOTAL BUDGETARY EFFECTS OF H.R. 2684

[In millions of dollars, by fiscal year]

	1996	1997	1998	1999	2000	2001	2002	5-year total	7-year total
DIRECT SPENDING									
Increase Earnings Limit:									
OASDI Benefit Outlays	320	650	790	850	910	1460	2030	3520	7010
CDR Revolving Fund:									
OASDI Benefit Outlays	−20	−90	−210	−360	−510	−650	−790	−1190	−2630
CDR Fund Outlays	310	460	590	780	830	850	920	2970	4740
Medicare	−10	−50	−120	−220	−330	−450	−560	−730	−1740
SSI	−1	−2	−5	−10	−15	−15	−20	−33	−68
Subtotal	279	318	255	190	−25	−265	−450	1017	302
Modify Dependency Requirement for Stepchild Benefits:									
OASDI Benefit Outlays	−20	−100	−190	−250	−310	−350	−390	−870	−1610
Delay Benefit Recomputations One Year for Earnings after 65:									
OASDI Benefits Outlays	−10	−150	−150	−150	−150	−150	−150	−610	−910
Eliminate SSI & DI Benefits to Addicts and Alcoholics [1]:									
OASDI Benefit Outlays	−20	−210	−280	−310	−340	−360	−380	−1160	−1900
SSI Benefits	−19	−197	−215	−249	−260	−230	−280	−940	−1450
RMA Costs (SSI)	−	−114	−186	−166	−193	−214	−235	−659	−1108
RMA Costs (DI)	−	−30	−54	−65	−82	−88	−96	−231	−415
Medicaid	−8	−80	−89	−108	−117	−125	−136	−402	−663
Medicare	−	−43	−101	−140	−163	−185	−213	−447	−845
AFDC	([2])	5	5	5	5	5	5	20	30
Food Stamps	4	50	55	65	70	70	75	244	389
Treatment Funding	.....	46	80	54	20	.....	.....	200	200
Subtotal	−43	−573	−785	−914	−1060	−1127	−1260	−3375	−5762

Limit SSA Role in Adjudicating Attorney Fees:									
OASDI Benefit Outlays	(2)	30	2	2	3	3	3	37	43
Subtotal: Mandatory Spending:.									
Off-budget	560	560	498	497	351	715	1147	2466	4328
On-budget	−34	−385	−576	−769	−983	−1144	−1364	−2747	−5255
Total Mandatory Spending	526	175	−78	−272	−632	−429	−217	−281	−927
REVENUE									
Election of OASDHI by Members of Clergy:									
Off-budget Revenue	2	4	4	4	5	5	5	19	20
AUTHORIZATIONS OF APPROPRIATIONS									
Earnings Test Limit:									
Administrative Costs	−5	−10	−10	−10	−10	−20	−30	−45	−95
CDR Revolving Fund:									
Administrative Costs	−234	−284	−334	−384	−434	−484	−534	−1670	−2688
Eliminate SSI & DI Benefits to Addicts and Alcoholics:									
Administrative Costs	75	35	(2)	(2)	(2)	(2)	(2)	110	110
Limit SSA Role in Adjudicating Attorney Fees:									
Administrative Costs	−5	−20	−21	−22	−22	−23	−24	−90	−137
Social Security Benefit Statement Pilot:									
Administrative Costs	(2)	2	3	.....	.....	.....	.....	5	5
Total Discretionary Spending	65	7	−28	−32	−32	−43	−54	−20	−117

[1] The bill would impose identical restrictions on drug addicts and alcoholics (DA&As) in both the OASDI and SSI programs. Since the House- and Senate-passed reconciliation bills already would impose such restrictions on SSI, those savings—if both bills were enacted—would have to be adjusted to avoid double-counting. Of the $5.8 billion in 7-year savings shown above, $2.9 billion are associated with the SSI restrictions (SSI, SSI RMAs, Medicaid, AFDC, part of the food stamp cost, and half of the proposed treatment funding). Based on discussions with staff, CBO assumes that a technical correction will be made to the bill to clarify that new awards to DA&As are to cease immediately after enactment.

[2] Less than $1 million.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the need for this legislation was confirmed by the oversight hearings of the Subcommittee on Social Security. On January 9, 1995, the Subcommittee on Social Security held a public hearing on the "Contract With America" provision contained in H.R. 8, the "Senior Citizens' Equity Act," to raise the Social Security earnings limit to $30,000.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings and recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in this bill.

C. INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill are not expected to have any inflationary impact on the economy.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE II—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE BENEFITS

FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND

SEC. 201. (a) * * *

* * * * * * *

(g)(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

(i) * * *

* * * * * * *

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II and XVIII of this Act and chapters 2 and 21 of the Internal Revenue Code of 1986. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI, and title XVIII for which the Commissioner of Social Security is responsible *(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))*, the costs of title XVIII for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.

* * * * * * *

(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the "Account"). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

(ii) certify the amount of such estimate to the Managing Trustee.

(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall

make available to the Commissioner of Social Security from the Account the amount so certified.

(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

Old-Age Insurance Benefits

SEC. 202. (a) * * *

* * * * * * *

Child's Insurance Benefits

(d)(1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) * * *

* * * * * * *

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or,

(ii) the month in which he attains the age of 19, but only if he was not under a disability (as so defined) in such earlier month; [or]

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 223(e) (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19, but only if he was not under a disability (as so defined) in such earlier month,

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity[.]*; or*

(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the sixth month after the month in which the Commissioner of Social Security receives formal notification of such divorce.

* * * * * * *

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) if, at such time, the child [was living with or] was receiving at least one-half of his support from such stepfather or stepmother.

* * * * * * *

REDUCTION OF INSURANCE BENEFITS

Maximum Benefits

SEC. 203. (a)(1) * * *

* * * * * * *

(f) For purposes of subsection (b)—

(1) * * *

* * * * * * *

(8)(A) * * *

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

(ii) the product of the corresponding exempt amount which is in effect with respect to months in [the taxable year ending after 1993 and before 1995] *the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)*, and the ratio of—

(I) the national average wage index (as defined in section 209(k)(1)) for the calendar year before the calendar year in which the determination under subparagraph (A) is made, to

(II) the national average wage index (as so defined) [for 1992] *for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)*,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of but not of 10 and to the nearest multiple of $10 in any other case. Whenever the Commissioner of Social Security determines that an exempt amount is to be increased in any year under this paragraph, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 215(i)(1)(A)) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

* * * * * * *

[(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved—

[(i) shall be $333.33 ⅓ for each month of any taxable year ending after 1977 and before 1979,

[(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

[(iii) shall be $416.66 ⅔ for each month of any taxable year ending after 1979 and before 1981,

[(iv) shall be $458.33 ⅓ for each month of any taxable year ending after 1980 and before 1982, and

[(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.]

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.

* * * * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

* * * * * * *

Representative Payees

(j)(1)(A) * * *

[(B) In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, certification of payment of such benefits to a representative payee shall be deemed to serve the interest of such individual under this title. In any case in which such certification is so deemed under this subparagraph to serve the interest of an individual, the Commissioner of Social Security shall include, in such individual's notification of entitlement, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination of such individual's disability and that the Commissioner of Social Security is therefore required to make a certification of payment of such individual's benefits to a representative payee.]

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.

(2)(A) * * *

* * * * * * *

(C)(i) * * *

* * * * * * *

(v) In the case of an individual [entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability] *described in paragraph (1)(B)*, when selecting such individual's representative payee, preference shall be given to—

(I) * * *

* * * * * * *

(D)(i) * * *

(ii)(I) Except as provided in subclause (11), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or [(if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability) is

eligible for benefits under this title by reason of disability.] *described in paragraph (1)(B).*

* * * * * * *

(4)(A)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is [entitled to benefits based on disability and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability] *described in paragraph (1)(B)).*

* * * * * * *

REPRESENTATION OF CLAIMANTS

SEC. 206. (a)(1) The Commissioner of Social Security may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Commissioners' rules and regulations or who violates any provision of this section for which a penalty is prescribed. [The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Commissioner of Social Security under this title, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before him for benefits under this title, makes a determination favorable to the claimant, he shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.]

[(2)(A) In the case of a claim of entitlement to past-due benefits under this title, if—

[(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner's determination regarding the claim,

[(ii) the fee specified in the agreement does not exceed the lesser of—

[(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1127(a)), or

[(II) $4,000, and

[(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 215(i) since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

[(B) For purposes of this subsection, the term past-due benefits excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223.

[(C) In any case involving—

[(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this title and a claim of entitlement to past-due benefits under title XVI, and

[(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

[(D) In the case of a claim with respect to which the Commissioner of Social Security has approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security 1 47 shall provide the claimant and the person representing the claimant a written notice of—

[(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1127(a)) and the dollar amount of the past-due benefits payable to the claimant,

[(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

[(iii) a description of the procedures for review under paragraph (3).

[(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the

maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

[(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

[(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

[(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

[(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

[(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

[(4)(A) Subject to subparagraph (B), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall, notwithstanding section 205(i), certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1127(a)) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1127(a)).

[(B) The Commissioner of Social Security shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.]

(2)(A) No person, agent, or attorney may charge in excess of $4,000 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

(C) Any agreement in violation of this paragraph shall be void.

(D) Whenever the Commissioner makes a favorable determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of—

(i) the determination,

(ii) the dollar amount of any benefits payable to the claimant, and

(iii) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim.

[(5)] *(3)* Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Commissioner of Social Security shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. The Commissioner of Social Security shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Commissioner of Social Security, of the identity of any person representing such claimant in accordance with this subsection.

(b)(1)[(A)] Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such [representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 205(i), certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits.] *representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.* In case of any such judgment, no other fee may be payable [or certified for payment] for such representation except as provided in this paragraph.

[(B) For purposes of this paragraph—

[(i) the term "past-due benefits" excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223, and

[(ii) amounts of past-due benefits shall be determined before any applicable reduction under section 1127(a).]

* * * * * * *

COMPUTATION OF PRIMARY INSURANCE AMOUNT

SEC. 215. For the purposes of this title—

Primary Insurance Amount

(a) * * *

* * * * * * *

Recomputation of Benefits

(f)(1) * * *

The following matter in 8 point type shows provisions of the Social Security Act as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978.

(2) If an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulations prescribe, recompute such individual's primary insurance amount with respect to each year. Such recomputation shall be made as provided in subsections (a) (1) (A) and (C) and (a) (3), as though the year with respect to which such recomputation is made is the last year of the period specified in subsection (b) (2) (C). A recomputation under this paragraph with respect to any year shall be effective—

(A) [in the case of an individual who did not die in such year. for monthly benefits beginning with benefits for January of the following year; or] *in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—*

(i) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained age 65 as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

(ii) the first year following the year with respect to which the recomputation is made, in any other such case; or

* * * * * * *

(D) A recomputation under this paragraph with respect to any year shall be effective—

[(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or]

(i) in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—

(I) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained retirement age (as defined

in section 216(l)) as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

(II) the first year following the year with respect to which the recomputation is made, in any other such case; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

* * * * * * *

(7) This subsection as in effect in December 1978, *and as amended by section 5(b)(2) of the Senior Citizens' Right to Work Act of 1995,* shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) as in effect (without regard to the table in subsection (a)) in that month, and, where appropriate, under subsection (d) as in effect in December 1977, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter, and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) where applicable.

* * * * * * *

DISABILITY DETERMINATIONS

SEC. 221. (a) * * *

* * * * * * *

(i)(1) * * *

* * * * * * *

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, [and] the number of such initial terminations which are overturned as the result of a reconsideration or hearing[.], *and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary*

of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).

* * * * * * *

REHABILITATION SERVICES

Referral for Rehabilitation Services

SEC. 222. (a) * * *

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Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

DISABILITY INSURANCE BENEFIT PAYMENTS

Disability Insurance Benefits

SEC. 223. (a) * * *

* * * * * * *

Definition of Disability

(d)(1) * * *

(2) For purposes of paragraph (1)(A)—

(A) * * *

* * * * * * *

(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

* * * * * * *

(4)(A) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed [the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof] *an amount equal to the exempt amount which would be applicable*

under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amount to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe.

* * * * * * *

Interim Benefits in Cases of Delayed Final Decisions

(h)(1) * * *

* * * * * * *

(3) Any benefits currently paid under this title pursuant to this subsection (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this title (unless payment of such benefits was fraudulently obtained)[, and such benefits shall not be treated as past-due benefits for purposes of section 206(b)(l)].

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ADDITIONAL RULES RELATING TO BENEFITS BASED ON DISABILITY

Suspension of Benefits

SEC. 225. (a) * * *

* * * * * * *

[Nonpayment or Termination of Benefits Where Entitlement Involves Alcoholism or Drug Addiction

[(c)(1)(A) In the case of any individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that such individual is under a disability, such individual shall comply with the provisions of this subsection. In any case in which an individual is required to comply with the provisions of this subsection, the Commissioner of Social Security shall include, in such individual's notification of entitlement, a notice informing such individual of such requirement.

[(B) Notwithstanding any other provision of this title, if an individual who is required under subparagraph (A) to comply with the provisions of this subsection is determined by the Commissioner of Social Security not to be in compliance with the provisions of this subsection, such individual's benefits based on disability shall be suspended for a period—

[(i) commencing with the first month following the month in which such individual is notified by the Commissioner of Social Security of the determination of noncompliance and that the individual's benefits will be suspended, and

[(ii) ending with the month preceding the first month, after the determination of noncompliance, in which such individual demonstrates that he or she has reestablished and maintained compliance with such provisions for the applicable period specified in paragraph (3).

[(2)(A) An individual described in paragraph (1) is in compliance with the requirements of this subsection for a month if in such month—

[(i) such individual undergoes substance abuse treatment which is appropriate for such individual's condition diagnosed as alcoholism or drug addiction and for the stage of such individual's rehabilitation and which is conducted at an institution or facility approved for purposes of this subsection by the Commissioner of Social Security, and

[(ii) such individual complies in such month with the terms, conditions, and requirements of such treatment and with requirements imposed by the Commissioner of Social Security under paragraph (5).

[(B) An individual described in paragraph (1) may be determined as failing to comply with the requirements of this subsection for a month only if treatment meeting the requirements of subparagraph (A)(i) is available for that month, as determined pursuant to regulations of the Commissioner of Social Security.

[(3) The applicable period specified in this paragraph is—

[(A) 2 consecutive months, in the case of a first determination that an individual is not in compliance with the requirements of this subsection,

[(B) 3 consecutive months, in the case of the second such determination with respect to the individual, or

[(C) 6 consecutive months, in the case of the third or subsequent such determination with respect to the individual.

[(4) In any case in which an individual's benefit is suspended for a period of 12 consecutive months for failure to comply with treatment described in paragraph (2) of this subsection, the month following such period shall be deemed, for purposes of section 223(a)(1) or subsection (d)(1)(G)(i), (e)(1), or (f)(1) of section 202 (as applicable), the termination month with respect to such entitlement.

[(5)(A) The Commissioner of Social Security shall provide for the monitoring and testing of individuals who are receiving benefits under this title and who as a condition of payment of such benefits are required to be undergoing treatment under paragraph (1) and complying with the terms, conditions, and requirements thereof as described in paragraph (2)(A), in order to assure such compliance.

[(B) The Commissioner of Social Security, in consultation with drug and alcohol treatment professionals, shall issue regulations—

[(i) defining appropriate treatment for alcoholics and drug addicts who are subject to appropriate substance abuse treatment required under this subsection, and

[(ii) establishing guidelines to be used to review and evaluate their compliance, including measures of the progress expected to be achieved by participants in such programs. (C)(i) For purposes of carrying out the requirements of subparagraphs (A) and (B), the Commissioner of Social Security shall provide for the establishment of one or more referral and monitoring agencies for each State.

[(C) Each referral and monitoring agency for a State shall—

[(i) identify appropriate placements, for individuals residing in such State who are entitled to benefits based on disability and with respect to whom alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that they are under a disability, where they may obtain treatment described in paragraph (2)(A),

[(ii) refer such individuals to such placements for such treatment, and

[(iii) monitor compliance with the requirements of paragraph (2)(A) by individuals who are referred by the agency to such placements and promptly report failures to comply to the Commissioner of Social Security.

[(D) There are authorized to be transferred from the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund such sums as are necessary to carry out the requirements of this paragraph for referral, monitoring, and testing.

[(6)(A) In the case of any individual who is entitled to a benefit based on disability for any month, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, payment of any past-due monthly insurance benefits under this title to which such individual is entitled shall be made in any month only to the extent that the sum of—

[(i) the amount of such past-due benefit paid in such month, and

[(ii) the amount of any benefit for the preceding month under such current entitlement which is payable in such month, does not exceed, subject to subparagraph (B), twice the amount of such individual's benefit for the preceding month (determined without applying any reductions or deductions under this title).

[(B)(i) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this title but to whom any amount of past-due benefits has not been paid, for purposes of subparagraph (A), such individual's monthly insurance benefit for such individual's last month of entitlement shall be treated as such individual's benefit for the preceding month.

[(ii) For the first month in which an individual's past-due benefits referred to in subparagraph (A) are paid, the amount of the limitation provided in subparagraph (A) shall be increased by the

amount of any debts of such individual related to housing which are outstanding as of the end of the preceding month and which are resulting in a high risk of homelessness for such individual.

[(C) Upon the death of an individual to whom payment of past-due benefits has been limited under subparagraph (A), any amount of such past-due benefits remaining unpaid shall be treated as an underpayment for purposes of section 204.

[(D) In the case of an individual who would be entitled to benefits based on disability but for termination of such benefits under paragraph (4) or (7), such individual shall be entitled to payment of past-due benefits under this paragraph as if such individual continued to be entitled to such terminated benefits.

[(7)(A) Subject to subparagraph (B), in the case of any individual entitled to benefits based on disability, if—

[(i) alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that such individual is under a disability, and

[(ii) as of the end of the 36-month period beginning with such individual's first month of entitlement, such individual would not otherwise be disabled but for alcoholism or drug addiction, the month following such 36-month period shall be deemed, for purposes of section 223(a)(1) or subsection (d)(1)(G)(I), (e)(1), or (f)(1) of section 202 (as applicable), the termination month with respect to such entitlement. Such individual whose entitlement is terminated under this paragraph may not be entitled to benefits based on disability for any month following such 36-month period if, in such following month, alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that such individual is under a disability.

[(B) In determining whether the 36-month period referred to in subparagraph (A) has elapsed—

[(i) a month shall not be taken into account unless the Commissioner of Social Security determines, under regulations of the Commissioner of Social Security, that treatment required under this subsection is available to the individual for the month, and

[(ii) any month for which a suspension is in effect for the individual under paragraph (1)(B) shall not be taken into account.

[(8) Monthly insurance benefits under this title which would be payable to any individual (other than the disabled individual to whom benefits are not payable by reason of this subsection) on the basis of the wages and self-employment income of such disabled individual but for the provisions of paragraph (1), (4), or (7) shall be payable as though such paragraph did not apply.

[(9) For purposes of this subsection, the term "benefit based on disability" of an individual means a disability insurance benefit of such individual under section 223 or a child's, widows, or widower's insurance benefit of such individual under section 202 based on the disability of such individual.]

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TITLE VII—ADMINISTRATION

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COMMISSIONER; DEPUTY COMMISSIONER; OTHER OFFICERS

Commissioner of Social Security

SEC. 702. (a) * * *

* * * * * * *

Chief Actuary

(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.

Chief Financial Officer

[(c)] *(d)* There shall be in the Administration a Chief Financial Officer appointed by the Commissioner in accordance with section 901(a)(2) of title 31, United States Code.

Inspector General

[(d)] *(e)* There shall be in the Administration an Inspector General appointed by the President, by and with the advice and consent of the Senate, in accordance with section 3(a) of the Inspector General Act of 1978.

* * * * * * *

TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

PART A—GENERAL PROVISIONS

* * * * * * *

ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT OF RETROACTIVE BENEFITS UNDER TITLE II

SEC. 1127. (a) Notwithstanding any other provision of this Act, in any case where an individual—

(1) is entitled to benefits under title II that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under title II that were regularly due in such month or months, or supplemental security income benefits for

such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under title II in the month or months in which they were regularly due. [A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to subsection (a)(4) or (b) of section 206.]

* * * * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

PART A—DETERMINATION OF BENEFITS

ELIGIBILITY FOR AND AMOUNT OF BENEFITS

Definition of Eligible Individual

SEC. 1611. (a) * * *

* * * * * * *

(e)(1) * * *

* * * * * * *

[(3)(A)(i)(I) In the case of any individual eligible for benefits under this title solely by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled, the individual shall comply with the provisions of this subparagraph. In any case in which an individual is required to comply with the provisions of this subparagraph, the Secretary shall include in the individual's notification of such eligibility a notice informing the individual of such requirement.

[(II) Notwithstanding any other provision of this title, if an individual who is required under subclause (I) to comply with the requirements of this subparagraph is determined by the Secretary not to be in compliance with the provisions of this subparagraph, the individual's benefits under this title by reason of disability shall be suspended for a period—

[(aa) commencing with the first month following the month in which the individual is notified by the Secretary of the determination of noncompliance and that the individual's benefits will be suspended; and

[(bb) ending with the month preceding the first month, after the determination of noncompliance, in which the individual demonstrates that he or she has reestablished and maintained compliance with such provisions for the applicable period specified in clause (iii).

[(ii)(I) An individual described in clause (i) is in compliance with the requirements of this subparagraph for a month if in such month—

[(aa) the individual undergoes substance abuse treatment, which is appropriate for the individual's condition diagnosed as alcoholism or drug addiction and for the stage of the individual's rehabilitation and which is conducted at an institution or facility approved for purposes of this subparagraph by the Secretary; and

[(bb) the individual complies in such month with the terms, conditions, and requirements of the treatment and with requirements imposed by the Secretary under this paragraph.

[(II) An individual described in clause (i) may be determined as failing to comply with the requirements of this subparagraph for a month only if treatment meeting the requirements of subclause (I)(aa) is available for the month, as determined pursuant to regulations of the Secretary.

[(iii) The applicable period specified in this clause is—

[(I) 2 consecutive months, in the case of a 1st determination that an individual is not in compliance with the requirements of this subparagraph;

[(II) 3 consecutive months, in the case of the 2nd such determination with respect to the individual; or

[(III) 6 consecutive months, in the case of the 3rd or subsequent such determination with respect to the individual.

[(iv) An individual who is not in compliance with this paragraph for 12 consecutive months shall not be eligible for supplemental security income benefits under this title. The preceding sentence shall not be construed to prevent the individual from reapplying and becoming eligible for such benefits.

[(v)(I) In the case of any individual eligible for benefits under this title by reason of disability, if—

[(aa) alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled; and

[(bb) as of the end of the 36-month period beginning with the 1st month for which such benefits by reason of disability are payable to the individual, the individual would not otherwise be disabled but for alcoholism or drug addiction,

the individual shall not be eligible for such benefits by reason of disability for any month following such 36-month period if, in such following month, alcoholism or drug addiction would be a contributing factor material to the Secretary's determination that the individual is disabled, notwithstanding section 1619(a).

[(II) An individual whose entitlement to benefits under title II based on disability has been terminated by reason of section 225(c)(7) shall not be eligible for benefits under this title by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled, for any month after the individual's termination month (within the meaning of section 223(a)(1) or subsection (d)(1)(G)(i), (e)(1), or (f)(1) of section 202, as applicable) with respect to such benefits.

[(III) Any month for which a suspension is in effect for the individual under clause (i)(II) shall not be taken into account in determining whether any 36-month period referred to in this clause has elapsed.

[(vi)(I) In the case of any individual who is eligible for benefits under this title for any month solely by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled, payment of any benefits under this title the payment of which is past due shall be made in any month only to the extent that the sum of—

[(aa) the amount of the past-due benefit paid in the month; and

[(bb) the amount of any benefit under this title which is payable to the individual for the month,

does not exceed twice the maximum benefit payable under this title to an eligible individual for the preceding month.

[(II) For the first month in which an individual's past-due benefits referred to in subclause (I) are paid, the amount of the limitation provided in subclause (I) shall be increased by the amount of any debts of the individual related to housing which are outstanding as of the end of the preceding month and which are resulting in a high risk of homelessness for the individual.

[(III) Upon the death of an individual to whom payment of past-due benefits has been limited under subclause (I), any amount of such past-due benefits remaining unpaid shall be treated as an underpayment for purposes of section 1631(b)(1)(A).

[(IV) As used in this clause, the term "benefits under this title" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a), and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

[(V) In the case of an individual who would be eligible for benefits under this title by reason of disability but for termination of such benefits under clause (iv) or (v), the individual shall be eligible for payment of past-due benefits under this clause as if the individual continued to be eligible for such terminated benefits.

[(VI) Subclause (I) shall not apply to payments under section 1631(g).

[(B)(i) The Commissioner of Social Security shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this title.

[(ii) The Secretary, in consultation with drug and alcohol treatment professionals, shall issue regulations—

[(I) defining appropriate treatment for alcoholics and drug addicts who are subject to required appropriate substance abuse treatment under this subparagraph; and

[(II) establishing guidelines to be used to review and evaluate their compliance, including measures of the progress expected to be achieved by participants in such programs.

[(iii)(I) For purposes of carrying out the requirements of clauses (i) and (ii), the Secretary shall provide for the establishment of 1 or more referral and monitoring agencies for each State.

[(II) Each referral and monitoring agency for a State shall—

[(aa) identify appropriate placements, for individuals residing in the State who are eligible for benefits under this title by reason of disability and with respect to whom alcoholism or drug addiction is a contributing factor material to the Secretary's determination that they are disabled, where they may obtain treatment described in subparagraph (A)(ii)(I);

[(bb) refer such individuals to such placements for such treatment; and

[(cc) monitor compliance with the requirements of subparagraph (A) by individuals who are referred by the agency to such placements, and promptly report to the Secretary any failure to comply with such requirements.]

* * * * * * *

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. (a)(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

* * * * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) * * *

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)(I) * * *

[(II) In the case of an individual eligible for benefits under this title by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, the payment of such benefits to a representative payee shall be deemed to serve the interest of the individual under this title. In any case in which such payment is so deemed under this subclause to serve the interest of an individual, the Commissioner of Social Security shall include, in the individual's notification of such eligibility, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled and that the Commissioner of Social Security is therefore required to pay the individual's benefits to a representative payee.]

(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.

* * * * * * *

(B)(i) * * *

* * * * * * *

(vii) In the case of an individual [eligible for benefits under this title by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled] *described in subparagraph (A)(ii)(II)*, when selecting such individual's representative payee, preference shall be given to—

(I) * * *

* * * * * * *

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or [(if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled) is eligible for benefits under this title by reason of disability.] *described in subparagraph (A)(ii)(II).*

* * * * * * *

(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is [eligible for benefits under this title by reason of disability and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled] *described in subparagraph (A)(ii)(II)*).

The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A), except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), (d), and (e) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

(2)(A) The provisions of section 206(a) [(other than paragraph (4) thereof)] shall apply to this part to the same extent as they apply in the case of title II[, except that paragraph (2) thereof shall be applied—

[(i) by substituting, in subparagraphs (A)(ii)(I) and (C)(i), the phrase "(as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a))" for the parenthetical phrase contained therein; and

[(ii) by substituting "section 1631(a)(7)(A) or the requirements of due process of law" for "subsection (g) or (h) of section 223"].

* * * * * * *

DETERMINATIONS OF MEDICAID ELIGIBILITY

SEC. 1634. (a) * * *

* * * * * * *

[(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22—

[(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 202(d) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

[(2) ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase.]

* * * * * * *

TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

* * * * * * *

SECTION 201 OF THE SOCIAL SECURITY INDEPENDENCE AND PROGRAM IMPROVEMENTS ACT OF 1994

SEC. 201. RESTRICTIONS ON PAYMENT OF BENEFITS BASED ON DISABILITY TO SUBSTANCE ABUSERS.

(a) * * *

* * * * * * *

[(c) DEMONSTRATION PROJECTS.—

[(1) IN GENERAL.—The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to explore innovative referral, monitoring, and treatment approaches with respect to—

[(A) individuals who are entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability under title II of the Social Security Act, and

[(B) individuals who are eligible for supplemental security income benefits under title XVI of such Act based solely on disability,

in cases in which alcoholism or drug addiction is a contributing factor material to the Secretary's determination that individuals are under a disability. The Secretary may include in such demonstration projects individuals who are not described in either subparagraph (A) or subparagraph (B) if the inclusion of such individuals is necessary to determine the efficacy of various monitoring, referral, and treatment approaches for individuals described in subparagraph (A) or (B).

[(2) SCOPE.—The demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative approaches under consideration while giving assurance that the results derived from the projects will obtain generally in the operation of the programs involved without committing such programs to the adoption of any particular system either locally or nationally.

[(3) FINAL REPORT.—The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than December 31, 1997, a final report on the demonstration projects carried out under this subsection, together with any related data and materials which the Secretary may consider appropriate. The authority under this section shall terminate upon the transmittal of such final report.]

○

Union Calendar No. 191

104TH CONGRESS
1ST SESSION

H. R. 2684

[Report No. 104–379]

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 1995

Mr. BUNNING of Kentucky (for himself, Mr. HASTERT, Mr. ARCHER, Mr. JACOBS, Mr. SAM JOHNSON of Texas, Mr. COLLINS of Georgia, Mr. PORTMAN, Mr. ENGLISH of Pennsylvania, Mr. CHRISTENSEN, Mr. LAUGHLIN, Mr. CRANE, Mr. THOMAS, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. HOUGHTON, Mr. HERGER, Mr. MCCRERY, Mr. HANCOCK, Mr. CAMP, Mr. RAMSTAD, Mr. ZIMMER, Mr. NUSSLE, Ms. DUNN of Washington, Mr. ENSIGN, Mr. MCCOLLUM, Mr. MCINTOSH, Mr. KNOLLENBERG, Mr. GOSS, Mrs. SMITH of Washington, Mr. MCDADE, Mr. EMERSON, Mr. FRELINGHUYSEN, Mr. BUNN of Oregon, Mr. CHABOT, Mr. KOLBE, Mr. BALLENGER, Mr. BACHUS, Mr. SOLOMON, Mr. CUNNINGHAM, Mr. LATOURETTE, Mr. METCALF, Mr. CALVERT, Mr. FUNDERBURK, Mr. LEWIS of Kentucky, Mr. BURTON of Indiana, Mr. GUNDERSON, Mr. BLUTE, Mr. MYERS of Indiana, Mr. GALLEGLY, Mr. HEINEMAN, Mr. COBLE, Mr. FOLEY, Mr. BARTLETT of Maryland, Mrs. FOWLER, Mr. HANSEN, Mr. SAXTON, Mr. BOEHNER, Mr. FIELDS of Texas, Mr. STEARNS, Mr. BEREUTER, Mr. BARTON of Texas, Mr. BLILEY, Mr. HAYWORTH, Mr. COOLEY, Mr. BASS, Mrs. KELLY, Mr. LARGENT, Mr. INGLIS of South Carolina, Mr. EWING, Mr. LUCAS, Mr. SCHAEFER, Mr. TORKILDSEN, Mr. MILLER of Florida, Mr. FOX of Pennsylvania, Mr. BOEHLERT, Mr. CLINGER, Mr. GREENWOOD, Mr. NETHERCUTT, Mr. STUMP, Mr. JONES, Mr. FRISA, Mrs. MORELLA, Mr. NORWOOD, Mr. TALENT, Mr. WELDON of Pennsylvania, Mr. EHRLICH, Mr. ROYCE, Mr. SALMON, Mrs. VUCANOVICH, Mr. SMITH of New Jersey, Mr. DORNAN, Mr. HOSTETTLER, Mr. BUYER, Mr. ROBERTS, Mr. SHAYS, Mr. UPTON, and Mr. CLEMENT) introduced the following bill; which was referred to the Committee on Ways and Means

DECEMBER 4, 1995
Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed
[Strike out all after the enacting clause and insert the part printed in italic]
[For text of introduced bill, see copy of bill as introduced on November 29, 1995]

A BILL

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Right to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age

(as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after

1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BEN-

EFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continu-

ing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Admin-

istration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a

stepparent who is subsequently divorced from such child's natural parent, the sixth month after the month in which the Commissioner of Social Security receives formal notification of such divorce.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

SEC. 5. RECOMPUTATION OF BENEFITS AFTER NORMAL RETIREMENT AGE.

(a) IN GENERAL.—Section 215(f)(2)(D)(i) of the Social Security Act (42 U.S.C. 415(f)(2)(D)(i)) is amended to read as follows:

"(i) in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—

"(I) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained retirement age (as defined in section 216(l)) as of the end of the year preceding the year with respect to which the recomputation is

made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(II) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(b) CONFORMING AMENDMENTS.—

(1) Section 215(f)(7) of such Act (42 U.S.C. 415(f)(7)) is amended by inserting ", and as amended by section 5(b)(2) of the Senior Citizens' Right to Work Act of 1995," after "This subsection as in effect in December 1978".

(2) Subparagraph (A) of section 215(f)(2) of the Social Security Act as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978 is amended—

(A) by striking "in the case of an individual who did not die" and all that follows and inserting "in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—"; and

(B) by adding at the end the following:

"(i) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained age 65 as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(ii) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to recomputations of primary insurance amounts based on wages paid and self employment income derived after 1994 and with respect to benefits payable after December 31, 1995.

SEC. 6. ELIMINATION OF THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION IN PROCESSING ATTORNEY FEES.

(a) ACTIONS BEFORE THE COMMISSIONER.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended—

(1) in paragraph (1), by striking the fourth and fifth sentences;

(2) by striking paragraphs (2), (3), and (4);

(3) by inserting after paragraph (1) the following new paragraph:

"(2)(A) No person, agent, or attorney may charge in excess of $4,000 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

"(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

"(C) Any agreement in violation of this paragraph shall be void.

"(D) Whenever the Commissioner makes a favorable determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of—

"(i) the determination,

"(ii) the dollar amount of any benefits payable to the claimant, and

"(iii) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim."; and

(4) by redesignating paragraph (5) as paragraph (3).

(b) JUDICIAL PROCEEDINGS.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

(1) in the first sentence of subparagraph (A), by striking "representation," and all that follows and inserting the following: "representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.";

(2) in the second sentence of subparagraph (A), by striking "or certified for payment";

(3) by striking subparagraph (B); and

(4) by striking "(b)(1)(A)" and inserting "(b)(1)".

(c) CONFORMING AMENDMENTS.—

(1) Section 223(h)(3) of such Act (42 U.S.C. 423(h)(3)) is amended by striking all that follows "obtained)" and inserting a period.

(2) Section 1127(a) of such Act (42 U.S.C. 1320a–6(a)) is amended by striking the last sentence.

(3) Section 1631(d)(2)(A) of such Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(A) by striking "(other than paragraph (4) thereof)"; and

(B) by striking all that follows "title II" and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) any claim for benefits under the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, or the black lung program under part B of the Black Lung Benefits Act that is initially filed on or after

the 60th day following the date of the enactment of this Act, and

(2) any claim for such benefits filed before such 60th day by a claimant who is first represented by any person, agent, or attorney in connection with such claim on or after such 60th day.

SEC. 7. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of So-

cial Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to monthly insurance benefits under title II of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are entitled to such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this

subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are eligible for such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the

enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 8. REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE.

(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code), if such application is filed

no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1995. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1995, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in

such subsection) in taxable years beginning after December 31, 1995, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

SEC. 9. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such

recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of

the last calendar year preceding the issuance of the statement for which complete information is available.

(b) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this subsection are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(c) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

Union Calendar No. 191

104TH CONGRESS
1ST SESSION

H. R. 2684

[Report No. 104–379]

A BILL

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

DECEMBER 4, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

SENIOR CITIZENS' RIGHT TO WORK ACT OF 1995

Mr. BUNNING of Kentucky. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2684) to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the Social Security earnings limit for individuals who have attained retirement age, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2684

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Right to Work Act of 1995"

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "[illegible] year ending after 2001 and before [illegible] spect to individuals described [illegible] (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"The Commissioner shall use funds made [illegible]able pursuant to this paragraph solely for [illegible]ne purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A)."

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration

Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the sixth month after the month in which the Commissioner of Social Security receives formal notification of such divorce.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

SEC. 5. RECOMPUTATION OF BENEFITS AFTER NORMAL RETIREMENT AGE.

(a) IN GENERAL.—Section 215(f)(2)(D)(i) of the Social Security Act (42 U.S.C. 415(f)(2)(D)(i)) is amended to read as follows:

"(i) in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—

"(I) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained retirement age (as defined in section 216(l)) as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(II) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(b) CONFORMING AMENDMENTS.—

(1) Section 215(f)(7) of such Act (42 U.S.C. 415(f)(7)) is amended by inserting ", and as amended by section 5(b)(2) of the Senior Citizens' Right to Work Act of 1995," after "This subsection as in effect in December 1978".

(2) Subparagraph (A) of section 215(f)(2) of the Social Security Act as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978 is amended—

(A) by striking "in the case of an individual who did not die" and all that follows and inserting "in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—"; and

(B) by adding at the end the following:

"(i) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained age 65 as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(ii) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to recomputations of primary insurance amounts based on wages paid and self employment income derived after 1994 and with respect to benefits payable after December 31, 1995.

SEC. 6. ELIMINATION OF THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION IN PROCESSING ATTORNEY FEES.

(a) ACTIONS BEFORE THE COMMISSIONER.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended—

(1) in paragraph (1), by striking the fourth and fifth sentences;

(2) by striking paragraphs (2), (3), and (4);

(3) by inserting after paragraph (1) the following new paragraph:

"(2)(A) No person, agent, or attorney may charge in excess of $4,000 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

"(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

"(C) Any agreement in violation of this paragraph shall be void.

"(D) Whenever the Commissioner makes a favorable determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of—

"(i) the determination,

"(ii) the dollar amount of any benefits payable to the claimant, and

"(iii) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim."; and

(4) by redesignating paragraph (5) as paragraph (3).

(b) JUDICIAL PROCEEDINGS.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

(1) in the first sentence of subparagraph (A), by striking "representation," and all that follows and inserting the following: "representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.";

(2) in the second sentence of subparagraph (A), by striking "or certified for payment";

(3) by striking subparagraph (B); and

(4) by striking "(b)(1)(A)" and inserting "(b)(1)".

(c) CONFORMING AMENDMENTS.—

(1) Section 223(h)(3) of such Act (42 U.S.C. 423(h)(3)) is amended by striking all that follows "obtained)" and inserting a period.

(2) Section 1127(a) of such Act (42 U.S.C. 1320a–6(a)) is amended by striking the last sentence.

(3) Section 1631(d)(2)(A) of such Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(A) by striking "(other than paragraph (4) thereof)"; and

(B) by striking all that follows "title II" and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) any claim for benefits under the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, or the black lung program under part B of the Black Lung Benefits Act that is initially filed on or after the 60th day following the date of the enactment of this Act, and

(2) any claim for such benefits filed before such 60th day by a claimant who is first represented by any person, agent, or attorney in connection with such claim on or after such 60th day.

SEC. 7. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to monthly insurance benefits under title II of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are entitled to such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are eligible for such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x-33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x-33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 8. REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE.

(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1995. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1995, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1995, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

SEC. 9. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the

study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(b) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this subsection are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(c) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes, and the gentleman from Indiana [Mr. JACOBS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. BUNNING].

Mr. BUNNING of Kentucky. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today, it is my honor to speak on behalf of the Senior Citizens' Right To Work Act of 1995, because I am also speaking on behalf of the 1 million people who are affected by the Social Security earnings limit.

Over a year ago, we promised working seniors financial relief from the punitive earnings limit which is imposed on many older Americans who must work to make ends meet.

Today we are taking one more step toward fulfilling that promise with the Senior Citizens' Right To Work Act.

H.R. 2684 is a fair and balanced bill. It is fair to the working seniors. It is fair to the financial soundness of the Social Security trust fund.

This legislation enjoys widespread support among the senior community, because they, too, know it is good policy to do what is right for working seniors.

The members of the Ways and Means Committee know it is good policy, too, because it passed the committee unanimously on a vote of 31 to 0.

I urge my colleagues to follow the example of the Ways and Means Committee and pass the Senior Citizens' Right To Work Act of 1995.

Mr. Speaker, I reserve the balance of my time.

Mr. JACOBS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I, of course, support this legislation as well, and I commend the gentleman from Kentucky as well as the gentleman from Texas who are longstanding supporters of the concept, and I cannot think of a better example of a legislative accommodation to various points of view.

There were those of us, and still are, who believe that it is improper to repeal the retirement test altogether, those of us who believe that retirement benefits should, in fact, go to people who are retired. But the compromise this bill represents is a very happy one, as the gentleman from Kentucky has said, for practically any reasonable person who has dealt with this issue over the years. This is a happy moment for the American people. It is a proud moment for the Congress, and it might not be a bad example for the people moving across the hall here to negotiate the whole budget.

There has been give and take. There has been friendship. And there has been accomplishment, and we have arrived at that accomplishment today.

Mr. Speaker, I yield 2½ minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise today not in the manner that I would have liked. I support this bill. I support final passage of this bill.

But I am truly disappointed that the bill came up under suspension, because it gives us no opportunity to amend the bill, and I had planned to testify today before the Committee on Rules to ask that we could have an amendment to continue equity for the blind people of this Nation. Up to this point, people in America who are blind have the same situation on earnings test limits as those who are 65 and older, and my amendment would have maintained this current link between senior citizens and the blind for the purposes of Social Security earnings.

This Social Security earnings test link was put forth originally by our own chairman of the Committee on Ways and Means, the gentleman from Texas [Mr. ARCHER]. He had this idea that this was a very good thing for the blind to have this same type of situation, and it became law nearly 20 years ago. Unfortunately, the bill before us will break that link, and the blind will no longer have the same work incentive our senior citizens should and will enjoy.

Earlier in the year I submitted a similar amendment before the Committee on Rules during consideration of the Contract With America, and the amendment was not permitted on the floor of the House. Today, again, I tried to get an amendment before the Committee on Rules, but, unfortunately, the decision was made to have this come under suspension.

Mr. Speaker, I feel this is unfortunate for the blind of this country not to be allowed to have the vote, but, more importantly, the link is broken. So I would like to say today, whereas it was not found possible to do this, the blind are very interested in this piece of legislation and would certainly like to reestablish this link. I would hope somewhere down the line this could come up again and we could have something that will work and continue.

□ 1645

Mr. BUNNING of Kentucky. Mr. Speaker, it is my pleasure to yield 3 minutes to the gentleman from Texas [Mr. ARCHER] the chairman of the full Committee on Ways and Means.

Mr. ARCHER. Mr. Speaker, I thank my friend from Kentucky for yielding me time.

Today is truly a banner day for this House of Representatives and for the country. As my friend, the gentleman from Indiana, ANDY JACOBS, said, we should find more opportunities to work together for the betterment not only of our senior citizens, but for all Americans.

Today is particularly a sentimental day for me, because over 20 years ago I initiated the effort to eliminate the retirement test. I felt very strongly that this country was losing tremendous talent available in its senior citizens who, if they did work, were penalized by losing their Social Security benefits and paying the highest effective marginal tax rate as a result of any age group in the country.

Today, after all of those years, we are making a move in the right direction, and it is a result of the work of the gentleman from Kentucky, JIM BUNNING, our subcommittee chairman, cooperating with the gentleman from Indiana, ANDY JACOBS, the ranking Democrat on the committee.

But it is also a sentimental day for Barry Goldwater. I hope in some way that he may be watching today, because year after year he was the lead Senate sponsor of this legislation, until he retired from the Senate.

This earnings limit brings about the most odious administrative nightmare in every Social Security office across this country. If you talk to people who who are there day by day, having to deal with Social Security problems, you will find that they will tell you that this is the toughest thing they have to deal with, just from a standpoint of administrative redtape.

When fully phased in, this will eliminate about 50 percent of the people who have to comply with it and bring about these mountainous files of uncertainty.

Seniors who want to work after the passage of this bill will be able to continue to do so up to earning $30,000 a year. That is a giant step forward. It will unlash an awful lot of talent, an awful lot of resources, to help push this country forward in the years ahead.

Mr. Speaker, I could not be more gratified with the response on a bipartisan basis, where this bill came out of our committee on a 31-to-0 vote, to send it to the Senate, where hopefully

they will pass it speedily and put it on the desk of the President so it can be signed soon this year.

Mr. BUNNING of Kentucky. Mr. Speaker, I have the good fortune to yield 1 minute to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, I rise today in support of this most important piece of legislation. It has been late in coming, but it is certainly an answer to many of our commitments to our senior citizens.

For many it is very difficult to live on Social Security and then be limited to $11,000 a year in earnings limits, as existing law provides. By increasing this over 7 years to $30,000, we are recognizing the fact that many of our seniors want to continue to work, can continue to work, and can live a much better and fuller life if they are able to work. It is high time that this legislation pass.

I compliment the chairman and the gentleman from Indiana [Mr. JACOBS] for working on this, in a bipartisan way, to bring this most important piece of legislation to the House floor.

Mr. JACOBS. Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, the bill before us is not very controversial. The base bill does provide for an increase in the earnings limit for senior citizens. I guess we could debate, and possibly the Senate will debate, whether or not it should go to $30,000 over a period of 7 years. But the point I want to raise with the body today is, No. 1, the process on how the bill got before us today, and then two of the components which are very troublesome to me.

We were notified, I believe last week, that this bill would be coming before the Committee on Rules today at 2:30, at which time Members who were interested could approach the Committee on Rules and ask for various amendments to be made in order.

That is the usual process when we are amending bills and debating bills. However, for whatever reason, unbeknownst to this speaker, the Committee on Rules canceled that hearing on this particular bill and it was rushed to the House under a procedure we call suspension of the rules. The suspension of the rules procedure does not permit any amendments to be offered to the legislation being debated.

So essentially what the Republican majority has done is cut some of us off, some of us who wanted to propose some constructive changes to the legislation we were debating.

You ask what are those changes? What do you want to change about the bill? There are two major changes I think that have to be addressed.

One was already spoken to by the gentlewoman from Connecticut [Mrs. KENNELLY], and it is something we did discuss before the committee and I am sad to say to no avail. But under current law and under an amendment back to 1977 that was proposed by my good friend, the gentleman from Texas [Mr. ARCHER], the chairman of the committee, there was a linkage formed between the blind and the earnings test for Social Security recipients. However, although that linkage has proved very beneficial to the blind involved and it has been in the law since 1977, for some reason, unbeknownst to me, that linkage is ending with the passage of this bill.

If you look at the plight of a blind person who has tried to struggle in a low paying job, to not permit them to earn more as we are doing for retired people I think is absurd. In fact, the example I used before the Committee on Ways and Means during markup was take the situation of a blind person who is not going to get better in his or her lifetime, unless a miracle would occur, a blind person who is trying to increase their stand in this country, and they try to get a job earning more money. But they know full well they are going to lose. A person who is blind who is trying to earn will lose Social Security benefits.

However, a retired person who is, say, 66 years old, very, very healthy, not blind, will over a 7-year period be able to earn $30,000, and I think the unlinking of the two is totally unfair. However, because of the Republican procedure today, the blind people will not get a separate vote on their request to my office and many others to keep this linked.

The other problem with the bill has nothing to do with the earnings test. However, under current law for attorneys who represent people in Social Security disability cases, they receive their reimbursement for the representation through a separate check from the Social Security Administration. That is being done away with. It does not save any money. We are told it might cost some money, but we are going to save some man-hours. We did want to offer before the Committee on Rules a proposal wherein we take the one disability check going to the beneficiary, have two payees listed on the check, and if in fact that did not cover the cost we would provide for a $20 fee. That was not permitted. That is sad.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 1 minute to the gentleman from Georgia [Mr. COLLINS].

Mr. COLLINS of Georgia. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I must say that this is a day that many of us in this body can stand and say promises made, promises kept, because both sides of the aisle have promised our seniors we would give them relief in their earnings ability by allowing them to continue to work and earn extra money and not be penalized for such.

It comes from both sides of the aisle. As has been mentioned, both in the subcommittee and the full committee, there was not a dissenting vote. Again, this is how this body can work.

I go back to just 10 days ago, on Sunday evening in this same body when on a unanimous consent we sent a continuing resolution down to the White House that would do the same thing, promises made, promises kept. That is why we all agreed to a 7-year balanced budget. I look forward to the day we stand here unanimously and say we fulfilled that promise also.

Mr. BUNNING of Kentucky. Mr. Speaker, I now have the pleasure of yielding 1 minute to the gentleman from Pennsylvania [Mr. ENGLISH].

Mr. ENGLISH of Pennsylvania. Mr. Speaker, I rise in strong support of H.R. 2684, legislation that will raise the Social Security earnings limit for working seniors who right now face higher real tax rates than millionaires in the current system.

While senior citizens are the primary beneficiaries of this legislation, I am pleased to say another important sector of our work force will also benefit, and that is members of the clergy.

H.R. 2684 includes a provision that I have advocated that would provide a 2-year open season for members of the clergy to enroll in Social Security. Some members of the clergy elected not to participate in Social Security early in their careers, before they fully understood the ramifications of opting out. Because the election process is irrevocable, there is no way for them to participate in the program under current law. Clergy typically have the most modest earnings throughout their working lives, and would be among those most likely to rely on Social Security. This legislation would give them an opportunity to enroll.

Mr. BUNNING of Kentucky. Mr. Speaker, I have the pleasure of yielding 1 minute to the gentleman from Texas [Mr. SAM JOHNSON] a member of the Subcommittee on Social Security and a member of the full committee.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I appreciate the gentleman yielding time.

Mr. Speaker, the only thing that is more important than repealing the 16th amendment and getting rid of the IRS is fixing it so our citizens have the right to work and earn whatever they want to. This bill, believe it or not, allows anyone between 65 and 70, which is what we are talking about, to hit $14,000 as a salary limit this year, this next year, instead of having to wait until the year 2002, which is what current law does.

You know what that does? That helps 20 percent of those involved in that category, which is 925,000 people. That means those guys are not going to have to pay any more tax. That means they can work at Wendy's and McDonald's or wherever they want to and earn money without being subject to the Federal Government of this Nation.

Mr. Speaker, I think we have to pass it. It is a duty that we have.

Mr. BUNNING of Kentucky. Mr. Speaker, I have the pleasure of yielding 1 minute to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. Mr. Speaker, I thank the distinguished chairman for yield me time.

Mr. Speaker, I rise today in strong support of this legislation. One provision of this bill, Mr. Speaker, cuts off benefits for those individuals considered disabled solely based on their addiction to either drugs or alcohol. I strongly support this provision.

Mr. Speaker, as a recovering alcoholic who spends a great deal of my time with other alcoholics and addicts who are still suffering the ravages of chemical addiction, I can tell you that paying cash benefits to these people is not the kind of help that they need. In fact, cash benefits only make the problem of addiction worse, only serve to enable, to fuel the addiction.

Those addicted to drugs or alcohol do not need cash, they need treatment. This bill, Mr. Speaker, provides $200 million in additional money to the States through an existing block grant program for the prevention and treatment of substance abuse.

So I commend my distinguished colleague on the Committee on Ways and Means, the chairman of the Subcommittee on Social Security, for bringing this thoughtful piece of legislation to the floor, and I urge all of my colleagues to give substance abusers the help that they need. Support this legislation.

Mr. JACOBS. Mr. Speaker, I yield 2 minutes to my friend, the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Speaker, I thank my friend from Indianapolis for yielding me time. There is not a man nor woman on that particular side from the gentleman's party whom I respect more, and whom I am going to dearly miss after his retirement this year.

Mr. Speaker, today represents another step in our efforts to increase the Social Security earnings limit. Currently senior citizens between the ages of 65 and 69 lose $1 in Social Security benefits for every three they make over $11,280. This important piece of legislation we are considering today will change that. It will raise the earnings limit for those ages 65 to 69 to $30,000 by year 2002, thereby removing this disincentive to work and allowing seniors to keep more of their hard-earned dollars.

This bill is especially important to the folks I represent back in Nebraska. The Omaha area is currently experiencing a labor shortage. With unemployment hovering around 2 percent, our efforts to raise the earnings limit will allow more seniors to enter the work force without being punished by the Federal Government, thereby providing Nebraska businesses with experienced employees rich in talent and full of ability.

□ 1700

Simply put, lifting the earnings limit for our Nation's seniors is the right thing to do. And as my friend from Georgia earlier said, promises made, promises kept.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. CAMP].

Mr. CAMP. Mr. Speaker, I thank the distinguished gentleman for yielding. I rise in support of the Senior Citizens Right to Work Act which will raise the earnings limit for seniors.

This legislation accomplishes two important tasks: First, it ends the policy of subsidizing drug and alcohol abuse with Social Security funds; and, second, and very importantly, it ends the practice of punishing seniors who want to work.

Currently, seniors who want to remain a vital part of the work force will lose $1 of their Social Security contributions for every $3 they earn over $11,280. This legislation will remove the disincentive to work placed upon seniors by raising that limit.

American seniors have worked hard to pay into the Social Security trust fund. This legislation not only protects their investment and honors our commitment to them, it also encourages seniors to continue their contribution to our Nation's work force.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. LAUGHLIN].

Mr. LAUGHLIN. Mr. Speaker, I thank my chairman for yielding me time. I am proud to stand in support of the Senior Citizens Right to Work Act, and I am proud to have been an original cosponsor of this bill. Not only does it raise the earnings limit for our senior citizens between the ages of 65 and 70, just as importantly as allowing them to have hard-earned money to help them in these years, it gives the added benefit of allowing them to continue working to allow the senior citizens to do the things they want to do in their golden senior years.

Mr. Speaker, that is a benefit that is healthy to them beyond the financial earnings. And in that I cite as an example of my own father who today is working at age 76. This law does not apply to them because seniors above the age of 70 are not subjected to earnings limits. But I see senior citizens who find it healthy for their own day-to-day happiness and well-being to be working, and I am proud to support this bill, and I urge my colleagues to support it.

Mr. JACOBS. Mr. Speaker, I yield 3 minutes to the gentlewoman from Washington [Ms. DUNN].

Ms. DUNN of Washington. Mr. Speaker, I thank the gentleman for yielding me this time. This is a wonderful piece of legislation. It has simply taken too long to come to the floor of the House. It is bipartisan. It came out of our Committee on Ways and Means with a vote of 31 to 0, and it is time, in fact, beyond time, that this legislation go into effect.

I support this legislation largely because I think it is just plain wrong to penalize our most experienced and dedicated workers for continuing to work and contribute to a better livelihood for themselves and also to a better future for the United States.

Seniors across the country want to work beyond age 65 because a fixed Social Security income alone these days often does not provide adequate financial security. I think also the younger people in the workplace gain a lot through the experience of those folks who continue to work. It is good for all of us.

Unfortunately, currently the earnings limit discriminates against some of our senior citizens and prevents us from being able to benefit from the talents of millions of experienced professional. The earnings limit punishes seniors after they have earned $11,280 by hitting them with an additional effective tax of 33 percent. It is too long that this has gone on. Now is the time to change it.

Mr. Speaker, I do want to make one note about an amendment that was accepted unanimously in the Committee on Ways and Means that is included in this legislation, a provision I offered during our consideration by our committee, that is, in effect, a sunshine amendment. It is designed to help seniors better understand their contributions and benefits under the Social Security system.

The lack of information currently provided to seniors simply is unacceptable. My parents and seniors around this country have a desire, a need, and certainly a right to know about the status of their participation in the system, and so the amendment we proposed outlines the total income earned by each senior.

Mr. Speaker, the provisions that we have added to this bill that would give further information on Social Security are: The total income earned by the individual receiving benefits, the total Social Security contributions by that individual and separately by that individual's employer, and, finally, the total dollars that have been received back by the beneficiary from Social Security.

I think, Mr. Speaker that it will open up a degree of information that has never been available before. It will help people understand what their return is on the current Social Security compared to what they have paid in. Numerous seniors in my district find it ironic that other retirement benefit programs, like mutual funds and IRAs, provide this type of information in writing on a quarterly basis.

Our proposal is a study for a period of 2 years with not more than 600,000 recipients. We will see how it works, and I hope continue to provide this and further information.

Mr. Speaker, I urge my colleagues to vote for this proposal. it is, as I said, way beyond its time. It will be good for seniors and good for all of us.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. HEINEMAN].

(Mr. HEINEMAN asked and was given permission to revise and extend his remarks.)

Mr. HEINEMAN. Mr. Speaker, I thank the gentleman for giving me this time.

I rise in strong support of this legislation. I am a cosponsor of the bill and I urge my colleagues to strongly, strongly support the bill.

I am proud to be an original cosponsor of this legislation, which helps to fulfill a solemn pledge I made to the senior citizens in the Fourth Congressional District of North Carolina to remove this burdensome tax targeted at our working senior citizens.

Mr. Speaker, as a senior citizen myself I know that current law penalizes seniors who want to work by imposing an earnings limit on the amount of outside income they can receive while still obtaining their full Social Security benefits. Seniors between the ages of 65 and 69 currently lose $1 in Social Security benefits for every $3 they earn above $11,280. This kind of earnings limit amounts to an additional 33 percent tax on top of existing income taxes.

I know from first hand experience that many seniors continue to lead active and productive lives and contribute in important ways to our community. We should be supporting seniors who want to work, not penalizing them. H.R. 2684 will raise the current earnings limit from $11,280 to $30,000 by the year 2002. After the year 2002, the earnings limit will be indexed to the growth in average wages.

Mr. Speaker, this is a modest, but critical reform, and I am pleased to lend my support to this much needed legislation.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. TORKILDSEN].

(Mr. TORKILDSEN asked and was given permission to revise and extend his remarks.)

Mr. TORKILDSEN. Mr. Speaker, I rise in strong support of the increase in the earnings limit for Social Security recipients.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. HASTERT], who has worked for the last 8 years to make this bill law.

(Mr. HASTERT asked and was given permission to revise and extend his remarks.)

Mr. HASTERT. Mr. Speaker, this certainly is a red letter day for this Congress, but certainly, even more than that, a red letter day for the seniors of this country. It would not have happened, and I want to thank specifically the gentleman, who, after we passed this bill out of this House with over 400 votes on it, and the funding mechanism was rejected by the Senate, the gentleman from Kentucky [Mr. BUNNING] came back, worked with the staff diligently and made it work. We need to thank him profusely for that effort to make sure that this bill is on this floor today so that we can pass it and move it on.

I also want to thank other Members, the gentleman from Texas, DICK ARMEY, who carried this bill for years in the House; and another gentleman from Texas, BILL ARCHER, who carried it for 20 years in the House as an important piece.

What this bill does, ladies and gentleman, it helps working seniors, seniors who do not have pension income or stocks and bonds tacked away; people who have never had the chance to save and invest, and yet when they want to work to bring up their standard of living, to be part of this country, to share in the economy, to help their grandchildren, to take a vacation, to buy a car, when they go to earn those extra dollars, they get hit with a marginal tax rate of 56 percent when they exceed the limit of $11,000. Fifty-six percent, nearly twice the rate that millionaries pay today. Those seniors who live off investment incomes are not impacted by the earnings limit.

Mr. Speaker, this is not just a right. America's working seniors should not be punished just because they never had money to tuck away and must now keep working to make ends meet. This tax relief for working seniors is sorely needed.

Even though we know working seniors will pay more into our economy and more than offset the cost associated with lifting the earnings limit, the Congressional Budget Office will not allow this dynamic method of scoring. The gentleman from Kentucky [Mr. BUNNING] has worked to put together a proposal that meets the CBO budget rules and has also looked at that extra dynamic.

Ladies and gentlemen, this is a salute to senior citizens, people who have worked their whole life, people who have yet to give information and education and leadership to people who are younger, that they can be the person that they look up to in a work force in a small store, a candy store, a McDonald's, the Sears area, all of those people who endorse this piece of legislation.

I again salute the gentleman from Kentucky for his tremendous leadership and his staff for bringing this piece of legislation together and salute the seniors of this country so that they can make a statement in their behalf as well.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. STEARNS].

Mr. STEARNS. Mr. Speaker, I thank my colleague from Kentucky for yielding me this time.

Mr. Speaker, the earnings test limit is unfair and unjust. It is, effectively, a mandatory retirement mechanism for a country no longer in need of it. It precludes greater flexibility for the elderly worker, and also prevents America's full use of the eager, experienced, and educated elderly worker. Finally, it deprives the U.S. economy of the additional income which would be generated by the elderly worker.

Mr. Speaker, I am an original cosponsor of this bill, and I certainly want to applaud my colleague from Kentucky, Mr. BUNNING; and, of course, the gentleman from Illinois, Mr. DENNIS HASTERT, who has labored in the vineyards for many years. When I came here in 1989, we worked so hard to get this bill forward, and I think now we have an opportunity to pass a great bill, to gain economic equality for those elderly workers who either want to work or must work in order to maintain a decent lifestyle.

Mr. JACOBS. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. FOX].

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the opportunity to speak on behalf of this legislation which our senior citizens of the United States have been waiting for. The income eligibility raising is certainly an idea whose time has arrived.

I have to congratulate all those colleagues who have been working so long and hard to make this legislation a reality. The fact is that seniors should be able, under 70 years of age, to earn more than $11,280. Under this legislation it will raise the income limit up to $30,000 without having the deduction from their Social Security.

Anything we can do to help the seniors, who have helped us have the right to be here in Congress and to serve, certainly need our attention, our respect and admiration. I thank the individuals who have brought this legislation forward: the gentleman from Illinois, DENNIS HASTERT, the gentleman from Kentucky, Mr. BUNNING, and others, the gentleman from Indiana, Mr. JACOBS. I appreciate all their help in making this day possible and urge all my colleagues to support the legislation.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Florida [Mr. GOSS], a member of the Committee on Rules.

(Mr. GOSS asked and was given permission to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, I am overjoyed to rise today in strong support of the Senior Citizens Right to Work Act. This is very good news for seniors in Florida and all across America.

The issue here is very, very simple. Big brother, the Federal Government, is no longer going to punish seniors who choose to remain a productive part of the American work force. The new majority in Congress made a promise to our Nation's seniors that we would fix the unfair earnings test process and that is what is happening.

Mr. Speaker, today's action provides one more example of promises made, promises kept, as we have said before. By raising the earnings test threshold from the meager $11,280 to $30,000 over the next 6 years we are sending a clear message to seniors that hard work and self-reliance are still valued qualities in the United States of America.

Although I feel strongly that we should abolish the earnings test limit altogether, because there should be no

additional tax penalty for work just because an individual has reached a certain age, this legislation does move us much further to that ultimate goal.

Mr. Speaker, I urge a "yes" vote and very much commend the gentleman from Kentucky [Mr. BUNNING], the gentleman from Illinois [Mr. HASTERT], and the gentleman from Indiana [Mr. JACOBS], for their strong, persistent, smart leadership in this matter.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. FOLEY].

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Mr. FOLEY. Mr. Speaker, I appreciate the work of the gentleman from Kentucky on this issue. My father is 73 and a principal of a school in Palm Beach County, FL, very active. For those between the age of 66 and 69, they should have the same opportunities.

Mr. Speaker, we have commended people for work in America. Many of our bills talk about work being an honorable occupation. Go out and work. Get a job. But somehow when we hit 66, we are told, "Sorry, unless you are going to be penalized, you do not need to pursue gainful employment."

So, I think this Congress is on the right track. Restoring dignity. Instead of telling people just because they hit a magic number, this age, that they are no longer wanted, now we are saying they continue to be wanted. They will be productive. They will continue to pay taxes and they will have a benefit to society.

Public supermarkets in my district employ many seniors in assisting in grocery checkouts and other items. People are proud to have that opportunity to continue to remain active in their communities and the job market.

Mr. Speaker, I commend the chairman for his leadership on this and urge passage.

Mr. JACOBS. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Speaker, I really hate to be the skunk at the Republican picnic this afternoon, but in my previous remarks I indicated that this bill is basically noncontroversial. But, also, one of the bad things that this bill that we are going to be voting on does is delink the earnings test for the blind.

Mr. Speaker, we have 17,000 people, it is not a heck of a lot, but we have 17,000 blind Americans who qualify for this program today and they are being delinked. Yet after I made those comments, not one Republican would stand up and defend that law change. That is sad.

The Speaker of this House, when he addressed the National Federation of the Blind, back in February of this year, indicated that removing the linkage for the blind was a major mistake and that he would make sure that was taken out. That is all we have heard for the last half hour is this gushing, gushing for our senior citizens. We have heard that through this measure we are going to salute our senior citizens. This is the same party, my friends, that is cutting Medicare for the senior citizens by $270 billion. Doubling their premiums, cutting $185 or $182 billion out of Medicaid, which provides nursing home care. Where were the salutes then? Where was the support and all the gushing then?

Through this bill, the seniors are going to have to work to pick up what they are losing in their health care program. This is ridiculous.

Mr. BUNNING of Kentucky. Mr. Speaker, would the Chair please give us the time remaining on both sides?

The SPEAKER pro tempore (Mr. EVERETT). The gentleman from Kentucky [Mr. BUNNING] has 2½ minutes, the gentleman from Indiana [Mr. JACOBS] has 5 minutes remaining.

Mr. JACOBS. Mr. Speaker, I have no further requests, and I yield back the balance of my time.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield myself 2½ minutes.

Mr. Speaker, just in response to the gentleman from Wisconsin [Mr. KLECZKA], there are over 120 organizations currently trying to get the nonblind disabled to the same level of earnings that are under this bill for the blind disabled. The blind disabled in this bill continue to have the same limit on earnings that are in the current law. In other words, their limit on earnings will rise to $14,400 by the year 2002. The nonblind disabled are stuck at $6,000.

The cost of raising the nonblind disabled to the blind disabled currently is approximately $10 billion. We do not have the money to do that. To take them to where the gentlewoman from Connecticut [Mrs. KENNELLY] would like to take them, the cost would run approximately $20 billion over just the next 5 years. We do not have the money to do that.

The bill preserves the indexing of the limitation on earnings for blind disabled recipients in the future. So, in answer to the gentleman from Wisconsin, blind disabled recipients lose nothing as the result of this bill.

In summary, I would first like to thank everybody that has worked on this bill: the staff, Phil Moseley, Valerie Nixon, Kim Hildred, Katherine Keith, Mary Anne Gee, Ken Morton, Janice Mays, Sandy Wise, and Cathy Noe; but most of all I would like to thank my colleague, the gentleman from Indiana [Mr. JACOBS]. Without his help we could not have gotten this bill together and accomplished on a bipartisan basis, both in the subcommittee and in the full committee.

When we get a bill that comes out of our subcommittee almost on a unanimous vote, and a bill that comes out of the full Committee on Ways and Means, this day and age on a unanimous vote, I am certainly very proud of that fact. And it is because of the leadership of the gentleman from Indiana on his side that we were able to accomplish that.

We know that the gentleman is going to retire, and maybe we could name this the Andy Jacobs retirement bill. The fact of the matter is I am sorry to see him leave, and I am very proud to have worked with the gentleman over the past 5 years on the Subcommittee on Social Security.

Mr. SMITH of New Jersey. Mr. Speaker, I rise in strong support of this legislation to raise the Social Security earnings limit. Under this bill, the annual income senior citizens will be allowed to earn, without penalty, will rise from $11,280 to $30,000 over the next 5 years.

In this day and age, I cannot believe that there would be anybody in this Chamber who wants to discourage people from working. Yet the earnings limit does precisely that. It is a foolish policy and one which creates perverse economic incentives. H.R. 2684 represents a solid first step and goes a long way toward lifting the burden placed on those seniors who continue to work and make contributions to America's economic activity.

Under current law, seniors under the age of 70 who choose to work lose $1 out of every $3 they earn over some arbitrary and bureaucratic limit—currently set at $11,280 a year. To punish these folks, who have racked up years of experience, wisdom, and institutional knowledge makes no sense whatsoever. By raising the limit to $30,000, we begin to ease the penalty and, I hope, make definite strides to eliminating the earnings test altogether.

The elections that swept Republicans into the majority were about rearranging our priorities and keeping our promises. We promised to raise the earnings limit in the Contract With America, and this bill, of which I am proud to be an original cosponsor, is symbolic of our efforts to keep our promises and fix a Government which all too often sends hardworking citizens the wrong signals.

H.R. 2684, Mr. Speaker, is only a partial fix and only the beginning of corrective action which is long overdue. Last year, I cosponsored legislation—H.R. 300—which would have fully repealed the earnings limit and again this year, I cosponsored legislation—H.R. 201—to fully repeal the earnings test. For years, we have heard people argue that raising the earnings limit or repealing the earnings test would only benefit the wealthy. What these people either forget or ignore is the fact that under current law, income derived from private pensions and investments is not subjected to the limit at all. Therefore the argument that this bill would only benefit the wealthy is completely without merit. In fact, the ultrawealthy can and already do earn as much as they want from their investments, but middle-class hardworking men and women who want to keep a job are penalized for moneys they earn. H.R. 2684 addresses this inequity and restores fairness for those who want to work.

For many of our elderly citizens, the additional wages they will be allowed to earn, without penalty, is important. But for many more there is an even greater reward: The dignity of working, earning, and keeping an honest buck. There is a spiritual as well as a health benefit to be derived from keeping active, working and being fairly compensated. Why the Federal Government would punish people for this is beyond me.

Mr. Speaker, H.R. 2684 also corrects a number of other injustices as well. Like the

fact that under current law, alcoholics and drug abusers can receive Social Security disability cash payments. As I said earlier, Republicans were elected to change our priorities, and here is a clear-cut case of mixed up priorities. Punish seniors who decide to work, but give cash benefits to drug and alcohol abusers? These people need treatment and counseling. Under H.R. 2684, people addicted to alcohol or drugs will no longer be eligible to receive benefits due to disability. Instead, the bill redirects some of that funding to various drug and alcohol treatment programs so that people get the type of help they need.

Mr. Speaker, in closing I would reiterate that this bill on the whole is a solid piece of legislation that can and should receive bipartisan support. It is unfortunate that during the years that the Democrats controlled the House this legislation was never brought to the floor for a vote and thus people continued to pay penalties at a very low threshold. Today, I am proud to be a cosponsor of H.R. 2684, and I look forward to building upon this achievement and eliminating the irrational earnings test altogether.

Mr. MARTIN. Mr. Speaker, I am pleased to come before you today to express my support for the Senior Citizens' Right to Work Act of 1995.

The time has come to defend the working seniors of America—seniors that have been penalized for their productive contributions to society.

The current Social Security earnings limit of $11,280 has demonstrated Government's apathy toward those seniors who continue to work in retirement out of necessity. We must never forget that, for many seniors, work is not a choice.

More importantly, the wisdom of our Nation's seniors is needed in today's work force. America benefits from their work ethic and their experience.

I urge support for this legislation, and commended those seniors who have continued to offer their ideas and services beyond retirement. These reforms in Social Security reflect our values to allow personal responsibility and opportunity.

Mr. POMEROY. Mr. Speaker, it is with great pleasure that I offer my support for H.R. 2684, the Senior Citizens' Right to Work Act.

For many senior citizens, their retirement years are not golden and filled with leisure. Many of our elderly who cannot make ends meet with their savings and Social Security benefits have no other choice but to continue working. This legislation will help low-income senior citizens, especially single women, who are at risk of living in poverty during their retirement years.

As the safety net for the elderly begins to fray due to cuts in Medicare and other programs, the least we can do is allow those who need to work to keep more of their benefits. I am pleased the Ways and Means Committee was able to forge a bipartisan bill on this important issue.

Mr. PORTMAN. Mr. Speaker, I rise today in support of H.R. 2684, the Senior Citizens' Right to Work Act. As you know, in 1935 Congress passed the Social Security Act to provide a stable source of income to older Americans. This program, however, includes an earnings limit that unfairly penalizes those senior citizens who want to work beyond the retirement age. Mr. Chairman, by raising the Social Security earnings limit to $30,000 by the year 2002, H.R. 2684, in part, fulfills our promises made to senior citizens in the Contract With America. Let me explain.

First, it is a matter of fairness for seniors. Under current law, a senior citizen loses $1 in benefits for every $3 earned, above the $11,280 limit. This limit hurts low and middle-income senior citizens the most. These are individuals who work out of necessity—and need the income. Raising the earnings limit will enable these individuals to work so that they can make ends meet.

Second, the low earnings limit penalizes senior citizens for remaining in our workforce. Our economy suffers from the loss of experience and skills that seniors bring to the work force. I have heard first hand from constituents in my district, that the earnings limit actually inhibits some seniors from working because the lose a portion of their Social Security benefits.

Third, raising the earnings limit will help stimulate the economy. Obviously , senior citizens will be paying more taxes if they are working, and at the same time, have more money in their pockets to spend.

Significantly, this legislation is paid for by spending cuts that make sense. Among other things, the bill eliminates the current practice of providing disability benefits to individuals that are considered disabled only because they are alcoholics or drug addicts. It also creates a revolving fund to finance continuing disability reviews to determine whether individuals receiving disability benefits are still disabled. Based on government studies, these reviews will result in fewer beneficiaries and substantial savings to the taxpayer.

Mr. Speaker, I strongly urge my colleagues to support this legislation. By increasing the Social Security earnings limit, it lessens the penalty for many senior citizens and it does so, in the most fiscally responsible manner.

Mr. BUYER. Mr. Speaker, I rise in strong support of this important legislation. The current earnings limit has been a disincentive for seniors to continue to be productively employed. In particular, the present earnings limit imposes a hardship on middle and lower-income retirees, who often rely on earnings from work to supplement their Social Security benefits. The earnings penalty is in reality a huge marginal tax on working seniors. It discourages work and it is discriminatory between earned (wages) and unearned (dividends, interest, etc.) income.

I support this legislation which will allow our seniors to continue to work and not be penalized for it. The "Senior Citizens' Right to Work Act of 1995" is long overdue and is just one piece of our puzzle as we bring tax fairness back to America's tax code. Again, I am pleased to support this legislation which will allow Indiana seniors the right to work.

Mr. FLANAGAN. Mr. Speaker, I rise in strong support of H.R. 2684, the Senior Citizens' Right to Work Act. This bill will help alleviate the uncalled for economic discrimination against senior citizens between the ages of 65 and 69. It is outrageous that seniors in that age bracket are unduly punished by having their Social Security earnings reduced by one dollar for every three dollars they earn above $11,280.

This bill will increase the earnings limitation from $11,280 to $30,000 by the year 2002. The first increase will occur in 1996 when the limit will be raised from the current $11,280 to $14,000. Each year thereafter, through 2000, the limit will increase by another $1,000. Thus, in 2000 the limit be up to $18,000. In 2001 the earnings limitation will jump up by some $7,000, going from $18,000 to $25,000. Finally, in 2002 the limit will be increased from $25,000 to $30,000.

After 2002, the earnings limit will be indexed to the growth in average wages. In this way, the earnings limitation will be able to keep up with the times.

I have long been an advocate and supporter of raising the earnings limitation for seniors. Earlier this year I cosponsored H.R. 8, the Senior Citizens Equity Act, which contained a provision raising the earnings limit to $30,000 by 2002. This provision was incorporated into H.R. 1215, the Tax Fairness and Deficit Reduction Act which passed the House on April 5, 1995, by a vote of 246 in favor, 188 against. I voted in favor of H.R. 1215. Since the fate of this legislation is still undetermined, I believe it is wise that the House is trying another venue, H.R. 2684, the Senior Citizens' Right to Work Act, in the effort to raise the earnings limitation.

The current low earnings limitation is an economic disincentive to work for many of our Nation's seniors. It puts a limit on the full use of their capabilities, as many who want to work more are put off by the reduction in their Social Security benefits. It is an absurd situation. This country should encourage, not discourage, seniors from earning more than $11,280 per year. Seniors who work are contributing mightily to our economy. They earn money and pay taxes on what they earn. They should not be penalized for their initiative and industry.

In addition to raising the earning limit for seniors, the legislation contains another much needed reform. It prohibits the consideration of drug addicts and alcoholics as disabled in determining eligibility for entitlements to cash Social Security and Supplemental Security Income [SSI] disability benefits if the addiction is the contributing factor to the disability. This should put an end to having SSI disability being misused by drug and alcohol addicts to support their habits.

Mr. Speaker, H.R. 2684, the Senior Citizens' Right to Work Act is a giant stride forward in the direction of helping our senior citizens between the ages of 65 and 69. It will enable them to earn more money without fear of having a substantial reduction in their Social Security benefits. The Senior Citizens' Right to Work Act will give our seniors the opportunity to live better lives because they will be able to have higher incomes and still retain their Social Security benefits without reductions. I urge my colleagues to support this legislation.

Ms. DELAURO. Mr. Speaker, I strongly support the Senior Citizens' Right to Work Act urge the measure's unanimous passage today. This essential legislation increases the amount that senior citizens under age 70 may earn without having their Social Security benefits reduced.

Under current law, Social Security beneficiaries aged 65 through 69 who earn too much lose $1 in benefits for every $3 they earn above specified limits. The limit is indexed so that it increases annually to reflect the increase in average wage growth. The current limit is approximately $11,000.

Seniors who are able to work should be encouraged to do so. Without this measure, the

Federal Government is telling our elderly citizens to stay at home, and not to pursue gainful employment. That is not the message that I want to send to the seniors in the 3d Congressional District of Connecticut.

Mr. Speaker, our Nation's seniors have too much to offer for us to simply turn them away. We need their wisdom, their expertise and their zeal.

Older Americans have tremendous potential to contribute to our communities, both in terms of professional expertise and productivity. It is a shame to lose those invaluable resources. Furthermore, Seniors who are active live longer and lead happier lives.

I strongly support the Senior Citizen's Right to Work Act, and I urge my colleagues to vote in favor of this important legislation.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to voice some concerns with H.R. 2684, the Senior Citizens' Right to Work Act. Although I will support the bill on final passage, I am concerned about the effect that some of the more obscure provisions in the legislation may have on the rights of senior citizens.

Included in this bill are provisions which remove the Social Security Administration from the process of payment of attorneys' fees. Currently, the Social Security Administration [SSA] approves the fees that an attorney may charge to represent a person in administrative proceedings, usually related to a denial of disability benefits. When the applicant is successful, SSA withholds the lesser of $4,000 or 25 percent of the benefits to pay the attorney. H.R. 2684 would change the law such that SSA would no longer be involved in the process and attorneys could negotiate fees up to a $4,000 limit.

This portion of H.R. 2684, while seeming sublime on the surface, may result in attorneys choosing to stop representing disabled individuals in their administrative proceedings. Since the fee would no longer be withheld, attorneys are fearful that they may not be paid for the service they provide, and thus may choose to avoid this type of representation.

While I will support the legislation, I regret that the leadership has chosen to bring this legislation to the floor in such a fashion so as to preclude amendments, and I hope to work with the Senate and the White House concerning the availability of competent representation for Social Security claimants.

Mr. GILMAN. Mr. Speaker, I rise today in support of H.R. 2684, the Senior Citizens Right to Work Act of 1995, and commend its sponsor, the gentleman from Kentucky [Mr. BUNNING] for all of his hard work on this measure.

Under current law, this country's senior citizens from age 65 to age 69 are limited to earn only $11,280 in additional income before they suffer penalties of $1 in Social Security benefits for every $3 of income earned above that limit. Mr. BUNNING's measure will allow seniors by the year 2000, to earn up to $30,000 in outside income without being forced to give up Social Security benefits.

While this bill is certainly a step in the right direction, I believe that we should go further and eliminate this anachronistic limitation and thereby allow our seniors to continue to work to the best of their capabilities in order to sustain themselves in a time of an increasing cost of living. We must allow older Americans who choose to work to earn appropriate pay without losing any of their hard-earned Social Security benefits.

Mr. BEILENSON. Mr. Speaker, the bill before us obviously enjoys very broad support among our colleagues. However, we ought to pause for a moment and give serious thought to what we are doing by passing this measure.

The Congressional Budget Office projects that we will spend more than $350 billion on Social Security benefits in 1996—more than one-fifth of the budget, and more than we are spending on any other single Federal program. Working Americans—no matter how little they make—6.2 percent of their paycheck—with their employers paying the same amount—to finance these benefits. Yet not only have we taken this huge program off the budget negotiating table, we are now actually moving to increase it—at a time when we are trying to cut back just about everything else the Government spends money on.

We need to give serious thought to whether it makes sense to increase these benefits—when the majority of that increase will go to those who are already relatively well off—at a time when we are moving to cut benefits for people who really need them.

We also need to give serious thought to whether it is wise to make what will be a huge move toward turning Social Security into a benefit which one is automatically entitled to receive upon reaching age 65, rather than a program to compensate for lost earnings due to retirement, as was originally intended. We need to ask: Does it make sense to do that when people are living so much longer than they used to, and when our population of older Americans is going to begin growing enormously in just a few years?

And, we ought to consider whether we are inviting early retirees—ages 62–64—to ask for the same thing we are about to grant retirees aged 65–69. Once we increase the earnings limitation for recipients who are aged 65–69, will early retirees ask for a liberalization of the definition of "retired" using the very same arguments that are being made by those aged 65–69?

The title of this bill, the Senior Citizens' Right to Work Act, is a misnomer. Senior citizens have every right to work; what this does is give older working Americans the right to collect more Social Security benefits than they are currently entitled to. At a time when we ought to be curbing entitlement spending, not expanding it, passing this legislation seems most unwise.

Mr. BUNNING of Kentucky. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. BUNNING] that the House suspend the rules and pass the bill, H.R. 2684, as amended.

The question was taken.

Mr. BUNNING of Kentucky. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. BUNNING of Kentucky. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2684, the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

SENIOR CITIZENS' RIGHT TO WORK ACT OF 1995

The SPEAKER pro tempore (Mr. EVERETT). The pending business is the question of suspending the rules and passing the bill, H.R. 2684, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. BUNNING] that the House suspend the rules and pass the bill, H.R. 2684, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 411, nays 4, not voting 17, as follows:

[Roll No 837]

YEAS—411

Abercrombie	Costello	Goodlatte
Ackerman	Cox	Goodling
Allard	Coyne	Gordon
Andrews	Cramer	Goss
Archer	Crane	Graham
Armey	Crapo	Green
Bachus	Cremeans	Greenwood
Baesler	Cubin	Gunderson
Baker (CA)	Cunningham	Gutierrez
Baker (LA)	Danner	Gutknecht
Baldacci	Davis	Hall (OH)
Ballenger	de la Garza	Hall (TX)
Barcia	Deal	Hamilton
Barr	DeLauro	Hancock
Barrett (NE)	DeLay	Hansen
Barrett (WI)	Dellums	Harman
Bartlett	Deutsch	Hastert
Barton	Diaz-Balart	Hastings (FL)
Bass	Dickey	Hastings (WA)
Bateman	Dicks	Hayes
Becerra	Dixon	Hayworth
Bentsen	Doggett	Hefley
Bereuter	Dooley	Hefner
Berman	Doolittle	Heineman
Bevill	Dornan	Herger
Bilbray	Doyle	Hilleary
Bilirakis	Dreier	Hilliard
Bishop	Duncan	Hinchey
Bliley	Dunn	Hobson
Blute	Durbin	Hoekstra
Boehlert	Edwards	Hoke
Boehner	Ehlers	Holden
Bonilla	Ehrlich	Horn
Bonior	Emerson	Hostettler
Bono	Engel	Houghton
Borski	English	Hoyer
Boucher	Ensign	Hunter
Brewster	Eshoo	Hutchinson
Browder	Evans	Hyde
Brown (CA)	Everett	Inglis
Brown (FL)	Ewing	Istook
Brown (OH)	Farr	Jackson-Lee
Brownback	Fattah	Jacobs
Bryant (TN)	Fawell	Jefferson
Bunn	Fazio	Johnson (CT)
Bunning	Fields (LA)	Johnson (SD)
Burr	Fields (TX)	Johnson, E.B.
Burton	Filner	Johnson, Sam
Buyer	Flake	Jones
Callahan	Flanagan	Kanjorski
Calvert	Foglietta	Kaptur
Camp	Foley	Kasich
Canady	Forbes	Kelly
Cardin	Ford	Kennedy (MA)
Castle	Fox	Kennedy (RI)
Chabot	Frank (MA)	Kennelly
Chambliss	Franks (CT)	Kildee
Christensen	Franks (NJ)	Kim
Chrysler	Frelinghuysen	King
Clay	Frisa	Kingston
Clayton	Frost	Kleczka
Clement	Funderburk	Klink
Clinger	Furse	Klug
Clyburn	Gallegly	Knollenberg
Coble	Ganske	Kolbe
Coburn	Gejdenson	LaHood
Coleman	Gekas	Lantos
Collins (GA)	Gephardt	Largent
Collins (IL)	Geren	Latham
Collins (MI)	Gibbons	LaTourette
Combest	Gilchrest	Laughlin
Condit	Gillmor	Lazio
Conyers	Gilman	Leach
Cooley	Gonzalez	Levin
Lewis (CA)	Ortiz	Skeen
Lewis (GA)	Orton	Skelton
Lewis (KY)	Owens	Slaughter
Lightfoot	Oxley	Smith (MI)
Lincoln	Packard	Smith (NJ)
Linder	Pallone	Smith (TX)
Lipinski	Parker	Smith (WA)
Livingston	Pastor	Solomon
LoBiondo	Paxon	Souder
Lofgren	Payne (NJ)	Spence
Longley	Payne (VA)	Spratt
Lowey	Peterson (FL)	Stark
Lucas	Peterson (MN)	Stearns
Luther	Petri	Stenholm
Maloney	Pickett	Stockman
Manton	Pombo	Stokes
Manzullo	Pomeroy	Stump
Markey	Porter	Stupak
Martinez	Portman	Talent
Martini	Poshard	Tanner
Mascara	Pryce	Tate
Matsui	Quillen	Tauzin
McCarthy	Quinn	Taylor (MS)
McCollum	Radanovich	Taylor (NC)
McCrery	Rahall	Tejeda
McDade	Ramstad	Thomas
McDermott	Rangel	Thompson
McHale	Reed	Thornberry
McHugh	Regula	Thornton
McInnis	Richardson	Thurman
McIntosh	Riggs	Tiahrt
McKeon	Rivers	Torkildsen
McKinney	Roberts	Torres
McNulty	Roemer	Towns
Meehan	Rogers	Traficant
Meek	Rohrabacher	Upton
Menendez	Ros-Lehtinen	Velazquez
Metcalf	Rose	Vento
Meyers	Roth	Visclosky
Mfume	Roukema	Volkmer
Mica	Roybal-Allard	Vucanovich
Miller (CA)	Royce	Walker
Miller (FL)	Sabo	Walsh
Minge	Salmon	Wamp
Mink	Sanders	Ward
Moakley	Sanford	Waters
Molinari	Sawyer	Watts (OK)
Mollohan	Saxton	Waxman
Montgomery	Scarborough	Weldon (FL)
Moorhead	Schaefer	Weldon (PA)
Moran	Schiff	Weller
Morella	Schroeder	White
Murtha	Schumer	Whitfield
Myers	Scott	Wicker
Myrick	Seastrand	Williams
Neal	Sensenbrenner	Wise
Nethercutt	Serrano	Wolf
Ney	Shadegg	Woolsey
Norwood	Shaw	Yates
Nussle	Shays	Young (AK)
Oberstar	Shuster	Young (FL)
Obey	Sisisky	Zeliff
Olver	Skaggs	Zimmer

NAYS—4

Beilenson	LaFalce
Johnston	Watt (NC)

NOT VOTING—17

Bryant (TX)	Nadler	Tucker
Chapman	Neumann	Waldholtz
Chenoweth	Pelosi	Wilson
DeFazio	Rush	Wyden
Dingell	Studds	Wynn
Fowler	Torricelli	

□ 1814

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

104TH CONGRESS
1ST SESSION

H. R. 2684

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 1995

Received; read twice and referred to the Committee on Finance

AN ACT

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Right to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8)

which is applicable to individuals described in subparagraph (D) thereof'' and inserting the following: ''an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

''(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby

transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall

transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust

Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such ex-

penditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the sixth month after the

month in which the Commissioner of Social Security receives formal notification of such divorce.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

SEC. 5. RECOMPUTATION OF BENEFITS AFTER NORMAL RETIREMENT AGE.

(a) IN GENERAL.—Section 215(f)(2)(D)(i) of the Social Security Act (42 U.S.C. 415(f)(2)(D)(i)) is amended to read as follows:

"(i) in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—

"(I) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained retirement age (as defined in section 216(l)) as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not

be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(II) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(b) CONFORMING AMENDMENTS.—

(1) Section 215(f)(7) of such Act (42 U.S.C. 415(f)(7)) is amended by inserting ", and as amended by section 5(b)(2) of the Senior Citizens' Right to Work Act of 1995," after "This subsection as in effect in December 1978".

(2) Subparagraph (A) of section 215(f)(2) of the Social Security Act as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978 is amended—

(A) by striking "in the case of an individual who did not die" and all that follows and inserting "in the case of an individual who did not die in the year with respect to which the recomputation is made, for monthly benefits beginning with benefits for January of—"; and

(B) by adding at the end the following:

"(i) the second year following the year with respect to which the recomputation is made, in any such case in which the individual is entitled to old-age insurance benefits, the individual has attained age 65 as of the end of the year preceding the year with respect to which the recomputation is made, and the year with respect to which the recomputation is made would not be substituted in recomputation under this subsection for a benefit computation year in which no wages or self-employment income have been credited previously to such individual, or

"(ii) the first year following the year with respect to which the recomputation is made, in any other such case; or".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to recomputations of primary insurance amounts based on wages paid and self employment income derived after 1994 and with respect to benefits payable after December 31, 1995.

SEC. 6. ELIMINATION OF THE ROLE OF THE SOCIAL SECURITY ADMINISTRATION IN PROCESSING ATTORNEY FEES.

(a) ACTIONS BEFORE THE COMMISSIONER.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended—

(1) in paragraph (1), by striking the fourth and fifth sentences;

(2) by striking paragraphs (2), (3), and (4);

(3) by inserting after paragraph (1) the following new paragraph:

"(2)(A) No person, agent, or attorney may charge in excess of $4,000 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

"(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

"(C) Any agreement in violation of this paragraph shall be void.

"(D) Whenever the Commissioner makes a favorable determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of—

"(i) the determination,

"(ii) the dollar amount of any benefits payable to the claimant, and

"(iii) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim."; and

(4) by redesignating paragraph (5) as paragraph (3).

(b) JUDICIAL PROCEEDINGS.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

(1) in the first sentence of subparagraph (A), by striking "representation," and all that follows and inserting the following: "representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.";

(2) in the second sentence of subparagraph (A), by striking "or certified for payment";

(3) by striking subparagraph (B); and

(4) by striking "(b)(1)(A)" and inserting "(b)(1)".

(c) CONFORMING AMENDMENTS.—

(1) Section 223(h)(3) of such Act (42 U.S.C. 423(h)(3)) is amended by striking all that follows "obtained)" and inserting a period.

(2) Section 1127(a) of such Act (42 U.S.C. 1320a–6(a)) is amended by striking the last sentence.

(3) Section 1631(d)(2)(A) of such Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(A) by striking "(other than paragraph (4) thereof)"; and

(B) by striking all that follows "title II" and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) any claim for benefits under the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, or the black lung program under part B of the

Black Lung Benefits Act that is initially filed on or after the 60th day following the date of the enactment of this Act, and

(2) any claim for such benefits filed before such 60th day by a claimant who is first represented by any person, agent, or attorney in connection with such claim on or after such 60th day.

SEC. 7. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is

amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to monthly insurance benefits under title II of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are entitled to such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits

for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act based on disability for months beginning after the date of the enactment of this Act, except that, in the case of individuals who are eligible for such benefits for the month in which this Act is enacted, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title

XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 8. REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE.

(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1)

of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1995. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1995, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of

the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1995, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

SEC. 9. PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of pro-

viding certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act, designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately

identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

(b) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this subsection are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

(c) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this sec-

tion not later than 60 days after the completion of such study.

Passed the House of Representatives December 5, 1995.

Attest: ROBIN H. CARLE,
Clerk.

By LINDA NAVE,
Deputy Clerk.

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

June E. O'Neill
Director

December 4, 1995

Honorable Bill Archer
Chairman
Committee on Ways and Means
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Congressional Budget Office (CBO) has prepared the enclosed cost estimate for H.R. 2684, the Senior Citizens' Right to Work Act of 1995, as ordered reported by the House Committee on Ways and Means on November 30, 1995.

The bill would affect direct spending and receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details, we will be pleased to provide them.

Sincerely,

James L. Blum

for June E. O'Neill

Attachment

cc: Honorable Sam Gibbons
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

December 4, 1995

1. BILL NUMBER: H.R. 2684

2. BILL TITLE: Senior Citizens' Right to Work Act of 1995

3. BILL STATUS:

As ordered reported by the Committee on Ways and Means on November 30, 1995.

4. BILL PURPOSE:

The bill would increase the exempt earnings amount for Social Security beneficiaries aged 65-69 in stages to reach $30,000 in 2002, delay for one year certain benefit recomputations for workers over age 65, eliminate Social Security and Supplemental Security Income benefits for certain substance abusers, eliminate Social Security benefits for certain stepchildren, create a revolving fund within the Disability Insurance Trust Fund from which continuing disability reviews (CDRs) would be funded, and alter the current practice for paying attorneys' fees.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

The following table summarizes the on-budget and off-budget effects of the changes in revenues and direct spending attributable to this bill. Changes in authorizations of appropriations would be subject to actions in future appropriation bills. Table I (attached) provides detail on the off-budget costs and savings associated with individual provisions affecting Social Security benefit payments and revenues. The estimated impact on the Social Security scorecard tracked by the House of Representatives also is included. Table II (attached) details the total budgetary effects of H.R. 2684.

H.R. 2684 would provide ad hoc increases in the exempt earnings limit for Social Security recipients who have reached the normal retirement age until, by 2002, the exempt amount would be $30,000. Additional Social Security benefit payments would total $0.3 billion in 1996 and $2.0 billion in 2002. The bill would reduce other Social Security benefit payments by $0.1 billion in 1996 and by $1.7 billion in 2002. In addition, the mandatory administrative costs of the additional CDRs would total $4.7 billion over the seven-year period, and savings in other mandatory programs would amount to $5.3 billion. Consequently, the bill is estimated to decrease the off-budget surplus by about $4.3 billion during the period while reducing the on-budget deficit by $5.3 billion, for a net reduction of $1.0 billion in the total deficit.

Estimated Budgetary Effects of H.R. 2684, The Senior Citizens' Right to Work Act of 1995
(by fiscal year, in billions of dollars)

	1995	1996	1997	1998	1999	2000	2001	2002
PROJECTED SPENDING UNDER CURRENT LAW								
On-Budget Direct Spending								
Supplemental Security Income	24.3	24.5	29.9	33.0	36.1	42.6	39.3	46.5
Medicare a/	158.1	178.7	197.5	215.9	237.3	260.8	286.6	315.2
Medicaid	89.2	99.3	110.0	122.1	134.8	148.1	162.6	177.8
Family Support	18.2	18.5	19.0	19.5	20.1	20.8	21.5	22.2
Food stamps	26.2	26.9	28.6	30.2	31.7	33.4	35.0	36.6
Funding for substance abuse treatment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Subtotal, On-Budget	316.1	348.0	385.0	420.6	460.1	505.7	545.0	598.3
Off-Budget Direct Spending								
Old-Age and Survivors Insurance	293.4	309.3	322.9	338.8	355.3	372.8	390.7	409.5
Disability Insurance	40.3	43.8	47.7	51.9	56.2	60.8	65.6	70.6
Subtotal, Off-Budget	333.7	353.1	370.6	390.7	411.6	433.6	456.2	480.1
Total, Direct Spending	**649.8**	**701.1**	**755.6**	**811.3**	**871.7**	**939.2**	**1001.2**	**1078.4**
PROPOSED CHANGES								
On-Budget Direct Spending								
Supplemental Security Income	0.0	-*	-0.3	-0.4	-0.4	-0.5	-0.5	-0.5
Medicare a/	0.0	-*	-0.1	-0.2	-0.4	-0.5	-0.6	-0.8
Medicaid	0.0	-*	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1
Family Support	0.0	0.0	*	*	*	*	*	*
Food stamps	0.0	*	0.1	0.1	0.1	0.1	0.1	0.1
Funding for substance abuse treatment	0.0	0.0	*	0.1	0.1	*	0.0	0.0
Subtotal, On-Budget	0.0	-*	-0.4	-0.6	-0.8	-1.0	-1.1	-1.4
Off-Budget Direct Spending								
Old-Age and Survivors Insurance	0.0	0.3	0.4	0.5	0.5	0.5	1.0	1.5
Disability Insurance	0.0	0.3	0.2	*	*	-0.1	-0.2	-0.3
Subtotal, Off-Budget	0.0	0.6	0.6	0.5	0.5	0.4	0.7	1.1
Total, Direct Spending	0.0	0.5	0.2	-0.1	-0.3	-0.6	-0.4	-0.2
PROJECTED SPENDING UNDER H.R. 2684								
On-Budget Direct Spending								
Supplemental Security Income	24.3	24.5	29.6	32.6	35.6	42.1	38.8	46.0
Medicare a/	158.1	178.7	197.4	215.7	237.0	260.3	285.9	314.4
Medicaid	89.2	99.3	109.9	122.0	134.7	148.0	162.5	177.7
Family Support	18.2	18.5	19.1	19.5	20.1	20.8	21.5	22.2
Food stamps	26.2	26.9	28.7	30.2	31.8	33.5	35.1	36.7
Funding for substance abuse treatment	0.0	0.0	*	0.1	0.1	*	0.0	0.0
Subtotal, On-Budget	316.1	348.0	384.7	420.1	459.3	504.7	543.8	596.9
Off-Budget Direct Spending								
Old-Age and Survivors Insurance	293.4	309.6	323.3	339.3	355.8	373.2	391.6	411.0
Disability Insurance	40.3	44.1	47.9	51.9	56.3	60.7	65.3	70.3
Subtotal, Off-Budget	293.4	309.6	323.3	339.3	355.8	373.2	391.6	411.0
Total, Direct Spending	**609.5**	**657.5**	**707.9**	**759.3**	**815.1**	**877.9**	**935.4**	**1007.9**
CHANGES TO REVENUES								
On-Budget	0.0	*	*	*	*	*	*	*
Off-Budget	0.0	*	*	*	*	*	*	*
Total, Revenues	**0.0**	*	*	*	*	*	*	*
DEFICIT EFFECTS								
On-Budget	0.0	-*	-0.4	-0.6	-0.8	-1.0	-1.1	-1.4
Off-Budget	0.0	0.6	0.6	0.5	0.5	0.3	0.7	1.1
Total, Deficit	**0.0**	**0.5**	**0.2**	**-0.1**	**-0.3**	**-0.6**	**-0.4**	**-0.2**

* indicates less than $50 million

a. Hospital Insurance, Supplementary Medical Insurance, and premium receipts.

6. BASIS OF ESTIMATE:

These estimates incorporate the economic and technical assumptions of CBO's March 1995 baseline and assume an enactment date of December 31, 1995.

Earnings Limit. H.R. 2684 would relax the current limitations on the receipt of Social Security benefits for those aged 65-69 with earnings above a certain level. Under current law, individuals entitled to Social Security cash benefits may have their benefits reduced, or withheld completely, if their earnings exceed a specified exempt amount. In 1995, the law provides that Social Security beneficiaries under age 65 may earn up to $8,160 a year in wages or self-employment income without having their benefits affected. Those aged 65-69 can earn up to $11,280. The earnings test currently reduces benefits for those under age 65 by $1 for each $2 of earnings above the exempt amount. Those aged 65-69 lose $1 in benefits for each $3 of earnings above the exempt amount. The test does not apply to recipients over age 69. (A different and more stringent earnings restriction applies to recipients of Disability Insurance (DI) benefits and would be unaffected by proposed changes in the earnings test.) The exempt amounts rise each year at the same rate as average wages in the economy.

The bill would affect beneficiaries who have reached the normal retirement age, currently 65. Under this bill, the annual exempt amount for beneficiaries aged 65-69 would be increased in stages during the 1996-2002 period to $30,000 in 2002. The exempt amount would be increased automatically thereafter based on the increase in average wages. The ad hoc increases in the exempt amount under the proposal are compared in the following table with the exempt amounts that are estimated to occur under current law.

Calendar Year	Current Law	H.R. 2684
1995	$11,280	$11,280
1996	11,520	14,000
1997	11,880	15,000
1998	12,240	16,000
1999	12,720	17,000
2000	13,200	18,000
2001	13,800	25,000
2002	14,400	30,000

The legislation is estimated to increase benefit outlays by $320 million in 1996 and by $7.0 billion over the 1996-2002 period. According to the Social Security Administration (SSA), in 1996 an estimated 720,000 Social Security beneficiaries would receive additional benefits under the proposal. In 2002, when the proposal would be fully phased in, roughly 800,000 beneficiaries would be affected.

Although implementing the earnings test is costly from an administrative perspective--over

$200 million annually--the changes entailed in H.R. 2684 would have only a marginal impact on SSA's administrative costs. All of those still under the normal retirement age would continue to be treated the same as under current law, and the exempt level increases would still leave many older workers with some benefits withheld as a result of the earnings test. CBO estimates that SSA would save about $5 million in administrative resources in 1996 and about $95 million over the estimating period.

Raising the earnings test exempt amount could result in behavioral responses that lead to an increase in earnings of those 65 and over, although the response is likely to be relatively small. Any additional work effort would have no significant effect on total Social Security benefits over the projection period. This conclusion is based on three considerations. First, the earnings test is only one of many factors that determine work effort; other factors include the level of Social Security and private pension benefits that would be received, the employment of a spouse, the availability of suitable work, and the health of the worker. Second, empirical research that is available provides little support for the notion that older workers would increase their work effort significantly. Finally, more than half of all workers begin collecting benefits as soon as they become eligible at age 62, even though they will receive reduced benefits throughout their retirement.

Under H.R. 2684 the substantial gainful activity (SGA) amount applicable to the blind would, in the future, be wage-indexed from the present amount of $940 per month in 1995 and would no longer be linked to the earnings test exempt amount for individuals who have reached the normal retirement age. This provision of H.R. 2684 yields the same SGA level for the blind that would prevail under current law and, hence, has no cost or saving.

Revolving Fund for Continuing Disability Review. Section 3 of the bill would establish a new account within the Federal Disability Insurance (DI) Trust Fund that would contain monies to be used only for the CDRs required under Section 221 (i) of the Social Security Act. These reviews are intended to ensure that persons who are no longer severely disabled would not continue to receive benefits. In 1996, the account would be initially funded at $300 million. The fund would also receive annual payments based upon the estimates by SSA's Chief Actuary as to the present value of the DI savings and Medicare savings expected to accrue from the CDRs conducted in the previous fiscal year. The bill would terminate the revolving fund at the end of 2002.

CBO assumes that the ultimate termination rates for CDRs--after all appeals are exhausted--would be about 6 percent initially, but that the termination rate from subsequent reviews of the same disabled persons would fall to 4 percent. Because SSA already conducts some CDRs, not all of the reviews funded out of the revolving fund would be additional reviews. CBO assumes that, based on SSA's plan for CDRs over the next 5 years, the number of CDRs in 2002 would reach more than 500,000. The savings attributable to the new funding through the revolving fund would be only those accruing from the additional reviews made possible by the increased funding. In total, CBO expects that the number of reviews over the 1996-

2002 period would rise from 2.7 million under current plans to 4.7 million under the proposal. The CBO estimates that the additional DI benefit savings during the seven-year period would amount to $2.6 billion.

CBO assumes that the average cost of a CDR is about $1,000. Although some reviews are inexpensive because the disabled beneficiary is screened out of the complete medical work-up, others may cost several thousand dollars if the process results in numerous appeals. The additional administrative costs--which would now be considered direct spending--are estimated to be $310 million in 1996 and $4.7 billion over the 1996-2002 period. CDRs are nevertheless viewed as cost-effective by most analysts, because their initial cost is more than offset by a stream of benefit savings in later years.

In addition to the effects on Social Security outlays, CDRs would also generate savings in the SSI and Medicare programs. Some of the DI cases reviewed would also be concurrent cases with SSI benefits. Because the two programs rely on the same definition of disability, a person found to be no longer sufficiently disabled to receive DI benefits would also no longer receive SSI benefits. Moreover, the person would lose eligibility for Medicare benefits as well. The seven-year savings in SSI would amount to $68 million and in Medicare would total $1.7 billion.

Entitlement to Benefits as Stepchildren. H. R. 2684 would introduce two new conditions for the receipt of Social Security benefits as a stepchild of a deceased, disabled, or retired worker. Under current law, stepchildren are eligible to receive Social Security benefits upon the death, disablement, or retirement of a stepparent if the child is less than 18 years old, or less than 19 years old and still in secondary school, and the stepparent either provided support for the child or was living with the child. The support test requires that the stepparent provide at least one-half of the income used to support the child. The child's entitlement to benefits continues even if the child's parents divorce. H.R. 2684 would require that a stepchild be eligible for benefits only if the stepparent provided for the support of the child, and that any stepchild's benefits would be terminated six months after the SSA was notified that the child's stepparent and natural parent had divorced.

Based on data from SSA and the Census Bureau, CBO estimates that about two percent of all awards of benefits to children would be affected by the new support test, resulting in benefit savings of about $1.1 billion over the 1996-2002 period. The estimated number of affected children would be 16,000 in 1996, rising to about 60,000 a year by 2002.

The termination of benefits in cases where the parents divorce would affect children currently receiving benefits as well as some of those who would come on the rolls in the future. According to Census Bureau data, about 40 percent of remarriages end in divorce, and the average length of remarriages that end in divorce is 4 years. CBO estimated that about 23,000 stepchildren receiving Social Security could be affected in 1996. Because SSA does not automatically receive notifications of divorce, CBO reduced the potential number of

affected children by one-half. The reduction was based on SSA information that it receives notifications of marriages in about 70 percent of cases and that, because children would lose benefits in these cases, the notification rate would be lower in the case of divorce. On average, the affected children are assumed to lose about $225 per month in 1996, with the total savings amounting to $490 million over the 1996-2002 period.

Delay Benefit Recomputations. Section 5 of the bill would reduce Social Security benefit payments by delaying for one year the recomputation of benefits to certain beneficiaries with post-entitlement earnings. Savings are estimated to total $910 million for the 1996-2002 period.

Under current law, if a retiree continues to work after entitlement to benefits, his or her monthly benefit may be increased if the new year's earnings are greater than one of the years used in the most recent determination of benefits. Recomputation of benefits are effective in the year immediately following the year of the earnings. This proposal would delay the recomputation of benefits for workers age 66 and over by making the increase in benefits effective in January of the second year after the year of earnings. An exception would be provided for recipients who have one or more zero years of earnings among their computation years. The proposal would be effective for earnings beginning in 1995.

The legislation is estimated to reduce outlays by $10 million in fiscal year 1996 and by $150 million in each year between 1997 and 2002. Savings in 1996 occur because a small number of workers with earnings in 1995 would, under current law, request on their own a benefit recomputation before the end of fiscal year 1996. Automatic recomputations performed by SSA usually occur after the end of the fiscal year. According to SSA, about 1.2 million primary beneficiaries or families annually would experience a delay in their benefit increase.

Eliminate Processing of Attorneys' Fees. Under current law, SSA facilitates the payment of certain attorneys' fees when a lawyer successfully represents a claimant in administrative proceedings. In the most common cases where a finding of disability is in question, SSA will withhold the lesser of $4,000 or 25 percent of the past-due benefits to which the claimant becomes entitled. SSA will pay the attorney with that share of the past-due benefits and pay the remainder directly to the claimant. This process assures the attorney that he will be paid, thereby avoiding any potential shortage of legal aid to the disabled which might occur if the attorneys had to collect their payments directly from the claimant and face the possible failure of the claimant to pay the legal fees.

H.R. 2684 would eliminate SSA's involvement with payment of attorneys' fees, but would limit the maximum fee that could be charged a claimant to no more than $4,000. Such a change would allow SSA to use about 400 work years that currently are spent reviewing attorneys' fees on other priorities of the agency. In addition, it would speed up the payment of past-due benefits to claimants by an average of the six weeks it takes SSA to process the attorneys' fees now. The speed-up of payments would increase benefit outlays by $30 million in 1997, but only about $2 million to $3 million annually after that. The

administrative cost savings would total an estimated $137 million over the 1996-2002 period.

Termination of Benefits for Alcoholics and Drug Addicts. H.R. 2684 would eliminate DI and SSI eligibility for persons with substance abuse problems if the person is found to be disabled because they are addicted. Those addicts whose eligibility for benefits does not hinge on their current substance abuse could continue to receive benefits.

For many years, SSA has been required to identify certain drug addicts and alcoholics (DA&As) in the SSI program, when substance abuse is a material factor contributing to SSA's finding of disability. As a result of Public Law 103-296, SSA is now also required to identify those Social Security recipients for whom substance abuse is a material factor contributing to the finding of disability. Special provisions apply to those recipients: they must comply with treatment if available, they must have representative payees, and (beginning in 1998) they may be terminated from the program if they have received more than 36 months of benefits.

CBO assumes that, under current law, the DA&A caseload in the SSI program would grow from about 160,000 in 1996 to 200,000 in 2002, and the comparable caseload in Social Security would climb from about 90,000 to 150,000 over the same timespan. Under the bill, awards to DA&As in each program would stop immediately, and those already receiving benefits would be removed from the rolls on January 1, 1997, unless they had another seriously disabling condition.

Estimating the number of DA&As who already have or will soon develop another disabling condition is a thorny issue. Most cases include indicators that these recipients also have other significant health problems in addition to their addiction. In order to be worth noting on the claimant's file, these secondary conditions must be quite severe--but not necessarily disabling in their own right. On the other hand, there is no requirement to record secondary conditions; some recipients for whom none was recorded undoubtedly had them. And the health of many DA&A recipients certainly deteriorates over time, with or without continued substance abuse. Thus, CBO assumes that only about one-quarter of DA&A recipients would be permanently terminated from the program; the rest could requalify by documenting that they have another sufficiently disabling condition.

The proposed restrictions are estimated to eliminate Social Security benefits for about 5,000 DA&As in 1996, and about 40,000 in 2002. Multiplying the number of recipients terminated times their average benefit yields savings of $20 million in 1996 and $1.9 billion during the 1996-2002 period. The proposed changes in SSI would result in an estimated 4,000 fewer recipients in 1996 and an annual caseload reduction of about 50,000 in years after 1998. The resulting SSI savings are $19 million in 1996 and $1.45 billion over the next seven years.

by the ministers. (As self-employed individuals, they are allowed to take an income tax credit against a portion of their SECA payments.)

Social Security Benefits Statement Pilot Project. H.R. 2684 would require SSA to send to a limited number of old-age and survivor beneficiaries an estimate of the total benefits paid to the retiree and his or her dependents and survivors, as well as an estimate of the total employee and employer contributions made by the individual on whose income the benefits were based. The pilot project would last 2 years, and SSA would be required to report to the Congress within 60 days an analysis of the results of the pilot project. CBO estimates that the pilot project would incur discretionary costs of less than $500,000 in 1996, $2 million in 1997 and $3 million in 1998.

7. PAY-AS-YOU-GO CONSIDERATIONS:

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Changes in Social Security outlays and revenues are exempt from pay-as-you-go procedures, but are constrained under separate limitations in each house of the Congress. The so-called "Social Security Scorecard" for the House of Representatives is displayed in the attached Table I. The pay-as-you-go effects of the bill are as follows:

(By fiscal year, in millions of dollars)

	1996	1997	1998
Change in Outlays	-34	-385	-576
Chance in Receipts	0	0	0

8. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

H.R. 2684 would have both direct and indirect effects on the budgets of state and local governments, but precise estimates of the potential cost impacts are difficult to determine. Payments for the state's share of Medicaid and SSI supplements would be reduced however. The removal of certain recipients from Social Security, SSI, Medicare, and Medicaid through additional CDRs and the restrictions on drug addicts and alcoholics would likely increase the demand for general cash assistance and medical assistance provided in some states and localities. Some states may respond by redirecting some of their Medicaid and SSI savings to provide additional assistance through their own state programs. The state's share of the Medicaid savings from the bill is estimated to total about $0.5 billion during the next seven years. The additional AFDC costs for the states

would amount to $25 million over the period. Although there would be additional savings to the States from the DA&A provisions, CBO can not estimate the SSI effects by states because it has no state data on the geographical distribution of the DA&As removed from SSI program.

9. ESTIMATE COMPARISON: None.

10. PREVIOUS CBO ESTIMATE: None

11. ESTIMATE PREPARED BY:

Wayne Boyington (Social Security Retirement and Survivors) and Kathy Ruffing (Social Security Disability, SSI, and related issues) at 226-2820.

12. ESTIMATE APPROVED BY:

Paul Van de Water

Paul N. Van de Water
Assistant Director
for Budget Analysis

TABLE I: SOCIAL SECURITY BENEFIT AND REVENUE EFFECTS OF H.R. 2684

(millions of dollars, by fiscal year)

	1996	1997	1998	1999	2000	2001	2002	5-year Total	7-year Total
DIRECT SPENDING									
Increase Earnings Limit									
OASDI Benefit Outlays	320	650	790	850	910	1460	2030	3520	7010
CDR Revolving Fund									
OASDI Benefit Outlays	-20	-90	-210	-360	-510	-650	-790	-1190	-2630
Modify Dependency Requirement for Stepchild Benefits									
OASDI Benefit Outlays	-20	-100	-190	-250	-310	-350	-390	-870	-1610
Delay Benefit Recomputations One Year for Earnings after 65									
OASDI Benefit Outlays	-10	-150	-150	-150	-150	-150	-150	-610	-910
Eliminate DI Benefits to Addicts and Alcoholics									
OASDI Benefit Outlays	-20	-210	-280	-310	-340	-360	-380	-1160	-1900
Limit SSA Role in Adjudicating Attorney Fees									
OASDI Benefit Outlays	*	30	2	2	3	3	3	37	43
Subtotal: Selected Mandatory Spending - Off-budget									
OASDI Benefit Outlays	250	130	-38	-218	-397	-47	323	-273	3
REVENUES									
Election of OASDHI by Members of Clergy									
Off-budget Revenues	2	4	4	4	5	5	5	19	29
Memoranda:									
Social Security Scorecard Balance as of November 29, 1995									
Surplus (-Deficit)	117	98	203	189	0	na	na	607	na
New Social Security Scorecard Balance Assuming Enactment of H.R. 2684									
Surplus (-Deficit)	-131	-28	245	411	402	na	na	899	na

OASDI = Old-Age, Survivors, and Disability Insurance

* Less than $1 million

TABLE II: TOTAL BUDGETARY EFFECTS OF H.R. 2684

(millions of dollars, by fiscal year)

	1996	1997	1998	1999	2000	2001	2002	5-year Total	7-year Total
DIRECT SPENDING									
Increase Earnings Limit									
OASDI Benefit Outlays	320	650	790	850	910	1460	2030	3520	7010
CDR Revolving Fund									
OASDI Benefit Outlays	-20	-80	-210	-360	-510	-650	-790	-1190	-2630
CDR Fund Outlays	310	460	590	780	830	850	920	2970	4740
Medicare	-10	-50	-120	-220	-330	-450	-560	-730	-1740
SSI	-1	-2	-5	-10	-15	-15	-20	-33	-68
Subtotal	279	318	255	190	-25	-265	-450	1017	302
Modify Dependency Requirement for Stepchild Benefits									
OASDI Benefit Outlays	-20	-100	-190	-250	-310	-350	-390	-870	-1610
Delay Benefit Recomputations One Year for Earnings after 65									
OASDI Benefit Outlays	-10	-150	-150	-150	-150	-150	-150	-610	-910
Eliminate SSI & DI Benefits to Addicts and Alcoholics a/									
OASDI Benefit Outlays	-20	-210	-280	-310	-340	-360	-380	-1160	-1900
SSI Benefits a/	-19	-197	-215	-249	-260	-230	-280	-940	-1450
RMA Costs (SSI)	–	-114	-186	-166	-193	-214	-235	-659	-1108
RMA Costs (DI)	–	-30	-54	-65	-82	-88	-96	-231	-415
Medicaid	-8	-80	-89	-108	-117	-125	-136	-402	-663
Medicare	–	-43	-101	-140	-163	-185	-213	-447	-845
AFDC	•	5	5	5	5	5	5	20	30
Food Stamps	4	50	55	65	70	70	75	244	389
Treatment Funding	=	46	80	54	20	=	=	200	200
Subtotal	-43	-573	-785	-914	-1060	-1127	-1260	-3375	-5762
Limit SSA Role in Adjudicating Attorney Fees									
OASDI Benefit Outlays	•	30	2	2	3	3	3	37	43
Subtotal:Mandatory Spending									
Off-budget	560	560	498	497	351	715	1147	2466	4328
On-budget	-34	-385	-576	-769	-983	-1144	-1364	-2747	-5255
Total Mandatory Spending	526	175	-78	-272	-632	-429	-217	-281	-927
REVENUE									
Election of OASDHI by Members of Clergy									
Off-budget Revenue	2	4	4	4	5	5	5	19	29
AUTHORIZATIONS OF APPROPRIATIONS									
Earnings Test Limit									
Administrative Costs	5	-10	-10	-10	-10	-20	-30	-45	-95
CDR Revolving Fund									
Administrative Costs	-234	-284	-334	-384	-434	-484	-534	-1670	-2688
Eliminate SSI & DI Benefits to Addicts and Alcoholics									
Administrative Costs	75	35	•	•	•	•	•	110	110
Limit SSA Role in Adjudicating Attorney Fees									
Administrative Costs	-5	-20	-21	-22	-22	-23	-24	-90	-137
Social Security Benefit Statement Pilot									
Administrative Costs	•	2	3	–	–	–	–	5	5
Total Discretionary Spending	65	7	-28	-32	-32	-43	-54	-20	-117

• Less than $1 million

a. The bill would impose identical restrictions on drug addicts and alcoholics (DA&As) in both the OASDI and SSI programs. Since the House- and Senate-passed reconciliation bills already would impose such restrictions on SSI, those savings--if both bills were enacted--would have to be adjusted to avoid double-counting. Of the $5.8 billion in 7-year savings shown above, $2.9 billion are associated with the SSI restrictions (SSI, SSI RMAs, Medicaid, AFDC, part of the food stamp cost, and half of the proposed treatment funding). Based on discussions with staff, CBO assumes that a technical correction will be made to the bill to clarify that new awards to OA&As are to cease immediately after enactment.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 5, 1995
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 2684 - Senior Citizens' Right to Work Act of 1995
(Bunning (R) KY and 96 cosponsors)

The Administration welcomes congressional action to increase the Social Security Earnings Test. Currently, retired workers between the age of 65 and 69 who earn wages above the exempt amount have their Social Security benefit reduced by $1 for every $3 in earnings. This reduction in benefits discourages work by senior citizens who are able and willing to stay in the workforce. Raising the earnings test will increase the standard of living of the elderly and help the Nation's economy by increasing the supply of workers to the labor force. Over 900,000 Social Security beneficiaries lose some or all of their benefits as a result of the earnings test that applies at age 65.

While the Administration strongly supports increasing the Social Security earnings limit for senior citizens, its full support is contingent on accomplishing this in a deficit-neutral manner. One item of particular concern is that H.R. 2684 now achieves deficit neutrality in part by a provision that saves $3 billion in the Supplemental Security Income (SSI) program which is already assumed in balanced budget proposals put forth by both the Administration and the Congress. Using a proposal as an offset in this bill that both the Administration and the Congress have earmarked to reduce the deficit simply exacerbates the deficit reduction problem and is therefore not appropriate. The Administration recommends that the bill achieve deficit neutrality without including the savings from the SSI provision.

The Administration also has misgivings about some of the other provisions in the bill and their impact on benefit recipients. We would like to work with the Congress in these areas. For example, the Administration wants to explore options with Congress for modifying the attorneys' fees provision in ways that still meet the Administration's REGO II goals. In addition, with respect to the provisions of H.R. 2684 concerning continuing disability reviews, the Administration would not object to a mechanism that retains the oversight of the Executive Office and the appropriations committees that is inherent in the annual appropriations process. Such a mechanism could be similar to that used for the Internal Revenue Service by the 1990 Budget Enforcement Act.

H.R. 2684 would affect both direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. Office of Management and Budget scoring of this legislation is under development.

* * * * * * *

104TH CONGRESS
1ST SESSION

S. 1470

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 1995

Mr. MCCAIN (for himself, Mr. ROTH, and Mr. DOLE) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Freedom to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following:

"an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is

amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is adjudicated with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been adjudicated with respect to, such benefits before such date of enactment,

such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is adjudicated with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 5. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. Such amounts in the Account shall be considered amounts in the Federal Disability Insurance Trust Fund for purposes of subsections (d), (e), and (f), and the Managing Trustee shall credit the investment proceeds with respect to such amounts to the Account. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds

are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the

Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 6. APPLICABILITY OF PUBLIC DEBT LIMIT TO FEDERAL TRUST FUNDS AND OTHER FEDERAL ACCOUNTS.

(a) PROTECTION OF FEDERAL FUNDS.—Notwithstanding any other provision of law—

(1) no officer or employee of the United States may—

(A) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits, or

(B) refrain from the investment in public debt obligations of amounts in any Federal fund,

if a purpose of such action or inaction is to not increase the amount of outstanding public debt obligations, and

(2) no officer or employee of the United States may disinvest amounts in any Federal fund which are invested in public debt obligations if a purpose of the disinvestment is to reduce the amount of outstanding public debt obligations.

(b) PROTECTION OF BENEFITS AND EXPENDITURES FOR ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Notwithstanding subsection (a), during any period for which cash benefits or administrative expenses would not otherwise be payable from a Federal fund by reason of an inability to issue further public debt obligations because of the applicable public debt limit, public debt obligations held by such Federal fund shall be sold or redeemed only for the purpose of making payment of such benefits or administrative expenses and only to the extent cash assets of the Federal fund are not available from month to month for making payment of such benefits or administrative expenses.

(2) ISSUANCE OF CORRESPONDING DEBT.—For purposes of undertaking the sale or redemption of public debt obligations held by a Federal fund pur-

suant to paragraph (1), the Secretary of the Treasury may issue corresponding public debt obligations to the public, in order to obtain the cash necessary for payment of benefits or administrative expenses from such Federal fund, notwithstanding the public debt limit.

(3) ADVANCE NOTICE OF SALE OR REDEMPTION.—Not less than 3 days prior to the date on which, by reason of the public debt limit, the Secretary of the Treasury expects to undertake a sale or redemption authorized under paragraph (1), the Secretary of the Treasury shall report to each House of the Congress and to the Comptroller General of the United States regarding the expected sale or redemption. Upon receipt of such report, the Comptroller General shall review the extent of compliance with subsection (a) and paragraphs (1) and (2) of this subsection and shall issue such findings and recommendations to each House of the Congress as the Comptroller General considers necessary and appropriate.

(c) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term "public debt obligation" means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

(d) FEDERAL FUND.—For purposes of this section, the term "Federal fund" means—

(1) the Federal Old-Age and Survivors Insurance Trust Fund;

(2) the Federal Disability Insurance Trust Fund;

(3) the Federal Hospital Insurance Trust Fund; and

(4) the Federal Supplementary Medical Insurance Trust Fund.

○

Calendar No. 282

104TH CONGRESS
1ST SESSION

S. 1470

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 1995

Mr. MCCAIN (for himself, Mr. ROTH, Mr. DOLE, Mr. BIDEN, Mr. WARNER, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Finance

DECEMBER 15, 1995

Reported by Mr. ROTH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Freedom to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of such Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8)

which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Right to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENT.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(c) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is adjudicated with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the

case of any individual who has applied for, and whose claim has been adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that fol-

lows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT SERVICES FOR INDIVIDUALS WITH A SUBSTANCE ABUSE CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(c) of such Act (42 U.S.C. 1382(c)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (c).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is adjudicated with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applica-

~~tions are filed on or after the date of the enactment of this Act.~~

~~(C) If an individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.~~

~~(D) For purposes of this paragraph, the phrase "supplemental security income benefits under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.~~

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $100,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to notifications of divorces received by the Commissioner of Social Security on or after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 5. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. Such amounts in the Account shall be considered amounts in the Federal Disability Insurance Trust Fund for purposes of subsections (d), (e), and (f), and the Managing Trustee shall credit the investment proceeds with respect to such amounts to the Account. The balance in the Account shall be available solely for expenditures certified under paragraph (2).

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise in the Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds

are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C).".

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2002.

(2) SUNSET.—Effective October 1, 2002, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of such Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (e) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(e)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the

Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 6. APPLICABILITY OF PUBLIC DEBT LIMIT TO FEDERAL TRUST FUNDS AND OTHER FEDERAL ACCOUNTS.

(a) PROTECTION OF FEDERAL FUNDS.—Notwithstanding any other provision of law—

(1) no officer or employee of the United States may—

(A) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits, or

(B) refrain from the investment in public debt obligations of amounts in any Federal fund,

if a purpose of such action or inaction is to not increase the amount of outstanding public debt obligations, and

(2) no officer or employee of the United States may disinvest amounts in any Federal fund which are invested in public debt obligations if a purpose of the disinvestment is to reduce the amount of outstanding public debt obligations.

(b) PROTECTION OF BENEFITS AND EXPENDITURES FOR ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Notwithstanding subsection (a), during any period for which cash benefits or administrative expenses would not otherwise be payable from a Federal fund by reason of an inability to issue further public debt obligations because of the applicable public debt limit, public debt obligations held by such Federal fund shall be sold or redeemed only for the purpose of making payment of such benefits or administrative expenses and only to the extent cash assets of the Federal fund are not available from month to month for making payment of such benefits or administrative expenses.

(2) ISSUANCE OF CORRESPONDING DEBT.—For purposes of undertaking the sale or redemption of public debt obligations held by a Federal fund pur-

suant to paragraph (1), the Secretary of the Treasury may issue corresponding public debt obligations to the public, in order to obtain the cash necessary for payment of benefits or administrative expenses from such Federal fund, notwithstanding the public debt limit.

(3) ADVANCE NOTICE OF SALE OR REDEMPTION.—Not less than 3 days prior to the date on which, by reason of the public debt limit, the Secretary of the Treasury expects to undertake a sale or redemption authorized under paragraph (1), the Secretary of the Treasury shall report to each House of the Congress and to the Comptroller General of the United States regarding the expected sale or redemption. Upon receipt of such report, the Comptroller General shall review the extent of compliance with subsection (a) and paragraphs (1) and (2) of this subsection and shall issue such findings and recommendations to each House of the Congress as the Comptroller General considers necessary and appropriate.

(c) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term "public debt obligation" means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

~~(d) FEDERAL FUND.—For purposes of this section, the term "Federal fund" means—~~

~~(1) the Federal Old-Age and Survivors Insurance Trust Fund;~~

~~(2) the Federal Disability Insurance Trust Fund;~~

~~(3) the Federal Hospital Insurance Trust Fund; and~~

~~(4) the Federal Supplementary Medical Insurance Trust Fund.~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Citizens' Freedom to Work Act of 1995".

SEC. 2. INCREASES IN MONTHLY EXEMPT AMOUNT FOR PURPOSES OF THE SOCIAL SECURITY EARNINGS LIMIT.

(a) INCREASE IN MONTHLY EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.—Section 203(f)(8)(D) of the Social Security Act (42 U.S.C. 403(f)(8)(D)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) for each month of any taxable year ending after 1995 and before 1997, $1,166.66⅔,

"(ii) for each month of any taxable year ending after 1996 and before 1998, $1,250.00,

"(iii) for each month of any taxable year ending after 1997 and before 1999, $1,333.33⅓,

"(iv) for each month of any taxable year ending after 1998 and before 2000, $1,416.66⅔,

"(v) for each month of any taxable year ending after 1999 and before 2001, $1,500.00,

"(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

"(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.".

(b) CONFORMING AMENDMENTS.—

(1) Section 203(f)(8)(B)(ii) of the Social Security Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended—

(A) by striking "the taxable year ending after 1993 and before 1995" and inserting "the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)"; and

(B) in subclause (II), by striking "for 1992" and inserting "for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)".

(2) The second sentence of section 223(d)(4)(A) of such Act (42 U.S.C. 423(d)(4)(A)) is amended by striking "the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof" and inserting the following: "an amount equal to the exempt amount which would be applicable under section 203(f)(8), to individuals described in subparagraph (D) thereof, if section 2 of the Senior Citizens' Freedom to Work Act of 1995 had not been enacted".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years ending after 1995.

SEC. 3. DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) AMENDMENTS RELATING TO TITLE II DISABILITY BENEFITS.—

(1) IN GENERAL.—Section 223(d)(2) of the Social Security Act (42 U.S.C. 423(d)(2)) is amended by adding at the end the following:

"(C) An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 205(j)(1)(B) of such Act (42 U.S.C. 405(j)(1)(B)) is amended to read as follows:

"(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 205(j)(2)(C)(v) of such Act (42 U.S.C. 405(j)(2)(C)(v)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(C) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by

striking all that follows "15 years, or" and inserting "described in paragraph (1)(B).".

(D) Section 205(j)(4)(A)(i)(II) of such Act (42 U.S.C. 405(j)(4)(A)(ii)(II)) is amended by striking "entitled to benefits" and all that follows through "under a disability" and inserting "described in paragraph (1)(B)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Section 222 of such Act (42 U.S.C. 422) is amended by adding at the end the following new subsection:

"Treatment Referrals for Individuals with an Alcoholism or Drug Addiction Condition

"(e) In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 205(j)(1)(B), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENT.—Subsection (c) of section 225 of such Act (42 U.S.C. 425(c)) is repealed.

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is adjudicated with respect to, benefits under title II of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to benefits for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection reapplies for benefits under title II of such Act (as amended by this Act) based on dis-

ability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination with respect to such individual pursuant to the procedures of such title.

(b) AMENDMENTS RELATING TO SSI BENEFITS.—

(1) IN GENERAL.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(2) REPRESENTATIVE PAYEE REQUIREMENTS.—

(A) Section 1631(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the indi-

vidual also has an alcoholism or drug addiction condition (as determined by the Commissioner) that prevents the individual from managing such benefits.".

(B) Section 1631(a)(2)(B)(vii) of such Act (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(C) Section 1631(a)(2)(B)(ix)(II) of such Act (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II).".

(D) Section 1631(a)(2)(D)(i)(II) of such Act (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Title XVI of such Act (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"SEC. 1636. In the case of any individual whose benefits under this title are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(4) CONFORMING AMENDMENTS.—

(A) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(B) Section 1634 of such Act (42 U.S.C. 1383c) is amended by striking subsection (e).

(5) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (4) shall apply to any individual who applies for, or whose claim is adjudicated with respect to, supplemental security income benefits under title XVI of the Social Security Act based on disability on or after the date of the enactment of this Act, and, in the case of any individual who has applied for, and whose claim has been adjudicated with respect to, such benefits be-

fore such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act for which applications are filed on or after the date of the enactment of this Act.

(C) If an individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination with respect to such individual pursuant to the procedures of such title.

(D) For purposes of this paragraph, the phrase "supplemental security income benefits

under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(c) CONFORMING AMENDMENT.—Section 201(c) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is repealed.

(d) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection

shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

SEC. 4. ENTITLEMENT OF STEPCHILDREN TO CHILD'S INSURANCE BENEFITS BASED ON ACTUAL DEPENDENCY ON STEPPARENT SUPPORT.

(a) REQUIREMENT OF ACTUAL DEPENDENCY FOR FUTURE ENTITLEMENTS.—

(1) IN GENERAL.—Section 202(d)(4) of the Social Security Act (42 U.S.C. 402(d)(4)) is amended by striking "was living with or".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted.

(b) TERMINATION OF CHILD'S INSURANCE BENEFITS BASED ON WORK RECORD OF STEPPARENT UPON NATURAL PARENT'S DIVORCE FROM STEPPARENT.—

(1) IN GENERAL.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.".

(2) NOTIFICATION.—Section 202(d) of such Act (42 U.S.C. 402(d)) is amended by adding the following new paragraph:

"(10) For purposes of paragraph (1)(H)—

"(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

"(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

SEC. 5. ESTABLISHMENT OF DISABILITY INSURANCE CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT.

(a) CONTINUING DISABILITY REVIEW ADMINISTRATION REVOLVING ACCOUNT FOR TITLE II DISABILITY BENEFITS IN THE FEDERAL DISABILITY INSURANCE TRUST FUND.—

(1) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

"(n)(1) There is hereby created in the Federal Disability Insurance Trust Fund a Continuing Disability Review Administration Revolving Account (hereinafter in this subsection referred to as the 'Account'). The Account shall consist initially of $300,000,000 (which is hereby transferred to the Account from amounts otherwise available in such Trust Fund) and shall also consist thereafter of such other amounts as may be transferred to it under this subsection. Such amounts in the Account shall be considered amounts in the Federal Disability Insurance Trust Fund for purposes of subsections (d), (e), and (f), and the Managing Trustee shall credit the investment proceeds with respect to

such amounts to the Account. The balance in the Account shall be available solely for expenditures certified under paragraph (2) and shall remain available until expended.

"(2)(A) Before October 1 of each calendar year, the Chief Actuary of the Social Security Administration shall—

"(i) estimate the present value of savings to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund which will accrue for all years as a result of cessations of benefit payments resulting from continuing disability reviews carried out pursuant to the requirements of section 221(i) during the fiscal year ending on September 30 of such calendar year (increased or decreased as appropriate to account for deviations of estimates for prior fiscal years from the actual amounts for such fiscal years), and

"(ii) certify the amount of such estimate to the Managing Trustee.

"(B) Upon receipt of certification by the Chief Actuary under subparagraph (A), the Managing Trustee shall transfer to the Account from amounts otherwise available in the

Federal Disability Insurance Trust Fund an amount equal to the estimated savings so certified.

"(C) To the extent of available funds in the Account, upon certification by the Chief Actuary that such funds are currently required to meet expenditures necessary to provide for continuing disability reviews required under section 221(i), the Managing Trustee shall make available to the Commissioner of Social Security from the Account the amount so certified.

"(D) The expenditures referred to in subparagraph (C) shall include, but not be limited to, the cost of staffing, training, purchase of medical and other evidence, and processing related to appeals (including appeal hearings) and to overpayments and related indirect costs.

"(E) The Commissioner shall use funds made available pursuant to this paragraph solely for the purposes described in subparagraph (C)."

(2) CONFORMING AMENDMENT.—Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended in the last sentence by inserting "(other than expenditures from available funds in the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund made pursuant to subsection (n))" after "is responsible" the first place it appears.

(3) ANNUAL REPORT.—Section 221(i)(3) of such Act (42 U.S.C. 421(i)(3)) is amended—

(A) by striking "and the number" and inserting "the number";

(B) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following: "and a final accounting of amounts transferred to the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund during the year, the amount made available from such Account during such year pursuant to certifications made by the Chief Actuary of the Social Security Administration under section 201(n)(2)(C), and expenditures made by the Commissioner of Social Security for the purposes described in section 201(n)(2)(C) during the year, including a comparison of the number of continuing disability reviews conducted during the year with the estimated number of continuing disability reviews upon which the estimate of such expenditures was made under section 201(n)(2)(A).".

(b) EFFECTIVE DATE AND SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply for fiscal years beginning on or after October 1, 1995, and ending on or before September 30, 2005.

(2) SUNSET.—Effective October 1, 2005, the Continuing Disability Review Administration Revolving Account in the Federal Disability Insurance Trust Fund shall cease to exist, any balance in such Account shall revert to funds otherwise available in such Trust Fund, and sections 201 and 221 of the Social Security Act shall read as if the amendments made by subsection (a) had not been enacted.

(c) OFFICE OF CHIEF ACTUARY IN THE SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 702 of the Social Security Act (42 U.S.C. 902) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection:

"Chief Actuary

"(c)(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by

their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

"(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.".

(2) EFFECTIVE DATE OF SUBSECTION.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 6. PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"PROTECTION OF SOCIAL SECURITY AND MEDICARE TRUST FUNDS

"SEC. 1145. (a) IN GENERAL.—No officer or employee of the United States shall—

"(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

"(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

"(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

"(b) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term 'public debt obligation' means any obligation subject to the public debt limit established under section 3101 of title 31, United States Code.

"(c) FEDERAL FUND.—For purposes of this section, the term 'Federal fund' means—

"(1) the Federal Old-Age and Survivors Insurance Trust Fund;

"(2) the Federal Disability Insurance Trust Fund;

"(3) the Federal Hospital Insurance Trust Fund; and

"(4) the Federal Supplementary Medical Insurance Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Calendar No. 282

104TH CONGRESS
1ST SESSION

S. 1470

A BILL

To amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes.

DECEMBER 15, 1995

Reported with an amendment

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 20, 1995 (SENT)
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1470 - Senior Citizens' Freedom to Work Act of 1995
(McCain (R) AZ and 5 cosponsors)

The Administration supports congressional action to increase the Social Security Earnings Test. Currently, retired workers ages 65 through 69 who have earnings above the exempt amount have their Social Security benefits reduced by $1 for every $3 in earnings over the exempt amount. This reduction in benefits discourages work by senior citizens who are able and willing to stay in the workforce. Raising the earnings test exempt amount will increase the standard of living of the elderly and help the Nation's economy by increasing the supply of workers to the labor force. Over 900,000 Social Security beneficiaries currently lose some or all of their benefits as a result of the earnings test that applies at age 65.

The Administration's full support for this bill is contingent on the increase in the earnings limit being accomplished in a deficit-neutral manner within Social Security. The Administration is deeply concerned that S. 1470 now achieves deficit neutrality in part by a provision that saves $3 billion in the Supplemental Security Income (SSI) program -- savings which are already assumed in balanced budget proposals put forth by both the Administration and Congress. Using a proposal as an offset in this bill that both the Administration and Congress have earmarked to reduce the deficit simply exacerbates the deficit reduction problem and is therefore not appropriate. The Administration urges Congress to achieve deficit neutrality without including the savings from the SSI provision (by either identifying additional offsets or reducing the change in the earnings test. If the bill does not achieve this test of deficit neutrality, the Administration believes that action on the legislation should be delayed and considered as part of the overall budget discussions.

The Administration also has concerns about some of the other provisions in the bill and their impact on benefit recipients, and would like to work with Congress to address these provisions. In particular, with respect to the provisions of S. 1470 concerning continuing disability reviews, the Administration would support a mechanism that retains the oversight of the Executive Branch and the Appropriations Committees that is inherent in the annual appropriations process. Such a mechanism

could be similar to that used for the Internal Revenue Service by the 1990 Budget Enforcement Act.

S. 1470, as reported, would codify the Administration's interpretation of the Secretary of the Treasury's authority as it relates to managing the Social Security and Medicare trust funds during a debt limit crisis. The Administration welcomes the codification of its position that the Treasury may not use the Social Security and Medicare trust funds for any purpose other than to assure the payment of benefits.

Pay-As-You-Go Scoring

S. 1470 would affect both direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. Office of Management and Budget scoring of this legislation is under development.

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104TH CONGRESS
1ST SESSION

S. 942

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16 (legislative day, JUNE 5), 1995

Mr. BOND (for himself, Mr. DOMENICI, Mr. WARNER, Mrs. HUTCHISON, Mr. BURNS, Mr. FRIST, and Mr. COVERDELL) introduced the following bill; which was read twice and referred to the Committee on Small Business

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A BILL

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Regulatory Fairness Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.

TITLE I--REGULATORY SIMPLIFICATION AND VOLUNTARY COMPLIANCE

Sec. 101. Definitions.
Sec. 102. Compliance guides.
Sec. 103. No action letter.
Sec. 104. Voluntary self-audits.
Sec. 105. Defense to enforcement actions.

TITLE II--SMALL BUSINESS RESPONSIVENESS OF COVERED AGENCIES

Sec. 201. Small business and agriculture ombudsman.
Sec. 202. Small business regulatory fairness boards.
Sec. 203. Services provided by small business development centers.

TITLE III—FINANCIAL ACCOUNTABILITY OF COVERED AGENCIES RELATING TO FEES AND EXPENSES

Sec. 301. Administrative proceedings.
Sec. 302. Judicial proceedings.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to change the relationship between regulators and small entities;

(2) to ameliorate the concern of small entities regarding the effects of arbitrary Federal regulatory enforcement actions on small entities;

(3) to increase the comprehensibility of Federal regulations affecting small entities;

(4) to make Federal regulators accountable for their actions; and

(5) to provide small entities with a meaningful opportunity for the redress of arbitrary enforcement actions by Federal regulators.

TITLE I—REGULATORY SIMPLIFICATION AND VOLUNTARY COMPLIANCE

SEC. 101. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) COMPLIANCE GUIDE.—The term "compliance guide" means a publication made by a covered agency under section 102(a).

(2) COVERED AGENCY.—The term "covered agency" has the same meaning as in section 30(a) of the Small Business Act (as added by section 201 of this Act).

(3) NO ACTION LETTER.—The term "no action letter" means a written determination from a covered agency stating that, based on a no action request submitted to the agency by a small entity, the agency will not take enforcement action against the small entity under the rules of the covered agency.

(4) NO ACTION REQUEST.—The term "no action request" means a written correspondence submitted by a small entity to a covered agency—

(A) stating a set of facts; and

(B) requesting a determination by the agency of whether the agency would take an enforcement action against the small entity based on such facts and the application of any rule of the agency.

(5) RULE.—The term "rule" has the same meaning as in section 601(2) of title 5, United States Code.

(6) SMALL ENTITY.—The term "small entity" has the same meaning as in section 601(6) of title 5, United States Code.

(7) SMALL BUSINESS CONCERN.—The term "small business concern" has the same meaning as in section 3 of the Small Business Act.

(8) VOLUNTARY SELF-AUDIT.—The term "voluntary self-audit" means an audit, assessment, or review of any operation, practice, or condition of a small entity that—

(A) is initiated by an officer, employee, or agent of the small entity; and

(B) is not required by law.

SEC. 102. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—

(1) PUBLICATION.—If a covered agency is required to prepare a regulatory flexibility analysis for a rule or group of related rules under section 603 of title 5, United States Code, the agency shall publish a compliance guide for such rule or group of related rules.

(2) REQUIREMENTS.—Each compliance guide published under paragraph (1) shall—

(A) contain a summary description of the rule or group of related rules;

(B) contain a citation to the location of the complete rule or group of related rules in the Federal Register;

(C) provide notice to small entities of the requirements under the rule or group of related rules and explain the actions that a small entity is required to take to comply with the rule or group of related rules;

(D) be written in a manner to be understood by the average owner or manager of a small entity; and

(E) be updated as required to reflect changes in the rule.

(b) DISSEMINATION.—

(1) IN GENERAL.—Each covered agency shall establish a system to ensure that compliance guides required under this section are published, disseminated, and made easily available to small entities.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—In carrying out this subsection, each covered agency shall provide sufficient numbers of compliance guides to small business development centers for distribution to small businesses concerns under section 21(c)(3)(R) of the Small Business Act (as added by section 202 of this Act).

(c) LIMITATION ON ENFORCEMENT.—

(1) IN GENERAL.—No covered agency may bring an enforcement action in any Federal court or in any Federal administrative proceeding against a small entity to enforce a rule for which a compliance guide is not published and disseminated by the covered agency as required under this section.

(2) EFFECTIVE DATES.—This subsection shall take effect—

(A) 1 year after the date of the enactment of this Act with regard to a final regulation in effect on the date of the enactment of this Act; and

(B) on the date of the enactment of this Act with regard to a regulation that takes effect as a final regulation after such date of enactment.

SEC. 103. NO ACTION LETTER.

(a) APPLICATION.—This section applies to all covered agencies, except—

(1) the Federal Trade Commission;

(2) the Equal Employment Opportunity Commission; and

(3) the Consumer Product Safety Commission.

(b) ISSUANCE OF NO ACTION LETTER.—Not later than 90 days after the date on which a covered agency receives a no action request, the agency shall—

(1) make a determination regarding whether to grant the no action request, deny the no action request, or seek further information regarding the no action request; and

(2) if the agency makes a determination under paragraph (1) to grant the no action request, issue a no action letter and transmit the letter to the requesting small entity.

(c) RELIANCE ON NO ACTION LETTER OR COMPLIANCE GUIDE.—In any enforcement action brought by a covered agency in any Federal court, or Federal adminis-

trative proceeding against a small entity, the small entity shall have a complete defense to any allegation of noncompliance or violation of a rule if the small entity affirmatively pleads and proves by a preponderance of the evidence that the act or omission constituting the alleged noncompliance or violation was taken in good faith with and in reliance on—

(1) a no action letter from that agency; or

(2) a compliance guide of the applicable rule published by the agency under section 102(a).

SEC. 104. VOLUNTARY SELF-AUDITS.

(a) INADMISSIBILITY OF EVIDENCE AND LIMITATION ON DISCOVERY.—The evidence described in subsection (b)—

(1) shall not be admissible, unless agreed to by the small entity, in any enforcement action brought against a small entity by a Federal agency in any Federal—

(A) court; or

(B) administrative proceeding; and

(2) may not be the subject of discovery in any enforcement action brought against a small entity by a Federal agency in any Federal—

(A) court; or

(B) administrative proceeding.

(b) APPLICATION.—For purposes of subsection (a), the evidence described in this subsection is—

(1) a voluntary self-audit made in good faith; and

(2) any report, finding, opinion, or any other oral or written communication made in good faith relating to such voluntary self-audit.

(c) EXCEPTIONS.—Subsection (a) shall not apply if—

(1) the act or omission that forms the basis of the enforcement action is a violation of criminal law; or

(2) the voluntary self-audit or the report, finding, opinion, or other oral or written communication was prepared for the purpose of avoiding disclosure of information required for an investigative, administrative, or judicial proceeding that, at the time of preparation, was imminent or in progress.

SEC. 105. DEFENSE TO ENFORCEMENT ACTIONS.

(a) IN GENERAL.—No covered agency may impose a fine or penalty on a small entity if the small entity proves by a preponderance of the evidence that—

(1) the covered agency rule is vague or ambiguous; and

(2) the interpretation by the small entity of the rule is reasonable considering the rule and any applicable compliance guide.

(b) INTERPRETATION OF RULE.—In determining whether the interpretation of a rule by a small entity is reasonable, no deference shall be given to any interpretation of the rule by the agency that is not included in a compliance guide.

TITLE II—SMALL BUSINESS RESPONSIVENESS OF COVERED AGENCIES

SEC. 201. SMALL BUSINESS AND AGRICULTURE OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

"(2) COVERED AGENCY.—The term 'covered agency' means any agency that, as of the date of enactment of the Small Business Regulatory Fairness Act of 1995, has promulgated any rule for which a regulatory flexibility analysis was required under section 605 of title 5, United States Code, and any other agency that promulgates any such rule, as of the date of such promulgation.

"(3) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

"(4) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

"(5) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

"(b) OMBUDSMAN.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Small Business Regulatory Fairness Act of 1995, the Administrator shall designate in each region a senior employee of the Administration to serve as the Regional Small

Business and Agriculture Ombudsman in accordance with this subsection.

"(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

"(A) on a confidential basis, solicit and receive comments from small business concerns regarding the enforcement activities of covered agencies;

"(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each covered agency;

"(C) publish periodic reports compiling the comments received under subparagraph (A);

"(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

"(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).".

SEC. 202. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 201 of this Act) is amended by adding at the end the following new subsection:

"(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Small Business Regulatory Fairness Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

"(2) DUTIES.—Each Board established under paragraph (1) shall—

"(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

"(B) conduct investigations into enforcement activities by covered agencies with respect to small business concerns;

"(C) issue advisory findings and recommendations regarding the enforcement activities of covered agencies with respect to small business concerns;

"(D) review and approve, prior to publication—

"(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

"(ii) each periodic report prepared under subsection (b)(2)(C); and

"(E) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

"(3) MEMBERSHIP.—Each Board shall consist of—

"(A) 1 member appointed by the President;

"(B) 1 member appointed by the Speaker of the House of Representatives;

"(C) 1 member appointed by the Minority Leader of the House of Representatives;

"(D) 1 member appointed by the Majority Leader of the Senate; and

"(E) 1 member appointed by the Minority Leader of the Senate.

"(4) PERIOD OF APPOINTMENT; VACANCIES.—

"(A) PERIOD OF APPOINTMENT.—

"(i) PRESIDENTIAL APPOINTEES.—Each member of the Board appointed under subparagraph (A) of paragraph (2) shall be appointed for a term of 3 years, except that the initial member appointed

under such subparagraph shall be appointed for a term of 1 year.

"(ii) HOUSE OF REPRESENTATIVES APPOINTEES.—Each member of the Board appointed under subparagraph (B) or (C) of paragraph (2) shall be appointed for a term of 3 years, except that the initial members appointed under such subparagraphs shall each be appointed for a term of 2 years.

"(iii) SENATE APPOINTEES.—Each member of the Board appointed under subparagraph (D) or (E) of paragraph (2) shall be appointed for a term of 3 years.

"(B) VACANCIES.—Any vacancy on the Board—

"(i) shall not affect the powers of the Board; and

"(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

"(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

"(6) MEETINGS.—

"(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

"(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

"(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(8) POWERS OF THE BOARD.—

"(A) HEARINGS.—The Board or, at its direction, any subcommittee or member of the Board, may, for the purpose of carrying out the provisions of this section—

"(i) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

"(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Board or such subcommittee or member considers advisable.

"(B) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

"(i) ISSUANCE.—Each subpoena issued pursuant to subparagraph (A) shall bear the signature of the Chairperson and shall be served by any person or class of persons designated by the Chairperson for that purpose.

"(ii) ENFORCEMENT.—

"(I) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence.

"(II) CONTEMPT OF COURT.—Any failure to obey the order of the court issued under subclause (I) may be punished by the court as a contempt of that court.

"(C) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

"(D) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

"(E) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(F) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

"(9) BOARD PERSONNEL MATTERS.—

"(A) COMPENSATION.—Members of the Board shall serve without compensation.

"(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 203. SERVICES PROVIDED BY SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting immediately after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, including providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides pub-

lished under section 102(a) of the Small Business Regulatory Fairness Act of 1995 to small business concerns; and

"(S) developing a program to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures.".

TITLE III—FINANCIAL ACCOUNTABILITY OF COVERED AGENCIES RELATING TO FEES AND EXPENSES

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

Section 504 of title 5, United States Code, is amended—

(1) in subsection (b)(1)(B)—

(A) by striking ", or (ii)" and inserting ", (ii)"; and

(B) by striking the semicolon at the end of the subparagraph and inserting the following: ", or (iii) a small entity as such term is defined in subsection (g)(1)(D);" and

(2) by adding at the end the following new subsection:

"(g)(1) For purposes of this subsection, the term—

"(A) 'covered agency' has the same meaning as in section 30(a) of the Small Business Act;

"(B) 'fees and other expenses' has the same meaning as in subsection (b)(1)(A), except that—

"(i) clause (ii) of such subparagraph (A) shall not apply; and

"(ii) attorney's fees shall not be awarded at a rate of pay in excess of $150 per hour unless the adjudicative party determines that regional costs or other special factors justify a higher fee;

"(C) 'prevailing small entity'—

"(i) means a small entity that raised a successful defense to an agency enforcement action by a covered agency in an adversary adjudication; and

"(ii) includes a small entity that is a party in an adversary adjudication in which the adjudicative officer orders a corrective action or penalty against the small entity that is less burdensome than the corrective action or penalty

initially sought or demanded by the covered agency; and

"(D) 'small entity' has the same meaning as in section 601(6).

"(2) For the purpose of making a finding of whether an award under subsection (a)(1) is unjust, in any case in which fees and other expenses would be awarded to a prevailing small entity as a prevailing party—

"(A) the adjudicative officer of the agency shall not consider whether the position of the agency was substantially justified; and

"(B) special circumstances shall be limited to circumstances in which—

"(i) the matters in the adversary adjudication are matters for which there is little or no legal precedent; or

"(ii) findings of fact or conclusions of law are based on inconsistent interpretations of applicable law by different courts.

"(3) If a prevailing small entity is awarded fees and other expenses as a prevailing party under subsection (a)(1), such fees and other expenses shall include all fees and expenses incurred by the small entity in appearing in any proceeding the purpose of which is to determine the amount of fees and other expenses.

"(4) Fees and other expenses awarded to a prevailing small entity as a prevailing party under this section shall be paid by the covered agency from funds made available to the agency by appropriation or from fees or other amounts charged to the public if authorized by law. A covered agency may not increase any such fee or amount charged for the purpose of paying fees and other expenses awarded to a prevailing small entity as a prevailing party under this section.".

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended—

(1) in subsection (d)(2)(B)—

(A) by striking ", or (ii)" and inserting ", (ii)"; and

(B) by striking the semicolon at the end of the subparagraph and inserting the following: ", or (iii) a small entity as defined under subsection (g)(1)(D);" and

(2) by adding at the end the following new subsection:

"(g)(1) For purposes of this subsection, the term—

"(A) 'covered agency' has the same meaning as in section 30(a) of the Small Business Act;

"(B) 'fees and other expenses' has the same meaning as in subsection (d)(2)(A), except that—

"(i) clause (ii) of such subparagraph (A) shall not apply; and

"(ii) attorney's fees shall not be awarded at a rate of pay in excess of $150 per hour unless the court determines that regional costs or other special factors justify a higher fee;

"(C) 'prevailing small entity'—

"(i) means a small entity that raised a successful defense to an agency enforcement action by a covered agency in a civil action; and

"(ii) includes a small entity that is a party in a civil action in which the court orders a corrective action or penalty against the small entity that is less burdensome than the corrective action or penalty initially sought or demanded by the covered agency; and

"(D) 'small entity' has the same meaning as the term 'small entity' in section 601(6) of title 5.

"(2) For the purpose of making a finding of whether an award under subsection (d)(1)(A) is unjust, in any case in which fees and other expenses would be awarded to a prevailing small entity as a prevailing party—

"(A) the court shall not consider whether the position of the United States was substantially justified; and

"(B) special circumstances shall be limited to circumstances in which—

"(i) the matters in the civil action are matters for which there is little or no legal precedent; or

"(ii) findings of fact or conclusions of law are based on inconsistent interpretations of applicable law by different courts.

"(3) If a prevailing small entity is awarded fees and other expenses as a prevailing party under subsection (d)(1)(A), such fees and expenses shall include all fees and expenses incurred by the small entity in appearing in any proceeding the purpose of which is to determine the amount of fees and other expenses.

"(4) Fees and other expenses awarded to a prevailing small entity as a prevailing party under this section shall be paid by the covered agency from funds made available to the agency by appropriation or from fees or other amounts charged to the public if authorized by law. A covered agency may not increase any such fee or amount charged for the purpose of paying fees and other expenses

awarded to a prevailing small entity as a prevailing party under this section.".

○

Calendar No. 342

104TH CONGRESS
2D SESSION

S. 942

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16 (legislative day, JUNE 5), 1995

Mr. BOND (for himself, Mr. DOMENICI, Mr. WARNER, Mrs. HUTCHISON, Mr. BURNS, Mr. FRIST, Mr. COVERDELL, Mr. DOLE, Mr. LUGAR, Mr. GRAMS, Mr. LOTT, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Small Business

MARCH 6, 1996

Reported by Mr. BOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from

excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Regulatory Fairness Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.

TITLE I—REGULATORY SIMPLIFICATION AND VOLUNTARY COMPLIANCE

Sec. 101. Definitions.
Sec. 102. Compliance guides.
Sec. 103. No action letter.
Sec. 104. Voluntary self-audits.
Sec. 105. Defense to enforcement actions.

TITLE II—SMALL BUSINESS RESPONSIVENESS OF COVERED AGENCIES

Sec. 201. Small business and agriculture ombudsman.
Sec. 202. Small business regulatory fairness boards.
Sec. 203. Services provided by small business development centers.

TITLE III—FINANCIAL ACCOUNTABILITY OF COVERED AGENCIES RELATING TO FEES AND EXPENSES

Sec. 301. Administrative proceedings.
Sec. 302. Judicial proceedings.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to change the relationship between regulators and small entities;

(2) to ameliorate the concern of small entities regarding the effects of arbitrary Federal regulatory enforcement actions on small entities;

(3) to increase the comprehensibility of Federal regulations affecting small entities;

(4) to make Federal regulators accountable for their actions; and

(5) to provide small entities with a meaningful opportunity for the redress of arbitrary enforcement actions by Federal regulators.

TITLE I—REGULATORY SIMPLIFICATION AND VOLUNTARY COMPLIANCE

SEC. 101. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) COMPLIANCE GUIDE.—The term "compliance guide" means a publication made by a covered agency under section 102(a).

(2) COVERED AGENCY.—The term "covered agency" has the same meaning as in section 30(a) of the Small Business Act (as added by section 201 of this Act).

(3) NO ACTION LETTER.—The term "no action letter" means a written determination from a cov-

ered agency stating that, based on a no action request submitted to the agency by a small entity, the agency will not take enforcement action against the small entity under the rules of the covered agency.

(4) NO ACTION REQUEST.—The term "no action request" means a written correspondence submitted by a small entity to a covered agency—

(A) stating a set of facts; and

(B) requesting a determination by the agency of whether the agency would take an enforcement action against the small entity based on such facts and the application of any rule of the agency.

(5) RULE.—The term "rule" has the same meaning as in section 601(2) of title 5, United States Code.

(6) SMALL ENTITY.—The term "small entity" has the same meaning as in section 601(6) of title 5, United States Code.

(7) SMALL BUSINESS CONCERN.—The term "small business concern" has the same meaning as in section 3 of the Small Business Act.

(8) VOLUNTARY SELF-AUDIT.—The term "voluntary self-audit" means an audit, assessment, or

review of any operation, practice, or condition of a small entity that—

(A) is initiated by an officer, employee, or agent of the small entity; and

(B) is not required by law.

SEC. 102. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—

(1) PUBLICATION.—If a covered agency is required to prepare a regulatory flexibility analysis for a rule or group of related rules under section 603 of title 5, United States Code, the agency shall publish a compliance guide for such rule or group of related rules.

(2) REQUIREMENTS.—Each compliance guide published under paragraph (1) shall—

(A) contain a summary description of the rule or group of related rules;

(B) contain a citation to the location of the complete rule or group of related rules in the Federal Register;

(C) provide notice to small entities of the requirements under the rule or group of related rules and explain the actions that a small entity is required to take to comply with the rule or group of related rules;

(D) be written in a manner to be understood by the average owner or manager of a small entity; and

(E) be updated as required to reflect changes in the rule.

(b) DISSEMINATION.—

(1) IN GENERAL.—Each covered agency shall establish a system to ensure that compliance guides required under this section are published, disseminated, and made easily available to small entities.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—In carrying out this subsection, each covered agency shall provide sufficient numbers of compliance guides to small business development centers for distribution to small businesses concerns under section 21(c)(3)(R) of the Small Business Act (as added by section 202 of this Act).

(c) LIMITATION ON ENFORCEMENT.—

(1) IN GENERAL.—No covered agency may bring an enforcement action in any Federal court or in any Federal administrative proceeding against a small entity to enforce a rule for which a compliance guide is not published and disseminated by the covered agency as required under this section.

(2) EFFECTIVE DATES.—This subsection shall take effect—

(A) 1 year after the date of the enactment of this Act with regard to a final regulation in effect on the date of the enactment of this Act; and

(B) on the date of the enactment of this Act with regard to a regulation that takes effect as a final regulation after such date of enactment.

SEC. 103. NO ACTION LETTER.

(a) APPLICATION.—This section applies to all covered agencies, except—

(1) the Federal Trade Commission;

(2) the Equal Employment Opportunity Commission; and

(3) the Consumer Product Safety Commission.

(b) ISSUANCE OF NO ACTION LETTER.—Not later than 90 days after the date on which a covered agency receives a no action request, the agency shall—

(1) make a determination regarding whether to grant the no action request, deny the no action request, or seek further information regarding the no action request; and

(2) if the agency makes a determination under paragraph (1) to grant the no action request, issue a no action letter and transmit the letter to the requesting small entity.

(c) RELIANCE ON NO ACTION LETTER OR COMPLIANCE GUIDE.—In any enforcement action brought by a covered agency in any Federal court, or Federal administrative proceeding against a small entity, the small entity shall have a complete defense to any allegation of noncompliance or violation of a rule if the small entity affirmatively pleads and proves by a preponderance of the evidence that the act or omission constituting the alleged noncompliance or violation was taken in good faith with and in reliance on—

(1) a no action letter from that agency; or

(2) a compliance guide of the applicable rule published by the agency under section 102(a).

SEC. 104. VOLUNTARY SELF-AUDITS.

(a) INADMISSIBILITY OF EVIDENCE AND LIMITATION ON DISCOVERY.—The evidence described in subsection (b)—

(1) shall not be admissible, unless agreed to by the small entity, in any enforcement action brought against a small entity by a Federal agency in any Federal—

~~(A) court; or~~

~~(B) administrative proceeding; and~~

~~(2) may not be the subject of discovery in any enforcement action brought against a small entity by a Federal agency in any Federal—~~

~~(A) court; or~~

~~(B) administrative proceeding.~~

~~(b) APPLICATION.—For purposes of subsection (a), the evidence described in this subsection is—~~

~~(1) a voluntary self-audit made in good faith; and~~

~~(2) any report, finding, opinion, or any other oral or written communication made in good faith relating to such voluntary self-audit.~~

~~(c) EXCEPTIONS.—Subsection (a) shall not apply if—~~

~~(1) the act or omission that forms the basis of the enforcement action is a violation of criminal law; or~~

~~(2) the voluntary self-audit or the report, finding, opinion, or other oral or written communication was prepared for the purpose of avoiding disclosure of information required for an investigative, administrative, or judicial proceeding that, at the time of preparation, was imminent or in progress.~~

SEC. 105. DEFENSE TO ENFORCEMENT ACTIONS.

(a) IN GENERAL.—No covered agency may impose a fine or penalty on a small entity if the small entity proves by a preponderance of the evidence that—

(1) the covered agency rule is vague or ambiguous; and

(2) the interpretation by the small entity of the rule is reasonable considering the rule and any applicable compliance guide.

(b) INTERPRETATION OF RULE.—In determining whether the interpretation of a rule by a small entity is reasonable, no deference shall be given to any interpretation of the rule by the agency that is not included in a compliance guide.

TITLE II—SMALL BUSINESS RESPONSIVENESS OF COVERED AGENCIES

SEC. 201. SMALL BUSINESS AND AGRICULTURE OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

"(2) COVERED AGENCY.—The term 'covered agency' means any agency that, as of the date of enactment of the Small Business Regulatory Fairness Act of 1995, has promulgated any rule for which a regulatory flexibility analysis was required under section 605 of title 5, United States Code, and any other agency that promulgates any such rule, as of the date of such promulgation.

"(3) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

"(4) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

"(5) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

"(b) OMBUDSMAN.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Small Business Regulatory Fairness Act of 1995, the Administrator shall designate in each region a senior employee of the Administration to serve as the Regional Small Business and Agriculture Ombudsman in accordance with this subsection.

"(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

"(A) on a confidential basis, solicit and receive comments from small business concerns regarding the enforcement activities of covered agencies;

"(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each covered agency;

"(C) publish periodic reports compiling the comments received under subparagraph (A);

"(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

"(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).".

SEC. 202. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 201 of this Act) is amended by adding at the end the following new subsection:

"(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Small Business Regulatory Fairness Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

"(2) DUTIES.—Each Board established under paragraph (1) shall—

"(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

"(B) conduct investigations into enforcement activities by covered agencies with respect to small business concerns;

"(C) issue advisory findings and recommendations regarding the enforcement activities of covered agencies with respect to small business concerns;

"(D) review and approve, prior to publication—

"(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

"(ii) each periodic report prepared under subsection (b)(2)(C); and

"(E) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

"(3) MEMBERSHIP.—Each Board shall consist of—

"(A) 1 member appointed by the President;

"(B) 1 member appointed by the Speaker of the House of Representatives;

"(C) 1 member appointed by the Minority Leader of the House of Representatives;

"(D) 1 member appointed by the Majority Leader of the Senate; and

"(E) 1 member appointed by the Minority Leader of the Senate.

"(4) PERIOD OF APPOINTMENT; VACANCIES.—

"(A) PERIOD OF APPOINTMENT.—

"(i) PRESIDENTIAL APPOINTEES.—Each member of the Board appointed under subparagraph (A) of paragraph (2) shall be appointed for a term of 3 years, except that the initial member appointed under such subparagraph shall be appointed for a term of 1 year.

"(ii) HOUSE OF REPRESENTATIVES APPOINTEES.—Each member of the Board appointed under subparagraph (B) or (C) of paragraph (2) shall be appointed for a term of 3 years, except that the initial members appointed under such subparagraphs shall each be appointed for a term of 2 years.

"(iii) SENATE APPOINTEES.—Each member of the Board appointed under subparagraph (D) or (E) of paragraph (2) shall be appointed for a term of 3 years.

"(B) VACANCIES.—Any vacancy on the Board—

"(i) shall not affect the powers of the Board; and

"(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

"(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

"(6) MEETINGS.—

"(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

"(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

"(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(8) POWERS OF THE BOARD.—

"(A) HEARINGS.—The Board or, at its direction, any subcommittee or member of the Board, may, for the purpose of carrying out the provisions of this section—

"(i) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

"(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Board or such subcommittee or member considers advisable.

"(B) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

"(i) ISSUANCE.—Each subpoena issued pursuant to subparagraph (A) shall bear the signature of the Chairperson and shall be served by any person or class of persons designated by the Chairperson for that purpose.

"(ii) ENFORCEMENT.—

"(I) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to

produce documentary or other evidence.

"(II) CONTEMPT OF COURT.—Any failure to obey the order of the court issued under subclause (I) may be punished by the court as a contempt of that court.

"(C) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

"(D) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

"(E) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(F) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

"(9) BOARD PERSONNEL MATTERS.—

"(A) COMPENSATION.—Members of the Board shall serve without compensation.

"(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 203. SERVICES PROVIDED BY SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting immediately after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, including providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 102(a) of the Small Business Regulatory Fairness Act of 1995 to small business concerns; and

"(S) developing a program to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures.".

TITLE III—FINANCIAL ACCOUNTABILITY OF COVERED AGENCIES RELATING TO FEES AND EXPENSES

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

Section 504 of title 5, United States Code, is amended—

(1) in subsection (b)(1)(B)—

(A) by striking ", or (ii)" and inserting ", (ii)"; and

(B) by striking the semicolon at the end of the subparagraph and inserting the following: ", or (iii) a small entity as such term is defined in subsection (g)(1)(D);" and

(2) by adding at the end the following new subsection:

"(g)(1) For purposes of this subsection, the term—

"(A) 'covered agency' has the same meaning as in section 30(a) of the Small Business Act;

"(B) 'fees and other expenses' has the same meaning as in subsection (b)(1)(A), except that—

"(i) clause (ii) of such subparagraph (A) shall not apply; and

"(ii) attorney's fees shall not be awarded at a rate of pay in excess of $150 per hour unless the adjudicative party determines that regional costs or other special factors justify a higher fee;

"(C) 'prevailing small entity'—

"(i) means a small entity that raised a successful defense to an agency enforcement action by a covered agency in an adversary adjudication; and

"(ii) includes a small entity that is a party in an adversary adjudication in which the adjudicative officer orders a corrective action or penalty against the small entity that is less burdensome than the corrective action or penalty initially sought or demanded by the covered agency; and

"(D) 'small entity' has the same meaning as in section 601(6).

"(2) For the purpose of making a finding of whether an award under subsection (a)(1) is unjust, in any case in which fees and other expenses would be awarded to a prevailing small entity as a prevailing party—

"(A) the adjudicative officer of the agency shall not consider whether the position of the agency was substantially justified; and

"(B) special circumstances shall be limited to circumstances in which—

"(i) the matters in the adversary adjudication are matters for which there is little or no legal precedent; or

"(ii) findings of fact or conclusions of law are based on inconsistent interpretations of applicable law by different courts.

"(3) If a prevailing small entity is awarded fees and other expenses as a prevailing party under subsection (a)(1), such fees and other expenses shall include all fees and expenses incurred by the small entity in appearing in any proceeding the purpose of which is to determine the amount of fees and other expenses.

"(4) Fees and other expenses awarded to a prevailing small entity as a prevailing party under this section shall be paid by the covered agency from funds made available to the agency by appropriation or from fees or other amounts charged to the public if authorized by law. A covered agency may not increase any such fee or amount charged for the purpose of paying fees and other expenses awarded to a prevailing small entity as a prevailing party under this section.".

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended—

(1) in subsection (d)(2)(B)—

(A) by striking ", or (ii)" and inserting ", (ii)"; and

(B) by striking the semicolon at the end of the subparagraph and inserting the following: ", or (iii) a small entity as defined under subsection (g)(1)(D);" and

(2) by adding at the end the following new subsection:

"(g)(1) For purposes of this subsection, the term—

"(A) 'covered agency' has the same meaning as in section 30(a) of the Small Business Act;

"(B) 'fees and other expenses' has the same meaning as in subsection (d)(2)(A), except that—

"(i) clause (ii) of such subparagraph (A) shall not apply; and

"(ii) attorney's fees shall not be awarded at a rate of pay in excess of $150 per hour unless the court determines that regional costs or other special factors justify a higher fee;

"(C) 'prevailing small entity'—

"(i) means a small entity that raised a successful defense to an agency enforcement action by a covered agency in a civil action; and

"(ii) includes a small entity that is a party in a civil action in which the court orders a corrective action or penalty against the small entity that is less burdensome than the corrective action or penalty initially sought or demanded by the covered agency; and

"(D) 'small entity' has the same meaning as the term 'small entity' in section 601(6) of title 5.

"(2) For the purpose of making a finding of whether an award under subsection (d)(1)(A) is unjust, in any case in which fees and other expenses would be awarded to a prevailing small entity as a prevailing party—

"(A) the court shall not consider whether the position of the United States was substantially justified; and

"(B) special circumstances shall be limited to circumstances in which—

"(i) the matters in the civil action are matters for which there is little or no legal precedent; or

"(ii) findings of fact or conclusions of law are based on inconsistent interpretations of applicable law by different courts.

"(3) If a prevailing small entity is awarded fees and other expenses as a prevailing party under subsection (d)(1)(A), such fees and expenses shall include all fees and expenses incurred by the small entity in appearing in any proceeding the purpose of which is to determine the amount of fees and other expenses.

"(4) Fees and other expenses awarded to a prevailing small entity as a prevailing party under this section shall be paid by the covered agency from funds made available to the agency by appropriation or from fees or other

~~amounts charged to the public if authorized by law. A covered agency may not increase any such fee or amount charged for the purpose of paying fees and other expenses awarded to a prevailing small entity as a prevailing party under this section.".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 2. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of the Regulatory Flexibility Act have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by the Regulatory Flexibility Act.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of the Regulatory Flexibility Act;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

SEC. 4. EFFECTIVE DATE.

This Act shall become effective on the date 90 days after enactment.

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 102. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small

entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, ensure that the guide is written using sufficiently plain language to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) SINGLE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through a single source of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—Except as provided by this subsection, an agency's designation of a small entity compliance guide shall not be subject to judicial review. In any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small business guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

(a) IN GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the ju-

risdiction of an agency, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance provided by an agency to a small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages imposed on such small entity.

(b) PROGRAM.—Each agency shall establish a program for issuing guidance in response to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, including providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to small business concerns; and

"(S) developing programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures.".

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.

The Manufacturing Technology Centers and other similar extension centers administered by the National Institute of Standards and Technology of the Department of Commerce shall, as appropriate, provide the assistance regarding regulatory requirements, develop and distribute information and guides and develop the programs to provide confidential onsite assessments and recommendations re-

garding regulatory compliance described in Section 104 of this Act.

TITLE II—REGULATORY ENFORCEMENT REFORMS

SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and Agriculture Regulatory

Enforcement Ombudsman utilizing existing personnel to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a confidential means to comment on and rate the performance of such personnel;

"(B) establish means to solicit and receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement related activities with respect to the small business concern, and maintain the identity of the person and small business concern making such comments on a confidential basis; and

"(C) based on comments received from small business concerns and the Boards, annually report to Congress and affected agencies concerning the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices and personnel of each agency; and

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administration and to the heads of affected agencies.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members appointed by the Administration, after receiving the recommendations of the chair and ranking minority member of the Small Business Committees of the House and Senate.

"(4) Members of the Board shall serve for terms of three years or less.

"(5) The Administration shall select a chair from among the members of the Board who shall serve for not more than 2 years as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.—

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

(b) CONDITIONS AND EXCEPTIONS.—Policies or programs established under this section may contain conditions or exceptions such as—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a State, or through a compliance audit resulting in disclosure of the violation;

(3) exempting small entities that have been subject to multiple enforcement actions by the agency;

(4) exempting violations involving willful or criminal conduct; and

(5) exempting violations that pose serious health, safety or environmental threats or risk of serious injury.

TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

Section 504(b)(1) of title 5, United States Code, is amended—

(1) by striking "$75" in subparagraph (A) and inserting "$125";

(2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

(3) at the end of subparagraph (B), by striking ";" and inserting the following: ", or (iii) a small entity as defined in section 601;";

(4) by striking "; and" in subparagraph (D) and inserting ";"; and

(5) by adding at the end the following new subparagraphs:

"(F) 'prevailing party' includes a small entity with respect to claims in an adversary adjudication brought by an agency (1) that the small entity has raised a successful defense to, or (2) with respect to which the decision of the adjudicative officer is substantially less than that sought by the agency in the adversary adjudication, provided that such small entity has not committed a willful violation of the law or otherwise acted in bad faith, and

"(G) in an adversary adjudication brought by an agency against a small entity, in the determination whether the position of the agency, including any citation, assessment, fine, penalty or demand for settlement sought by the agency, is 'substantially justified' only if the agency demonstrates that such position does not substantially exceed the decision of the adjudicative officer in the adversary adjudication,

and the position of the agency is consistent with agency policy.".

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended in paragraph (d)(2)—

(1) by striking "$75" in subparagraph (A) and inserting "$125";

(2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

(3) by striking "; and" subparagraph (G) and inserting ";"

(4) in subparagraph (H)—

(i) after "prevailing party"," by inserting "includes a small entity with respect to a claim in a civil action brought by the United States (1) that the small entity has raised a successful defense to, or (2) with respect to which the final judgement in the action is substantially less than that sought by the United States, provided that such small entity has not committed a willful violation of the law or otherwise acted in bad faith, and"; and

(ii) at the end of the subparagraph, by striking the period and inserting "; and"; and

(5) by adding at the end the following new subparagraph:

"(I) In a civil action brought by the United States against a small entity, a position of the United States, including any citation, assessment, fine, penalty or demand for settlement sought by an agency, is "substantially justified" only if the United States demonstrates that such position does not substantially exceed the value of the final judgement in the action, and the position of the United States is consistent with agency policy.".

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603(a) of title 5, United States Code, is amended—

(1) by inserting after "proposed rule", the phrase ", or publishes a notice of interpretive rule making of general applicability for any proposed interpretive rule"; and

(2) by inserting at the end of the subsection, the following new sentence: "In the case of interpretive rule making involving the internal revenue laws of the United States, this section applies only to regulations as that term is used in section 7805 of the Inter-

nal Revenue Code of 1986 that impose a record keeping, reporting or paperwork requirement on small entities."

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or otherwise publishing an initial regulatory flexibility analysis, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 402. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by agency action is entitled to judicial review of agency compliance with

the requirements of this chapter, except the requirements of sections 602, 603, 609 and 612.

"(2) Each court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review any claims of noncompliance with this chapter, except the requirements of sections 602, 603, 609 and 612.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of such one year period, such lesser period shall apply to a petition for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, a petition for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the one year period, the number of days specified in such provision of law

that is after the date the analysis is made available to the public.

"(4) If the court determines, on the basis of the rule-making record, that the agency action under this chapter was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court shall order the agency to take corrective action consistent with this chapter, which may include—

"(A) remanding the rule to the agency, or

"(B) deferring the enforcement of the rule against small entities, unless the court finds good cause for continuing the enforcement of the rule pending the completion of the corrective action.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Except as otherwise required by this chapter, the court shall apply the same standards of judicial review that

govern the review of agency findings under the statute granting the agency authority to conduct a rule making.

"(d) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(e) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rule making for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code, is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record and the".

SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.—Section 609 of title 5, United States Code, is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities", by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following new subsection:

"(b) Prior to publication of an initial regulatory flexibility analysis—

"(1) an agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, collect advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 603(b), paragraphs (3), (4) and (5);

"(5) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 603(b), paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule or the decision on whether an initial regulatory flexibility analysis is required.

"(c) Prior to publication of a final regulatory flexibility analysis—

"(1) an agency shall reconvene the review panel established under paragraph (b)(3), or if no initial regulatory flexibility analysis was published, undertake the actions described in paragraphs (b)(1) through (3);

"(2) the panel shall review any material the agency has prepared in connection with this chapter, collect the advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4) and (5);

"(3) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 604(a), para-

graphs (3), (4) and (5), provided that such report shall be made public as part of the rulemaking record; and

"(4) where appropriate, the agency shall modify the final rule or the decision on whether a final regulatory flexibility analysis is required.

"(d) An agency may in its discretion apply subsections (b) and (c) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

Calendar No. 342

104TH CONGRESS
2D SESSION

S. 942

A BILL

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

MARCH 6, 1996

Reported with an amendment

SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1995

The PRESIDING OFFICER. Under the previous order, we will now turn to S. 942.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 942) to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Small Business, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 2. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of the Regulatory Flexibility Act have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by the Regulatory Flexibility Act.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of the Regulatory Flexibility Act;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

SEC. 4. EFFECTIVE DATE.

This Act shall become effective on the date 90 days after enactment.

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 102. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, ensure that the guide is written using sufficiently plain language to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) SINGLE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through a single source of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—Except as provided by this subsection, an agency's designation of a small entity compliance guide shall not be subject to judicial review. In any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small business guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

(a) IN GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance provided by an agency to a small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages imposed on such small entity.

(b) PROGRAM.—Each agency shall establish a program for issuing guidance in response to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, including providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to small business concerns; and

"(S) developing programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures.".

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.

The Manufacturing Technology Centers and other similar extension centers administered by the National Institute of Standards and Technology of the Department of Commerce shall, as appropriate, provide the assistance regarding regulatory requirements, develop and distribute information and guides and develop the programs to provide confidential onsite assessments and recommendations regarding regulatory compliance described in Section 104 of this Act.

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The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman utilizing existing personnel to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a confidential means to comment on and rate the performance of such personnel;

"(B) establish means to solicit and receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement related activities with respect to the small business concern, and maintain the identity of the person and small business concern making such comments on a confidential basis; and

"(C) based on comments received from small business concerns and the Boards, annually report to Congress and affected agencies concerning the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices and personnel of each agency; and

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administration and to the heads of affected agencies.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members appointed by the Administration, after receiving the recommendations of the chair and ranking minority member of the Small Business Committees of the House and Senate.

"(4) Members of the Board shall serve for terms of three years or less.

"(5) The Administration shall select a chair from among the members of the Board who shall serve for not more than 2 years as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.—

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

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(b) CONDITIONS AND EXCEPTIONS.—Policies or programs established under this section may contain conditions or exceptions such as—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a State, or through a compliance audit resulting in disclosure of the violation;

(3) exempting small entities that have been subject to multiple enforcement actions by the agency;

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"(F) 'prevailing party' includes a small entity with respect to claims in an adversary adjudication brought by an agency (1) that the small entity has raised a successful defense to, or (2) with respect to which the decision of the adjudicative officer is substantially less than that sought by the agency in the adversary adjudication, provided that such small entity has not

committed a willful violation of the law or otherwise acted in bad faith, and

"(G) in an adversary adjudication brought by an agency against a small entity, in the determination whether the position of the agency, including any citation, assessment, fine, penalty or demand for settlement sought by the agency, is 'substantially justified' only if the agency demonstrates that such position does not substantially exceed the decision of the adjudicative officer in the adversary adjudication, and the position of the agency is consistent with agency policy.".

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended in paragraph (d)(2)—

(1) by striking "$75" in subparagraph (A) and inserting "$125";

(2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

(3) by striking "; and" subparagraph (G) and inserting ";";

(4) in subparagraph (H)—

(i) after "prevailing party," by inserting "includes a small entity with respect to a claim in a civil action brought by the United States (I) that the small entity has raised a successful defense to, or (2) with respect to which the final judgement in the action is substantially less than that sought by the United States, provided that such small entity has not committed a willful violation of the law or otherwise acted in bad faith, and"; and

(ii) at the end of the subparagraph, by striking the period and inserting "; and"; and

(5) by adding at the end the following new subparagraph:

"(I) In a civil action brought by the United States against a small entity, a position of the United States, including any citation, assessment, fine, penalty or demand for settlement sought by an agency, is "substantially justified" only if the United States demonstrates that such position does not substantially exceed the value of the final judgement in the action, and the position of the United States is consistent with agency policy.".

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603(a) of title 5, United States Code, is amended—

(1) by inserting after "proposed rule", the phrase ", or publishes a notice of interpretive rule making of general applicability for any proposed interpretive rule"; and

(2) by inserting at the end of the subsection, the following new sentence: "In the case of interpretive rule making involving the internal revenue laws of the United States, this section applies only to regulations as that term is used in section 7805 of the Internal Revenue Code of 1986 that impose a record keeping, reporting or paperwork requirement on small entities.".

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or otherwise publishing an initial regulatory flexibility analysis, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 402. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by agency action is entitled to judicial review of agency compliance with the requirements of this chapter, except the requirements of sections 602, 603, 609 and 612.

"(2) Each court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review any claims of noncompliance with this chapter, except the requirements of sections 602, 603, 609 and 612.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of such one year period, such lesser period shall apply to a petition for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, a petition for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the one year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) If the court determines, on the basis of the rulemaking record, that the agency action under this chapter was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court shall order the agency to take corrective action consistent with this chapter, which may include—

"(A) remanding the rule to the agency, or

"(B) deferring the enforcement of the rule against small entities, unless the court finds good cause for continuing the enforcement of the rule pending the completion of the corrective action.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Except as otherwise required by this chapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct a rule making.

"(d) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(e) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rule making for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code, is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record and the".

SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.—Section 609 of title 5, United States Code, is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities", by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following new subsection:

"(b) Prior to publication of an initial regulatory flexibility analysis—

"(1) an agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full time federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, collect advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 603(b), paragraphs (3), (4) and (5);

"(5) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 603(b),

paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rule-making record; and

"(6) where appropriate, the agency shall modify the proposed rule or the decision on whether an initial regulatory flexibility analysis is required.

"(c) Prior to publication of a final regulatory flexibility analysis—

"(1) an agency shall reconvene the review panel established under paragraph (b)(3), or if no initial regulatory flexibility analysis was published, undertake the actions described in paragraphs (b)(1) through (3);

"(2) the panel shall review any material the agency has prepared in connection with this chapter, collect the advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4) and (5);

"(3) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 604(a), paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rule-making record; and

"(4) where appropriate, the agency shall modify the final rule or the decision on whether a final regulatory flexibility analysis is required.

"(d) An agency may in its discretion apply subsections (b) and (c) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, my ranking member, Senator BUMPERS, and I are very pleased to be able to bring to the floor this vitally important small business regulatory reform bill. I want to express at the beginning my heartfelt thanks to Senator BUMPERS, to his staff, and to the many Members on both sides of the aisle and their staffs who helped us work on this measure. We will be presenting a managers' amendment very shortly, when they complete drafting all of the good ideas that came in.

We had a very good hearing on this in the Small Business Committee. Lots of people have had good ideas. We have been able to incorporate most of them. We are not able to handle all of them. But this measure is targeted clearly to small business.

As we come up on the first anniversary of the White House Conference on Small Business, I think it is very important that we move forward. I appreciate the Members who have allowed us to go forward today with this bill.

As most of my colleagues know, last June almost 2,000 delegates to the White House Conference on Small Business came to Washington to vote on an agenda of top concerns for small business. The top 60 recommendations were published by the conference last September as a report to the President and Congress entitled, "Foundation for a New Century." Three of the top recommendations in the White House conference call for reforms in the way that Government regulations are developed, the way they are enforced, and reforms in Government paperwork requirements.

The common theme of all recommendations is the need to change the culture of Government agencies, the need to provide a responsive ear and a responsive attitude toward small business and small entities.

Let me emphasize, while we are talking about small business, many people just think maybe it is the business downtown on the square or the mom-and-pop operation or the small contractor, but this bill also includes small entities. We have many entities of local government, charitable entities, educational entities, that would be affected and would be protected by the provisions in this bill.

We held a hearing in Atlanta, GA, on small business. We were very graciously provided the facilities of Georgia Tech to hold that hearing. The president of Georgia Tech was kind enough to come and be with us. As he and I listened to the concerns of small business, he told me afterward, "It is amazing how many of these concerns actually affect small colleges and universities as well." So, while traditionally we think of the small for-profit entities, there are benefits as well for nonprofits, for governmental entities, and charitable organizations as well as educational entities.

One of the top recommendations of the conference of the White House and small business was to put teeth into the Regulatory Flexibility Act, to provide regulatory relief for small entities, small businesses, small towns, small school districts, small nonprofit organizations. Back in 1980, Congress passed what was called the Regulatory Flexibility Act. I suppose regulatory flexibility came from the idea that Federal agencies are supposed to look at the issuance of regulations and make them flexible, so the impact on the small entities could be made flexible enough to carry out the purpose of the underlying statute under which the regulations were issued, without imposing unnecessary burdens on those small entities, hence the name regulatory flexibility. "Be flexible," is what Congress told Federal agencies, "in dealing with regulations impacting small entities, small businesses, and not-for-profits."

There is a problem with that. Congress said we are not going to have any judicial enforcement of regulatory flexibility. With that, too many Federal agencies took that as a sign to say we are not going to pay any attention to it. When small businesses said, "Have you paid attention to regulatory flexibility," they said, "No, it did not apply." Even the advocacy council, the Small Business Administration, has been totally stiffed by many Federal agencies when it has gone before them and said, "Look, we serve small business and believe there is a problem. It is not a reg-flex-compliant, small-entity regulation that you have issued."

We had hearings before the Small Business Committee in the past year, where the SBA's chief counsel for advocacy indicated that not only was regulatory flexibility being ignored, but that there is a tremendous burden on small business in many of these regulatory directives. In general, they say that the burden on small business is some 50 to 80 percent more per employee than it is for larger businesses.

Let me cite just one particular statistic that I found striking. In a manufacturing business, a large business can calculate that all the Federal regulations that I think we would all agree are designed to achieve worthwhile purposes of worker safety, a healthy environment, and a whole range of issues that we work on, cost about $2.50 per hour per employee.

For every hour that is worked, the manufacturing business pays the employee his or her salary, plus they have to calculate another $2.50. For a small manufacturing business with 50 or fewer employees, that costs $5 an hour. That means the small business starts off with a $2.50 an hour penalty over what the larger business has to pay. That makes our small businesses less competitive with larger businesses. It also makes our small businesses much less competitive with overseas competitors who may not have those burdens.

As a result, there has been strong bipartisan support to provide for judicial enforcement of the Regulatory Flexibility Act. The President has called for it. The Administrator of the Small Business Administration has called for it. Leading Members on both sides of the aisle in this body have called for it.

Mr. President, I ask unanimous consent to have printed in the RECORD letters of support for S. 942 that come from the National Federation of Independent Business, the Small Business Legislative Council, the National Retail Federation, the National Association of Home Builders, Associated Builders and Contractors, the National Association of Towns and Townships, and the National Association of Manufacturers.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, March 7, 1996.

Hon. CHRISTOPHER BOND,
Chairman, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the more than 600,000 small business owners of the National Federation of Independent Business (NFIB), I urge all your colleagues to support S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. The Bond-Bumpers legislation includes important provisions that have been top priorities for NFIB members for many years. It also includes provisions that were recommended by

small business owners at the 1995 White House provisions that were recommended by small business owners at the 1995 White House Conference on Small Business. The bill has these important elements:

Strengthening the Regulatory Flexibility Act

Provisions that would encourage a more cooperative regulatory enforcement environment regulation.

Updating the Equal Access to Justice Act.

Providing for the judicial review of the Regulatory Flexibility Act of 1980 is of particular concern to the small business community because it has the potential to fulfill the promise of that 16 year old law. The purpose of "reg.flex." was to fit regulations to the scale and resources of the regulated entity. A strong "reg.flex." process will provide a substantial measure of the regulatory reform that small business owners have wanted for years.

The vote on S. 942 will be a "Key Small Business Vote" of the 104th Congress.

Sincerely,

DONALD A. DANNER,
Vice President,
Federal Government Relations.

SMALL BUSINESS
LEGISLATIVE COUNCIL,
Washington, DC, March 7, 1996.

Hon. CHRISTOPHER BOND,
Committee on Small Business, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Small Business Legislative Council (SBLC), I wish to express our strong support for your legislation to amend the Regulatory Flexibility Act (RFA) to add judicial review, and to make other small business regulatory process improvements.

As long-time supporters of the RFA, we know from first-hand experience that agencies have been able to ignore the law due to the lack of judicial review. At the time of the enactment of the original RFA, we thought it was a risk we could reluctantly accept in order for us to overcome the then formidable resistance of the bureaucracy to the entire law. Time has proven that the price was too much to pay.

The original concept of the original law is still sound. The goal is to have agencies undertake an analysis of proposed rules to determine whether they have an adverse impact on small business. If such a determination is made, then the agency must explore alternatives to mitigate the impact on small business. Unfortunately, agencies have simply ignored the law in the absence of judicial review.

Small business is at the regulatory breaking point. All too frequently, small business owners tell us, "I am not sure I can advise my son or daughter to join me in the business. It is not worth it, the hassles outweigh the joys. They just might be better off working for someone else." It is time to reverse that trend.

Enactment of the judicial review amendment to the RFA was one of the priority recommendations of last year's White House Conference on Small Business.

Congratualtions on this initiative! We look forward to working with you towards the passage and enactment.

The SBLC is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For your information, a list of our members is enclosed.

Sincerely,

GARY F. PETTY,
Chairman of the Board.

Enclosure.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America
Alliance for Affordable Health Care.
Alliance for American Innovation.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Gear Manufacturers Association.
American Machine Tool Distributors association.
American Road & Transportation Builders Association.
American Society of Interior Designers.
American Society of Travel Agents, Inc.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association international.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Franchise Association.
International Television Association.
Machinery Dealers National Association.
Mail Advertising Service Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Chimney Sweep Guild.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear & Sportswear Association.
National Lumber & Building Material Dealers Association
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Wood Flooring Association.
NATSO, Inc.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Lawn Car Association of America.
Promotional Products Association International.
The Retailer's Bakery Association.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC Business Councils.
Society of American Florists.
Turfgrass Producers International.

NATIONAL RETAIL FEDERATION,
Washington, DC, March 13, 1996.

Hon. KIT BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR KIT: On behalf of the National Retail Federation (NRF) and America's 1.4 million U.S. retail establishments, I am writing to strongly support your bipartisan, "Small Business Regulatory Enforcement Fairness Act" (S. 942). For years Main Street retailers have been shouting for relief from the federal regulatory nightmare. The bipartisan legislation you've assembled should provide exactly that.

This bill includes important relief for small retailers—in particular strengthening the Regulatory Flexibility Act. Reg-Flex was designed to force federal regulators to consider the excessive burden regulations place on small businesses. The improvements included in this bill will give family-owned retailers the hammer necessary to break the regulatory juggernaut. It will help provide Main Street businesses with the common sense solutions they have been searching for.

Other features of the bill such as its "Plain English" requirement and its direction to agencies to set-up programs to waive civil penalties for first-time violations are also important and valuable. Small retailers simply cannot afford to spend valuable time in non-productive activities.

Again thank you on behalf of America's retailers and the one in five Americans employed in the retail industry for your leadership in important regulatory relief.

Sincerely,

JOHN J. MOTLEY III,
Senior Vice President,
Government and Public Affairs.

NATIONAL ASSOCIATION
OF HOME BUILDERS,
Washington, DC, March 7, 1996.

DEAR SENATOR: It is my understanding that you may be considering S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. S. 942 was reported to the full Senate unanimously by the Senate Small Business Committee on March 6, and on behalf of the 185,000 member firms of the National Association of Home Builders (NAHB), I urge you to support this bill and oppose any weakening amendments.

S. 942 is based on several recommendations of the White House Conference on Small Business (the Conference) which addresses the regulatory burden currently faced by small businesses in the United States. First of all, S. 942 would require federal agencies to streamline and simplify their regulations. Secondly, this legislation would create a Small Business and Agriculture Enforcement Ombudsman to compile the comments of small businesses with respect to regulatory enforcement, and annually rate agencies based on these comments. While this is a step in the right direction, NAHB would respectfully suggest that the Ombudsman be given meaningful authority to intervene on behalf of an aggrieved small business.

Additionally, S. 942 would establish a meaningful judicial review process for regulations under the Regulatory Flexibility Act, enabling small business owners to challenge onerous regulations in court, forcing agencies to ensure that rules do not adversely impact small businesses.

Many of our members were active participants in the Conference. Hence, we feel strongly that the recommendations adopted by the Conference should be implemented by Congress. As the recent report of the Small Business Administration (SBA) points out, small businesses currently shoulder a disproportionate share of the regulatory burden and generally have the least amount of resources to devote to regulatory compliance.

Most NAHB members are truly small businesses, and we support the provisions of S. 942. This legislation has broad, bipartisan support, and we strongly urge you to pass this bill without any weakening amendments.

Thank you for considering our views.

Sincerely,

RANDALL L. SMITH,
President.

ASSOCIATED BUILDERS
AND CONTRACTORS, INC.,
Rosslyn, VA, March 11, 1996.

Hon. CHRISTOPHER S. BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: The Senate will soon be considering the Small Business Regulatory Enforcement Fairness Act of 1996 (S. 942). On behalf of Associated Builders and Contractors (ABC)—and its more than 18,000 contractors, subcontractors, material suppliers, and related firms from across the country—I urge you to support the legislation.

S. 942 will implement key recommendations from the 1995 White House Conference on Small Business aimed to facilitate compliance with federal regulatory and administrative requirements imposed on the private sector. ABC believes S. 942 is an important step in managing the increasing regulatory burden on U.S. companies and small businesses in particular.

In particular, the legislation would strengthen enforcement of the Regulatory Flexibility Act. It would grant judicial review to ensure regulatory flexibility requirements are carried out by allowing small businesses to challenge certain agency actions or inactions in court. This will help enforce the Regulatory Flexibility Act, which was intended to require that federal agencies "fit regulatory and informational requirements to the scale of the businesses." It is critical that Congress enact this judicial "hammer" to enforce agencies to address regulatory impacts on small businesses.

Although the nation's regulations are intended to benefit the public, they in fact place a disproportionate burden on small businessmen and women—those who actually create the vast majority of jobs in America. The Small Business Regulatory Enforcement Fairness Act of 1996 will help alleviate this main obstruction to economic development and free America's small business owners to generate valuable jobs.

The majority of ABC's members are small businesses. The U.S. Small Business Administration has identified construction contractors as one of the top small business-dominated industries responsible for generating a significant number of new jobs annually. In fact, from 1993 to 1994, general building and specialty construction contractors created almost 290,000 new jobs.

Over-regulation is not only burdensome for small businesses, but also impacts the economy. For the construction industry, excessive regulation translates into higher costs that are eventually passed onto the consumer for private sector contracts. Over-regulation on public sector contracts costs the federal government and the taxpayer millions of dollars per year. An additional burden is placed on the nation's economy because the increased cost of doing business from excessive regulations results in fewer jobs.

Again, ABC urges you to vote in support of S. 942 to help improve the ability of small businesses to comply with federal regulations. The Small Business Regulatory Enforcement Fairness Act of 1996 will encourage small business participation in the regulatory process and provide the necessary opportunity for redress of arbitrary enforcement actions. Thank you for your consideration of this important matter.

Sincerely,

CHARLOTTE W. HERBERT,
Vice President,
Government Affairs.

NATIONAL ASSOCIATION OF
TOWNS AND TOWNSHIPS,
Washington, DC, March 7, 1996.

Hon. KIT BOND,
Chairman, Small Business Committee, U.S. Senate, Washington, DC.

DEAR SENATOR BOND: The National Association of Towns and Townships (NATaT) would like to thank you for your leadership in developing legislation to strengthen the Regulatory Flexibility Act of 1980 (RFA). NATaT strongly supports S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. NATaT has long supported judicial review of the Regulatory Flexibility Act (RFA), which is a major component of S. 942.

NATaT represents approximately 13,000 of the nation's 39,000 general purpose units of local governments. Most of our member local governments are small and rural and have fewer than 10,000 residents. These small communities simply do not have the resources to comply with many mandates and regulations in the same fashion that larger localities are able. The impact of federal regulations on small localities was understood by the authors of the RFA and small localities were therefore included under the definition of small entities in that act.

NATaT has long recognized the failings of the RFA and has fought to strengthen it over the years. We have concluded that the only way to get federal agencies to take notice of their responsibilities under the RFA is to allow small entities to take an agency to court for failure to follow the provisions of the RFA. Strong judicial review language would do just that. NATaT strongly supports the judicial review language and would oppose any efforts to weaken it.

TOM HALICKI,
Executive Director.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, March 7, 1996.

Hon. CHRISTOPHER S. "KIT" BOND,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR KIT: The National Association of Manufacturers (NAM) is pleased to offer its strong support for S. 942, The Small Business Regulatory Enforcement Fairness Act of 1996. This measure, which may be considered on the Senate floor today, is an important down payment on improvements to the nation's regulatory system.

Senate passage of S. 942 would be an important first step toward lifting regulatory barriers to increased flexibility, productivity and growth, particularly for small companies. The measure would allow small companies to stay focused on growing their businesses and creating jobs by increasing the accountability of regulatory agencies and decreasing unnecessary compliance burdens.

A recent study commissioned by the U.S. Small Business Administration concludes that small businesses shoulder 63 percent of the total regulatory burden while accounting for 50 percent of employment and sales. According to the report, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business," the average cost of regulation per employee in firms with 500 or more workers is $2,979. That compares with $5,532 for firms with 20 or fewer employees, an intolerable burden that must be reduced.

We also support the Nickles/Reid amendment, which will provide Congress with an opportunity to review major regulations under a fast track procedure. This will encourage the Federal bureaucracy to do a better job of developing sensible regulations.

The NAM believes that this legislation will yield smarter regulations that protect health, safety and the environment *and* bolster economic growth and job creation. I strongly urge you to support S. 942 and the Nickles-Reid amendment as part of a continuing effort to modernize the nation's antiquated regulatory system.

Sincerely,

JERRY J. JASINOWSKI,
President.

Mr. BOND. Mr. President, there are a number of other important amendments and provisions in this bill, in addition to providing judicial enforcement of regulatory flex. We take a very simple step of saying, with respect to compliance guides, when you write a regulation, you have to tell the small entities how, in plain English, they are supposed to abide by the regulation, what it is supposed to do, and how they can comply with it.

If a regulatory agency brings an enforcement action against a small entity, the small entity has a right to take a look at those so-called plain English guidelines and present it to the court or the administrative hearing officer and say, "Hey, look, we are doing what they told us to do," or if it is so confusing that they cannot figure it out, they have a case to make in the court or in the administrative hearing: "We had no idea what we were supposed to do to comply with this."

Another area that we think is very, very important is to change the atmosphere of inspectors and examiners who go out into the field representing the Federal Government to administer regulations.

Mr. President, you and I can cite many examples, I am sure. There are an overwhelming number of examples where dedicated public servants go out and work with the people they regulate to help them come into compliance. But I know we also can cite examples where a regulator goes out, an examiner goes out, and they think they have been sent from the king to impose fines, to impose sanctions and that their objective is to make life miserable. That is certainly the impression that too many of the witnesses before our hearings have held. They feel that there are some agencies in some areas or even some individuals who just have the wrong idea: They do not work for the people; they are there to collect fines and to impose penalties.

We set up fairness rules, and we set up an ombudsman. The ombudsman provision creates a small business enforcement ombudsman to provide a place where small businesses can complain and voice their concerns on excessive regulatory enforcement actions.

Right now, I have asked some of those small businesses why they do not complain to the guy's boss. They said, "Well, as soon as we do that, he is going to tell the inspector who is giving us so much trouble, who fined us $4,000 for not having a warning label on a bottle of kitchen dishwashing soap, and we are liable to get twice that fine the next time."

We set up an ombudsman system, regional fairness boards where you can go to complain, and if a number of small entities pinpoint a particular agency or even a particular inspector, then through the Small Business Administration, which knows the identity of the complaining witnesses, the attention of the supervisory personnel in the enforcing agency can be advised that this particular inspector or maybe this particular office is overreaching, is not performing its function of seeing that the purpose of the statute is carried out, that they are more interested in the enforcement sanctions and the fines.

We believe this will help change the culture so that regulators, examiners and inspectors know that their job, when they go out, is to see that the workplace is environmentally sound, healthful, safe and not to impose fines, and regulations. This does not take away any of the penalties. This says how you go about it should be designed to achieve compliance, not to impose penalties.

There is another measure which is included in this bill, one which was introduced by Senator DOMENICI as a result of hearings we had in New Mexico, to provide, on a pilot basis, in OSHA and EPA for the involvement of small businesses and small entities in the early stages of regulatory development, so you can have somebody sitting at the table as you look at the statute and you try to determine how best to carry it out. Somebody can say, "Well, to do this in the small entities, it will be easier to go this way to get the job done than to go that way."

We think that offers great promise. It will be tested, and we will see if we can, in fact, make sure that we get the job done of complying with the law.

Finally, there is a change in the Equal Access to Justice Act. That act is supposed to provide compensation for small businesses and small entities who are subject to regulatory proceedings, the imposition of fines. If it turns out that the Federal Government has asked for much larger fines or penalties than are warranted in the case, they are supposed to get compensation. Under existing law, however, the standards are so strict that it is a promise without performance.

We amend the Equal Access to Justice Act to level the playing field to bring some accountability to the actions between an agency and a small business entity so that when the agency makes a demand, it is going to have to be in proportion to what the violation is worth and what can actually be proven in a hearing, either administrative or judicial, to allow them to recover costs for representing themselves against an overreaching agency.

These things, I think, make this a good starting point for ensuring that Federal agencies give a hearing to small businesses and to small entities and take account of how their activities may impact those businesses.

With that, Mr. President, I hope that when we vote on this measure next Tuesday, we will have overwhelming support from this body. The House has considered but has not moved forward on legislation. I hope that by listening to Members on both sides and doing a tremendous amount of staff work—and I want to compliment not only the staff on this side, but on the minority side for their diligent work—we have a reasonably good piece of legislation.

We have made accommodations. There are a number of amendments we believe we can accept by voice vote. Senator NICKLES and Senator REID have one for congressional review that we think is vitally important. It has overwhelmingly passed the Congress. I think it was 100 to 0. That is about as good as you can get. It has already passed the Senate. I do not think we need another vote on that one, but we expect to accept that. And there will be a managers' amendment.

PRIVILEGE OF THE FLOOR

With that, as I turn to my ranking member, I ask unanimous consent to allow Tom McCully, a legislative fellow in the Small Business Committee, privilege of the floor for the duration of the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. I thank the Chair.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, the chairman of the Small Business Committee, my colleague, Senator BOND, made a magnificent statement on this very comprehensive bill. As Mo Udall used to say, "Just about everything that needs to be said has been said, but everybody hasn't said it." I know that what I have to say will be largely repetitious, but let me start, first, by just complimenting Senator BOND for his tenacity and determination in getting this bill out of the committee and getting it to the floor.

I believe I can truthfully say this is one of the two or three times since I have been in the Senate where Members, if this becomes law, will have an opportunity to go home and actually tell the small business community that we have done something for them that was actually meaningful, that they can relate to and that they will applaud.

Sometimes the small business community can get very volatile and vocal about the fact that nobody here hears them or really cares about their problems. And there is some merit to that. Very few of the recommendations they have made at these various White House conferences on small business have ever resulted in legislation here. In 1980, when we passed the Regulatory Flexibility Act, we patted ourselves on the back and gave ourselves the good government award and went home and told the small business community what we had done for them. Not much time elapsed before they said, "You didn't do anything for us."

They were absolutely right about that. The Regulatory Flexibility Act simply has not worked. If it had, we would not be here this morning. So really the initiative taken by Senator BOND is to correct that, and to fulfill a promise to the small business community—oh, yes, if you want to put the political aspect to it—to enable the Members of the U.S. Senate to go home and appear before small business groups and tell them how much you love them, but this time you can actually justify it by pointing to this legislation, if it becomes law, which I feel sure it will.

Why did the Regulatory Flexibility Act not work? Because it had a provision in it that said the agencies who write the rules that govern the people subject to their jurisdiction, it said that those agencies, first of all, had to make a determination that the rules they were writing were or were not unduly burdensome on the small business community. If they were, of course, then they had to do a regulatory analysis of how it affected small business as opposed to others. They have to do that to make a determination anyway. If they found that this was burdensome on the small business community, then they had to go through a lot of hoops.

Agencies do not like to jump through hoops. So what did they do? Almost

without exception they would simply say these regulations are not unduly burdensome on the small business community; therefore, they did not have to do anything more to accommodate the burden of that regulation on small business.

What was really the biggest omission of all in the Reg Flex Act of 1980 was that once the agency said, no, this does not hurt small business, small business could not do anything but stand there and take it because there was no judicial review. Under this bill, if they make a decision that a regulation is not burdensome, unduly harsh on small business, if they make that decision, they are going to have to defend it in court because the small business community has a right of judicial review on that determination.

So they are going to be much more circumspect about the regulation and certainly going to be much more circumspect about finding that the rules are not harsh on small business.

There are people who do not much like the judicial review part of this and say, you are going to clog the courts up with small business people contesting every regulation that has ever been written. That is powerful nonsense. Small business people do not like to spend money in court more than anybody else does.

But let me tell you, if I were going to summarize the vitality and the effectiveness of this bill in one sentence, or the reasons for it, it is because the small business people of this country spend 60 to 80 percent more dollars per employee to comply with Government regulations than big business does. How would you like to be a small business making widgets, and let us assume General Motors, one of the biggest corporations in America, also makes widgets, and you have to compete with General Motors, and then they come out with all these burdensome regulations, which are a piece of cake to General Motors, but, you know, you are going to have to spend 60 to 80 percent more than they are per employee to comply with those rules?

That is what this is all about, Mr. President. It is going to sail through. If there is a vote against this bill I am going to be surprised because everybody here knows those things I just described to you make sense.

The equal access to justice, which gives the small business community the right to go two court and to challenge some of the findings of the agencies, is long overdue. The equal access to justice, which says if the Government sues you for $1 million, and they wind up getting an award of $10,000 or even $50,000, the Justice Department, the small business person can sue for his attorney fees. This is a point that the Justice Department helped us with. And we accepted it. I applaud the Justice Department for it because the language says that if the award is disproportionately smaller than that requested, you are entitled to attorney fees.

Mr. BUMPERS. Mr. President, I am pleased to cosponsor S. 942 and the pending managers' amendment with the distinguished chairman of our committee, Senator BOND. This bill is one of the most significant accomplishments of the 104th Congress, and it is one of the best bills for the small business community in the last 15 years. It is important because it resolves major concerns to the small business community that have been unresolved for many years. And, it follows by less than 1 year the conclusion and recommendations of the 1995 White House Conference on Small Business.

Senators who support this bill can say to their small business constituents, "We not only hear you; we agree with much of what you are saying, and we are responding." With this bill, Senators can do more than give platitudes for small business. We can do something that will effect the lives of every business owner who deals with a Federal regulator.

S. 942 makes important, positive changes in two statutes which grew out of the 1980 White House Conference on Small Business: The Regulatory Flexibility Act and the Equal Access to Justice Act. This is a bill—all too rare in this Congress—which I can assure my colleagues that we would be considering if my party were in the majority. Some of today's bill's issues—particularly the judicial enforceability of the Regulatory Flexibility Act, or Reg Flex—have been the subject of consternation among small business owners almost since the act was passed in 1980. The recommendations of the White House Conference, as well as the work done by the National Performance Review under Vice President GORE, are the foundations of today's bill.

I want to emphasize that the spirit of S. 942 is one of reforming the regulatory environment—a cause which President Clinton's administration has championed since its inception both in the National Performance Review and in Executive orders which the President has signed. We are not only endorsing the Clinton administration's new regulatory philosophy, we are writing some of its program into law so that this new attitude does not change under some future President. Section 202 of the bill is specifically based on an Executive order, which President Clinton signed, providing for waiver or reduction of penalties and fines for small businesses in certain circumstances. His Executive order is exactly that approach to take if we are to change the climate of animosity between Government and small business which has existed for years.

There are several specific provisions of this bill which deserve mention. First, however, I want to compliment the chairman for the way he has handled this bill in our committee and since it was reported. Although the administration did not testify on the bill before the Small Business Committee, in subsequent days the chairman, the staff and I have held literally dozens of consultations with various agency officials about the bill. More importantly, we have worked very hard to accommodate the views and suggestions of the Clinton administration. Without exception, the suggestions and requests both from the administration and from Senators on and off the committee have been constructive and helpful. The staffs of the Finance Committee and the Governmental Affairs Committee have been especially helpful in crafting this far-reaching bill.

The Managers' amendment incorporates dozens of changes, some quite significant, in either language or policy from the bill reported by the committee. However, it does not retreat in any way from the main purpose of the bill. In fact, the administration's views have helped us to make the bill stronger and more effective for small business. I want to dispel any notion that the so-called bureaucrats have opposed this bill for fear that it would create more work for their agencies. The General Counsels' offices at Treasury, Justice, Labor, and other departments have offered advice which has improved upon what our committee originally approved 2 weeks ago.

Allowing judicial enforcement of the rights created under the Regulatory Flexibility Act of 1980—which S. 942 for the first time does—removes a bone that has been stuck in the throat of small business owners for over 15 years. The original act did not permit anyone to go to Federal court to enforce the promise that agencies would: First, consider whether a proposed rule significantly affected a substantial number of small entities; and second, consider whether steps should be taken to account for the special problems of small entities. The only enforcement of the act was the moral authority of the law and SBA's Chief Counsel for Advocacy who is charged with monitoring agencies' implementation of Reg Flex.

Small firms, according to the GAO, pay between 60 and 80 percent more, per employee, for the cost of complying with Government regulations than do the big businesses who are often their competitors. Small business owners do not have armies of accountants, clerks, and lawyers to help them comply with the Government's endless demand for information and enforcement of rules.

For several years, the SBA Chief Counsel for Advocacy has reported to the Senate Small Business Committee on the performance of agencies in following the mandate of the Reg Flex Act. Some agencies have been conscientious, others sadly have not. That report, to date, has been almost the only means of enforcing agency compliance with the act. There is at least a perception that some agencies of the Government have routinely used the act's escape clause by saying that a significant number of small entities would not be substantially affected. This has occasionally been done when

the facts were obviously to the contrary. Yet there was no legal recourse for businesses affected.

Today, all that changes. Those who should be protected by the Reg Flex Act will be. Small business owners, small town governments, and small nonprofit associations will be empowered to go into Federal court and obtain justice if a Federal agency has not followed the law. This law puts the Reg Flex Act on the same footing with other parts of the Administrative Procedure Act—which is to say that individuals are protected against actions which are arbitrary, capricious, an abuse of discretion, or otherwise not in accord with the law.

Judicial review of reg flex was one of the top recommendations of the 1995 White House Conference on Small Business, as was overall regulatory reform. Less than a year after the end of that conference, Congress is acting on those recommendations—a large part of them—by enacting these major changes in Federal regulatory law and policy. Important as judicial enforcement is, however, it is not the only big change made in this bill.

Perhaps the headline for this bill should be: IRS made subject to reg flex law. For the first time, the scope of the Reg Flex Act is being extended to cover so-called interpretative rulemakings. IRS and a few other agencies issue what are termed interpretative rules which, they say, merely explain the requirements of the statute. Nonetheless, these rules have great weight in the courts. They must be observed if the business owner wants to avoid a confrontation with the Government. Until the present moment, interpretative rules have not been subject to the requirements of the Reg Flex Act. Today, that also changes. IRS will be required to conduct an analysis under the act if a new rule substantially effects a significant number of small entities. And that finding will itself be subject to judicial review under section 5 of the Administrative Procedures Act.

Let me hasten to add that we do not believe allowing judicial review will result in a flurry of spurious lawsuits against the Government. Instead, we believe that agency rule writers will follow the new reg flex law and perform analyses which will avoid the necessity of anyone going to court. IRS particularly has a problem with tax protesters filing frivolous suits against the Government. The courts should deal summarily with such people, including imposing costs and fines in appropriate cases for those who sue to obstruct the Government.

The Equal Access to Justice Act [EAJA] which this bill amends deserves special mention. This important law allows individuals of small firms who have been sued by Government to recover their attorneys fees if they prevailed in the suit. This law has often failed of its purpose because it contained a two-part test which court decisions made nearly impossible to achieve. Under existing law, the small company must first show that he or she is a prevailing party. So, if the Government alleged 10 or 100 violations, and then only proved one minor one, the company was not a prevailing party.

Second, even if someone prevailed on each and every count, he has to show that the Government's action was not substantially justified. Courts have interpreted this phrase to mean that the Government's suit must have been without foundation in law or fact—virtually a frivolous suit under rule 11 of the civil rules. This is an almost impossible task, since the Government invariably has some basis for acting, even if it is not enough to persuade a judge or jury.

Our bill changes both these standards and makes it possible for the business owner to recover his fees by showing that the Government's final judgment was disproportionately less than an express demand by the Government during the course of the suit. So, if the Government sought $1 million to settle the case, and the judge or jury awarded, for example, $1,000 or $5,000, the defendant should be able to recover his fees. The phrase "disproportionately less" than an express demand by the Government was suggested by the Justice Department, and it was a very helpful suggestion. Obviously, this will not prohibit any agency from telling anyone the maximum legal penalty for a violation.

Additionally—and this should be emphasized by all who read and apply this section—the court or agency can deny attorneys fees if it finds that "special circumstances make such an award unjust." This phrase also came from the Justice Department, and it is contained in the current law. Clearly, we do not want to pay attorneys fees for someone who escaped conviction on a mere technicality but who was, nonetheless, probably guilty.

It is certainly not our intention to pay the lawyers for people who are essentially bad actors but who escaped punishment by the grace of the Almighty. Many circumstances, such as an exclusionary rule challenge, can be imagined where it would be wrong for the taxpayers to reimburse someone's attorneys fees, and the courts are empowered to use some reasonable discretion.

Finally, the courts are not obliged to allow the maximum rate of $125 per hour in every case. This is an increase from the $75 per hour maximum in current law, a figure which has not been changed in many years. The courts should look to existing law under section 1988 of the Civil Rights Act for guidance. Fees should be set in relation to prevailing fees actually charged in the community. Moreover, courts should require attorneys to substantiate their fees through time-sheets or other appropriate records.

The Justice Department is still not entirely satisfied with this language, as the statement of administration policy indicates. But the administration has my assurance, and that of Senator BOND, that we will continue to work with them to improve upon this language in conference with the House.

The House previously passed a bill allowing for some judicial review of reg flex decisions, but our bill is broader. Moreover, the House bill does not amend the EAJA, does not contain an ombudsman provision, and does not allow for Regulatory Advisory Boards. It is a rather narrow bill, and I hope that we will be able to persuade the House to substantially broaden it or, better yet, to accept our bill. To this point, the House has not been able to bring major regulatory reform to a conclusion, just as the Senate failed to complete debate on S. 343 earlier in this session. This bill, however, can and should go forward regardless of the outcome of those debates. This bill can only help our economy's small business sector, and I hope our colleagues in the other body will move expeditiously to send this bill to the President for his signature.

I urge my colleagues to support this important bill. The small business community will undoubtedly appreciate those who have helped us today.

Again, I want to thank Senator BOND and his staff, particularly Keith Cole and Louis Taylor, for their cooperation and support during the development and consideration of this bill. This bill shows that reasonable people of good will can still accomplish a great deal in this Congress, and I hope it will be a precedent for other bills.

Mr. President, on the equal access to justice, I point out it was the Justice Department that came up with the phrase which I think is almost a stroke of genius when they said, "Why don't you use the term 'disproportionate award'?" That is, if the Government sues for $1 million and they get a disproportionately smaller amount than that, then the small businessperson is entitled to his attorney fees. There are some exceptions to that, of course—if he has been guilty of a criminal act or willful wrongdoing or something like that—but normally he not only will be entitled to attorney fees, but the equal-access-to-justice provision, which is essentially incorporated here with Senator FEINGOLD, essentially the amendment he offered on the floor—I think it passed 98–0—that increased the amount the small businessperson could recover from $75 an hour to $225 an hour. We have put that in this bill.

Now, Mr. President, there are some cases in which offenses can be waived, penalties can be waived, under a certain set of conditions. If you really want, sometimes, to enforce a regulation, no exception, cross every "t" and dot every "i", you can still make things a little tough for some small business people.

The National Performance Review Group headed up by Vice President GORE had recommended that there be a provision in here that some people

could be excused from burdensome penalties if it was rather unintentional and had been corrected. That ought to be a source of some strength. I, frankly, thought that labor might oppose that, but they did not. It is not designed to ratify or condone bad conduct on the part of some small businessman but just to keep it from being too harsh.

Now, Mr. President, the final thing that I want to mention, there is a provision in here—and it may not be perfect; some people have voiced considerable reservation about it—but the provision is that the Small Business Administration will be home to an omsbudsman, and that ombudsman is there to take complaints from the small business community.

You have heard that classic joke for 100 years, "I'm here from the IRS and I am here to help you," and people are terrified when the IRS walks in. Usually if that agent happens to be abusive—and I use the IRS because they are everybody's favorite whipping boy—if that agent happens to be abusive on top of the fact you know that he is there to get in your pocketbook, it makes it doubly troublesome. This is also true of a lot of people who come into your plant to enforce the OSHA laws or all the other regulations that they write. If a small business man or woman feels that he or she has been put upon in an unfair, burdensome, and abusive way, they will have somebody to report that to.

It just occurred to me, Mr. President, one of the biggest cases I ever had involved a defense contract. My client was a manufacturer of tent pins. Tent pins came in different sizes, anywhere from 18 inches to 24 inches, and they were designed, of course, to drive in the ground to hold a tent up for the army, for the troops. Now, you have to understand the tent pins had to be absolutely perfect—sanded. You would not believe the regulations that my client had to comply with to build a tent pin which, when used, was going to be hit by a sledgehammer.

He had one of those crazy, as luck would have it, a crazy inspector. The guy used to go through his trash at night after he would leave to see if he could find something. The reason I am telling you that—it is humorous now because that happened 35 years ago; it was not funny then—it bankrupted my client. It took 7 years—I had never had a case in the U.S. Court of Claims before. They sent a referee down to Fort Smith, AR, and we tried that thing. It took a week. Happily, the referee of the Court of Claims was a very attentive judge. He was an elderly man. He understood the problem. He listened very carefully. He awarded my client, I believe, $100,000, one of the biggest judgments I ever got. You would think I could remember to the penny what it was.

It turned out, as a personal note, that Betty and I were getting ready to take our daughter to Boston to Children's Hospital for what we knew was going to be a tremendous expense and we did not know how to pay for it, and I collected on that judgment 3 days before we left. It saved my life.

I have had firsthand experience with the Government inspector who bankrupted my client. We did get that amount of money. But that was after 7 years. We did not get a dime of interest. We did not get a dime of penalty. We did not get a dime in attorney fees. All we got were actual damages.

Now, as a country lawyer in a town of 2,000 people, I could not believe the Government treated people like that. They admitted they were wrong, but no attorney fees, no interest, no penalty, after 7 years. Well, at least these people are going to be entitled to attorney fees.

Mr. President, I ask unanimous consent to add Senator CAROL MOSELEY-BRAUN as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. I yield the floor.

Mr. BOND. Mr. President, I yield myself 2 minutes. I would like to add—to make sure we have a list of cosponsors, I will read for the record the cosponsors:

In addition to Senator MOSELEY-BRAUN, Senator BUMPERS and myself, we have Senator BURNS, Senator COATS, Senator COVERDELL, Senator DEWINE, Senator DOLE, Senator DOMENICI, Senator FAIRCLOTH, Senator FRIST, Senator GRAMS of Minnesota, Senator GRASSLEY, Senator HUTCHISON, Senator KEMPTHORNE, Senator KERRY of Massachusetts, Senator LIEBERMAN, Senator LOTT, Senator LUGAR, Senator PRESSLER, Senator ROBB, Senator STEVENS, and Senator WARNER.

I also note that a number of these people, including Senator ROBB, are working very actively with us, with Senator NICKLES, with Senator JOHNSTON, Senator DOLE and others on a broader regulatory reform package. I think they want it understood, as I certainly do, that this does not supplant the need for other regulatory reform efforts, and it in no way is a substitute for them. We think this is a very important rifle shot to deal with the problems of small business, and we believe it does not deal with the broader regulatory issues.

Now, Mr. President, I ask unanimous consent to have printed in the RECORD a statement of the legislative history of this measure which is prepared by staff for Senator BUMPERS and me on behalf of the committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE LEGISLATIVE HISTORY FOR S. 942

I. SUMMARY OF THE LEGISLATION

The final version of the bill, embodied in a managers' amendment, makes a series of technical and other amendments to S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. The amendment resolves many of the questions raised by the Administration with the bill as reported by the Small Business Committee. The amendment also makes changes for better implementation of certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The scope of the RFA requires a regulatory flexibility analysis of all rules that have a "significant economic impact on a substantial number" of small entities. Under the RFA, this term "small entities" includes small businesses, small non-profit organizations, and small governmental units.

As amended, S. 942 provides a framework to make federal regulators more accountable for their enforcement actions by providing small entities with an opportunity for redress of arbitrary enforcement actions. The goal of the Act is to foster a more cooperative, less threatening regulatory environment between agencies and small businesses and other entities. In addition, S. 942 provides a vehicle for effective and early participation by small businesses in the Federal regulatory process by incorporating amended provisions of S. 917, the Small Business Advocacy Act.

II. SECTION-BY-SECTION ANALYSIS

Section 1

This section entitles the Act the "Small Business Regulatory Enforcement Fairness Act of 1996."

Section 2

The bill makes findings as to the need for a strong small business sector, the disproportionate impact of regulations on small businesses, the recommendations of the 1995 White House Conference on Small Business, and the need for judicial review of the Regulatory Flexibility Act.

Section 3

This section outlines the purposes for the bill. The bill addresses some key federal regulatory recommendations of the 1995 White House Conference on Small Business. The White House Conference produced a consensus that small businesses should be included earlier and more effectively in the regulatory process. The bill provides for a more cooperative and less threatening regulatory environment to help small businesses in their compliance efforts. The bill also provides small businesses with legal redress from arbitrary enforcement actions by making federal regulators accountable for their actions.

Section 4

This section provides that the effective date of the Act is 90 days after enactment. Proposed rules published after the effective date must be accompanied by an initial regulatory flexibility analysis or a certification under section 605 of the RFA. Final rules published after the effective date must be accompanied by a final regulatory flexibility analysis or a certification under section 605 of the RFA, regardless of when the rule was first proposed. However, IRS interpretive rules proposed prior to enactment will not be subject to the amendments made in chapter four of the Act expanding the scope of the RFA to include IRS interpretive rules. Thus, the IRS could finalize previously proposed interpretive rules according to the terms of currently applicable law, regardless of when the final interpretive rule is published.

TITLE ONE

Section 101

This section defines certain terms as used in the act. The term "small entity" is currently defined in the RFA to include small business concerns, as defined by the Small Business Act, small nonprofit organizations

and small governmental jurisdictions. The process of determining whether a given business qualifies as a small entity is straightforward, using thresholds established by the SBA for Standard Industrial Classification codes. The RFA also defines small organization and small governmental jurisdiction. Any definition established by an agency for purposes of implementing the RFA would also apply to this Act.

Section 102

The bill requires agencies to publish "small entity compliance guides" to assist small entities in complying with regulations which are the subject of a required Reg Flex analysis. The bill does not allow judicial review of the guide itself. However, the agency's claim that the guide provides "plain English" assistance would be a matter of public record. In addition, the small business compliance guide would be available as evidence of the reasonableness of any proposed fine on the small entity.

Agencies should endeavor to make these "plain English" guides available to small entities through a coordinated distribution system for regulatory compliance information utilizing means such as the SBA's U.S. Business Advisor, the Small Business Ombudsman at the Environmental Protection Agency, state-run compliance assistance programs established under section 507 of the Clean Air Act, Manufacturing Technology Centers or Small Business Development Centers established under the Small Business Act.

Section 103

The bill directs agencies that regulate small businesses to answer inquiries of small entities seeking information on and advice about regulatory compliance. Some agencies already have established successful programs to provide compliance assistance and the amendment intends to encourage these efforts. For example, the IRS, SEC and the Customs Service have an established practice of issuing private letter rulings applying the law to a particular set of facts. This legislation does not require other agencies to establish programs with the same level of formality as found in the current practice of issuing private letter rulings. The use of toll free telephone numbers and other informal means of responding to small entities is encouraged. This legislation does not mandate changes in current programs at the IRS, SEC and Customs Service, but these agencies should consider establishing less formal means of providing small entities with informal guidance in accordance with this section.

The bill gives agencies discretion to establish procedures and conditions under which they would provide advice to small entities. There is no requirement that the agency's advice to small businesses be binding as to the legal effects of the actions of other entities. Any guidance provided by the agency applying statutory or regulatory provisions to facts supplied by the small entity would be available as relevant evidence of the reasonableness of any subsequently proposed fine on the small entity.

Section 104

The bill creates permissive authority for Small Business Development Centers (SBDC) to offer regulatory compliance assistance and confidential on-site assessments for small businesses. SBDCs would not become the single-point source of regulatory information, but would supplement agency efforts to make this information widely available. Neither this section nor the related language in section 105 are intended to grant any exclusive franchise on regulatory compliance assistance. Rather, these sections are designed to add to the currently available resources to small businesses for assistance with regulatory compliance.

Section 105

the bill authorizes Manufacturing Technology Centers, commonly known as "Hollings Centers," and other similar extension centers administered by the National Institute of Standards and Technology, to engage in the types of compliance assistance activities described in Section 104 with respect to SBDCs.

This legislation places strong emphasis on compliance assistance programs for small businesses. These programs can save businesses money, improve their environmental performance and increase their competitiveness. They can help small businesses learn about cost-saving pollution prevention programs and new environmental technologies. Most importantly, they can help small business owners avoid potentially costly regulatory citations and adjudications. The bill calls for both the Small Business Development Centers and the Department of Commerce's Manufacturing Technology Centers to provide a range of technical and compliance assistance to small businesses. Some of the manufacturing technology centers already are providing environmental compliance assistance in addition to general technology assistance.

The bill also provides that it in no way limits the authority and operation of the small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990. There is strong support for that program. There are also other excellent small business technical assistance programs in various forms in different states. This bill is not intended to affect the operation and authority of those programs. comments from small business representatives in a variety of fora support the need for expansion of technical assistance programs.

Section 106

This section directs agencies to cooperate with states to create guides that fully integrate federal and state requirements on small businesses. Separate guides may be created for each state, or states may modify or supplement a guide to federal requirements. Since different types of small businesses are affected by different agency regulations, or are affected in different ways, agencies should consider preparing separate guides for the various sectors of the small business community subject to their jurisdiction. priority in producing these guides should be given to areas of law where rules are complex and where businesses tend to be small. Agencies may contract with outside entities to produce these guides and, to the extent practicable, agencies should utilize entities with the greatest experience in developing similar guides.

TITLE TWO

Section 201

The bill creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at SBA to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. This might include providing toll-free telephone numbers, computer access points, or mail-in forms allowing businesses to rate the performance and responsiveness of inspectors, auditors and other enforcement personnel. As used in this section of the bill, the term "audit" is not intended to refer to audits conducted by Inspectors General. This Ombudsman would not replace or diminish any similar ombudsman programs in other agencies.

The Ombudsman will compile the comments of small businesses and provide an annual evaluation similar to a "customer satisfaction" rating for different agencies, regions, or offices. The goal of this rating system is to see whether agencies and their personnel are in fact treating small businesses more like customers than potential criminals. Agencies will be provided an opportunity to comment on the Ombudsman's draft report, as is currently the practice with reports by the General Accounting Office. The final report may include a section in which an agency can address any concerns that the Ombudsman does not choose to address.

The bill also creates Regional Small Business Regulatory Fairness Boards at SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to track and comment on agency enforcement policies and practices. These boards provide an opportunity for representatives of small businesses to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies. The boards may meet to collect information about these activities, and report and make recommendations to the Ombudsman about the impact of agency enforcement policies or practices on small businesses. The boards will consist of owners or operators of small entities who are appointed by the Administrator of the Small Business Administration. Prior to appointing any board members, the Administrator must consult with the leadership of the Congressional small Business Committees. There is nothing in the bill that would exempt the boards from the Federal Advisory Committee Act, which would apply according to its terms.

Section 202

The bill 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 in certain circumstances. This section builds on the current Executive Order on small business enforcement practices and is intended to allow agencies flexibility to tailor their specific programs to their missions and charters. Agencies should also consider the ability of a small entity to pay in determining penalty assessments under appropriate circumstances. Each agency would have discretion to condition and limit the policy or program on appropriate conditions. For purposes of illustration, these could include requiring the small business to act in good faith, requiring that violations be discovered through participation in agency supported compliance assistance programs, or requiring that violations be corrected within a reasonable time.

An agency's policy or program could also provide for suitable exclusions. Again, for purposes of illustration, these could include circumstances where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct, or poses a grave threat to worker safety, public health, safety or the environment.

In establishing their programs, agencies may distinguish among types of small entities and among classes of civil penalties. Some agencies have already established formal or informal policies or programs that would meet the requirements of this section. For example, the Environmental Protection Agency has adopted a small business enforcement policy that satisfies this section. While this legislation sets out a general requirement to establish penalty waiver and reduction programs, some agencies may be subject to other statutory requirements or limitations applicable to the agency or to a particular program. For example, this section is

not intended to override, amend or affect provisions of the Occupational Health and Safety Act or the Mine Safety and Health Act that may impose specific limitations on the operation of penalty reduction or waiver programs.

TITLE THREE

Sections 301 & 302

The bill would amend the Equal Access to Justice Act to assist small businesses in recovering their attorneys fees and expenses in certain instances when agency demands for fines or civil penalties in enforcement actions are not sustained. While this is a significant change from current law, it is not the intention of the Committee that attorneys fees be awarded as a matter of course. Rather, the Committee's intention is that awards be made frequently enough to change the incentives of enforcement personnel and to assist in changing the culture among government regulators to increase the reasonableness and fairness of their enforcement practices. Past agency practice too often has been to treat small businesses like suspects. A goal of this bill is to encourage Government regulatory agencies to treat small businesses as partners sharing in a common goal of informed regulatory compliance. Government enforcement attorneys often take the position that they must zealously advocate for their client, in this case a regulatory agency, to the maximum extent permitted by law, as if they were representing an individual or other private party. But in the new regulatory climate for small businesses under this legislation, government attorneys with the advantages and resources of the federal government behind them in dealing with small entities must adjust their actions accordingly.

The Equal Access to Justice Act (EAJA) provides a means for prevailing small parties to recover their attorneys fees in a wide variety of civil and administrative actions between small parties and the government. This bill amends the EAJA to create a new avenue for small entities to recover their attorneys fees in situations where the government has instituted an administrative or civil action against the small entity to enforce a statutory or regulatory requirement. In these situations, the test for recovering attorneys fees in whether the final outcome imposed or ordered in the case (whether a fine, injunctive relief or damages) is disproportionately less burdensome on the small entity than the government's actual demand. This test does not provide attorneys fees if there has merely been a reduction in the burden on a small entity between the demand and the final outcome. The test is whether the demand is out of proportion with the actual value of the violation.

The comparison is always between an "express demand" by the government and the final outcome of the case. An express demand is just that—any demand for payment or performed by the government, including a fine, penalty notice, demand letter or otherwise. However, the term "express demand" should not be read to extend to a mere recitation of facts and law in a compliant.

This test should not be a simple mathematical comparison. The Committee intends for it to be applied in such a way that it identifies and corrects situations were the agency's demand is so far in excess of the true value of the case, as demonstrated by the final outcome, that it appears the agency's assessment or enforcement action did not represent a reasonable effort to match the penalty to the facts and circumstances of the case. In addition, the bill excludes attorneys fee awards in connection with willful violations, bad faith actions and in special circumstances that would made such an award unjust.

The bill also increases the maximum hourly rate for attorneys fees under the EAJA from $75 to $125. Agencies could avoid the possibility of paying attorneys fees by settling with the small entity prior to final judgment. The Committee anticipates that if a settlement is reached, all further claims of either party, including claims for attorneys fees, could be included as part of the settlement. The government may obtain a release specifically including attorneys fees under EAJA.

TITLE FOUR

Section 401

The bill expands the coverage of the FRA to including IRS interpretive rules that provide for a "collection of information" from small entities. The intention of the Committees to permit enforcement of the RFA for those IRS rulemakings that will be codified in the Code of Federal Regulations. Although the Committee believes IRS should take an expansive approach in interpreting which of its actions could have significant economic impact on small businesses, less formal IRS publications such as revenue rulings, revenue procedures, announcements, publications or private letter rulings are not covered by the bill. The term "collection of information" as used in the Paperwork Reduction Act (Title 44 U.S.C., Section 3502(4)) is defined to include the obtaining or soliciting of facts or opinions by an agency through a variety of means including the use of written report forms, schedules, or reporting or record keeping requirements, which the Committee interprets to include all tax recordkeeping, filing and similar compliance activities.

If an agency is required to publish an initial regulatory flexibility analysis, the agency also must publish a final regulatory flexibility analysis. In the final regulatory flexibility analysis, agencies will be required to describe the impacts of the rule on small entities and to specify the actions taken by the agency to modify the proposed rule to minimize the regulatory impact or small entities. Nothing in the bill directs the agency to choose a regulatory alternative that is not authorized by the statute granting regulatory authority. The goal of the final regulatory flexibility analysis is to demonstrate how the agency has minimized the impact of small entities consistent with the underling statute and other applicable legal requirements.

Section 402

The bill removes the current prohibition on judicial review of agency compliance with the RFA and allows adversely affected small entities to seek judicial review of agency compliance with the Act within one year after final agency action, except where a provision of law requires a shorter period for challenging a final agency actions. The prohibition on judicial enforcement of the RFA is contrary to the general principle of administrative law, and it has long been criticized by small business owners. Many small business owners believe that agencies have given lip service at best to RFA, and small entities have been denied legal recourse to enforce the Act's requirements.

The amendment is not intended to encourage or allow spurious lawsuits which might hinder important governmental functions. The one-year limitation on seeking judicial review ensures that this legislation will not permit indefinite, retroactive application of judicial review. The bill does not subject all regulations issued since the enactment of the RFA to judicial review. After the effective date, if the court finds that a final agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court may set aside the rule or order the agency to take other corrective action. The court may also decide that the failure to comply with the RFA warrants remanding the rule to the agency or delaying the application of the rule to small entities pending completion of the court ordered corrective action. However, in some circumstances, the court may find that there is good cause to allow the rule to be enforced and to remain in effect pending the corrective action.

Section 403

The bill requires agencies to publish their factual, policy and legal reasons when making a certification under section 605 of the RFA that the regulations will not impose a significant economic impact on a substantial number of small entities.

Section 404

The bill amends the existing requirements of RFA section 609 for small business participation in the rulemaking process by incorporating a modified version of S. 917, the Small Business Advocacy Act, introduced by Senator Domenici, to provide early input from small businesses into the regulatory process. For proposed and final rules with a significant economic impact on a substantial number of small entities, EPA and OSHA would have to collect advice and recommendations from small businesses to better inform the agency's regulatory flexibility analysis on the potential impacts of the rule.

The agency promulgating the rule would consult with the SBA's Chief Counsel for Advocacy to identify individuals who are representative of affected small businesses. The Agency would designate a senior level official to be responsible for implementing this section and chairing an interagency review panel for the rule. The findings of the panel and the comments of small business representatives would be made public as part of the rulemaking record. The final bill includes modifications requested by Senator Domenici after consultations with the Administration. These modifications clarify the timing of the review panel and create a limited process allowing the Chief Counsel to waive certain requirements of the section after consultation with the Office of Information and Regulatory Affairs and small businesses.

Mr. BOND. How much time does the Senator from Montana require?

Mr. BURNS. How much time does the Senator have?

Mr. BOND. I ask the Chair that question.

The PRESIDING OFFICER. The Senator from Missouri has 24 minutes, and the Senator from Arkansas has 29 minutes.

Mr. BOND. I yield to the Senator from Montana 5 minutes.

Mr. BURNS. I thank the Chair. It has been my pleasure to serve on the Small Business Committee ever since I came to the Senate, and under the chairmanship of both Senator BOND and Senator BUMPERS. I know of the hours they put in on this and the leadership they display. They have been trying to do this for quite a while. Finally, we have a product on the floor that I think will work.

Mr. President, I rise today in support of S. 942, the Small Business Regulatory Fairness Act. This is a bill that we have worked on in the Small Business Committee, with the help of many

White House Committee on Small Business delegates. It is a bill that will give much needed relief to small businesses all across the country. And the end result will benefit us all.

Small businesses are responsible for the vast majority of new jobs created in the last year, in spite of everything the Government is doing to hinder that growth. In Montana, where 98 percent of our businesses are considered small business, not 1 day goes by that I do not hear "Get the Government off our backs and we would be creating more jobs," or "If you would just get out of the way, more folks would be starting new businesses and our economy would be improving."

Mr. President, from the awesome amount of paperwork that various Government agencies require to the fines that threaten small businesses if they do not comply with the thousands of regulations imposed on them, it is no wonder that some folks are discouraged from starting or growing their business.

This bill will ease some of that burden. It makes it easier for small businesses to comply with regulations by letting them know what is expected from them—in clear, simple language. And if the rule is not clear or not spelled out specifically in a compliance guide, the small business cannot be penalized. It is just one way of making the Government agency more responsible—and of making compliance easier on our small businesses. Who can argue with that?

It also directs the SBA to set up regional ombudsmen for small business and agriculture, giving folks a place to go to voice their complaints about unfair enforcement of regulations—without fear of retribution. This provides a check on the agency, forcing their inspectors to be accountable for their actions. Small businesses can critique the inspectors and Government lawyers, and we then get an idea of how responsive different agencies are to small business.

There are a lot of ways we can help small business today. The White House Conference on Small Business produced 60 recommendations of what we can do to help. In nearly every category, dealing with regulations was mentioned. There is much more to be done to curtail unnecessary regulations and reduce the presence of Government in our lives—but this is just a first step.

We will always have rules and regulations—that is just the way our Government works. And no doubt we need some of those. But let us make it easy to understand and easy to comply. Let us give those being regulated a fair chance. I would encourage my colleagues to support this important legislation on Tuesday by voting for its passage. I know Montana's small businesses are counting on this and I would imagine that small businesses all across the country, as well as their customers, would be eager to see this passed.

Mr. President, we hear stories in our home States—we all have them—when we go home and sit down with the people who are providing the biggest percentage of new jobs in this country, which is the small business community, the entrepreneurs just starting out, and they are expanding. We know how important this is. They are also saying that we have to get Government off of their backs. If we just get out of the way, more folks would go into business and they would start expanding the economy as much as they can, just on a new idea, making some things happen.

Government rules and regulations are always going to exist in some areas of business and in other areas of our life, but now we will have a part of Government that is actually going to be an advocate for small business. This will put a person in the region to whom a small business can go and take the problem they are having with a regulatory agency—someone to hear them out and who they could have a relationship with, so that they might solve their problems.

Mr. President, we had a big problem in the State of Montana in the wood products industry, which is a big industry. We have some post and pole people who treated fencepost or treated lumber. They used some chemicals that, yes, are highly toxic. Rather than working with the people to get them in compliance, the EPA just went and found the violations and made the fines so big, and the cleanup so expensive, that they all went broke. I can cite four in the State of Montana alone. Here is the bad part about it. I forget the chemical they dip the posts into now, but there was one full 55-gallon drum and one half-full of creosote. What they did is, after they took the soil, they hired a person from Portland with an incinerator to burn the soil, and a soil handler from Florida to bring it clear to Montana, and we have people in Montana that can do the same thing. That was all charged against the owner. Then they left this big hole in the ground. They did not finish burning their soil. They gave up on that. They actually opened up the 55-gallon drum and poured what was left in it back into the hole, contaminating the whole area.

Now, this is our Government at work. And then they told the poor guy, "Fence that off, would you?" He put up a 36-inch web around it without any barb on top of it.

We can cite time after time after time examples of regulators or regulation enforcers that set up their own little fiefdom, and they are king for a day. And we hope this piece of legislation, which all of us had a hand in developing, will do something about that.

I am really happy that our good friend from Oklahoma is pursuing the way we write our regulations, the way we write our administrative rules, after the piece of legislation has been introduced. I have been preaching on that for a long time. Those rules and regulations should come back to the committee of jurisdiction, if nothing else, to be reviewed so that they do reflect the intent of the law and the intent that we had.

I congratulate my chairman and ranking member on this committee because I think it is a humongous step in the right direction.

I yield the floor.

Mr. BOND. Mr. President, I thank the distinguished Senator from Montana. I note that he has been a very active participant in hearings, and he also held a very useful and productive hearing in Montana. He has contributed greatly to his committee.

Now I will yield 5 minutes to the Senator from Oklahoma, who has been very active in our issues and has come before our committee to testify on a number of small business issues. We are very happy to be able to accept an amendment that he and Senator REID of Nevada have offered.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, first, I want to compliment my colleague, the chairman of the Small Business Committee, Senator BOND, for his leadership, as well as that of Senator BUMPERS. It is great to see two people work together and push legislation that will be a real asset to small business. That is exactly what they have done. They have worked tirelessly in this committee. I served on that committee, and I tell my colleague, when I served on that committee, it was kind of frustrating because we talked a lot, but we did not do much.

Frankly, the Senator from Missouri and the Senator from Arkansas are doing things, passing legislation to help small business, trying to make sure with the legislation they have introduced today that the impact of regulations on small business will be heard. If, for some reason, the regulatory agencies do not take small business impacts into account, their legislation will provide a means for directing the agencies to take those impacts into account in their regulations. So I compliment them for their efforts and leadership.

AMENDMENT NO. 3534

(Purpose: To provide for a substitute.)

Mr. BOND. Mr. President, in order to make the procedural activities work appropriately, if the Senator from Oklahoma will withhold, I send to the desk the managers' amendment on behalf of Senator BUMPERS and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the managers' amendment.

The bill clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself and Mr. BUMPERS, proposes an amendment numbered 3534.

Mr. BOND. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

AMENDMENT NO. 3535 TO AMENDMENT NO. 3534

(Purpose: To ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. Nickles], for himself, Mr. REID, Mrs. HUTCHISON, Mr. DOLE, Mr. BAUCUS, and Mr. FEINGOLD, proposes an amendment numbered 3535 to amendment No. 3534.

Mr. NICKLES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. NICKLES. Mr. President, this is an amendment on which Senator REID, myself, and many others in the Senate, including Senator HUTCHISON, Senator BOND, Senator BUMPERS, have had a lot of input. We worked on it a lot and actually passed this amendment through the Senate on March 29, 1995, by a vote of 100 to 0. This amendment was in contrast to some legislation that the House passed. The House passed a moratorium on all regulations. We considered in the Senate actually a bill somewhat similar to that, which had passed through the Governmental Affairs Committee. However, this is a substitute.

The moratorium would have lasted only until the end of last year; it would have expired December 31, 1995. It would not have an impact today. It might have stopped some regulations that were going forward in that period of time. This legislation, though, will be permanent law. We did pass it with bipartisan support. I thank Senator REID. It is not often that we have bipartisan support on legislation that will really have a significant impact. I am glad we have it in the legislation that Senator BOND and Senator BUMPERS had, the so-called reg flex proposal, and also the congressional review proposal that Senators REID, HUTCHISON, and myself are pushing today.

This legislation, instead of having a moratorium, we will have a permanent law that says Congress should review all new regulations. If you find that an agency passes a final rule and it has a significant impact, and you do not like it, you should stop it, you should change it. We, in Congress, many times will pass a law and congratulate ourselves and say we did a good job, give the regulatory agencies a fair amount of flexibility in implementing that law, but then we kind of turn our backs and we get busy and forget about what we did.

Then we find the full impact of the law once it is final and the rules are promulgated. It may be a year or two after we pass the legislative language that we find that rules issued pursuant to that law have a very significant economic impact—sometimes very, very significant negative economic impact. Sometimes the rules can be enormously expensive. Sometimes they can be ludicrous.

Yet we are sitting on our hands in Congress. And our constituents are saying, "When did you guys pass that law? What did you do? Do you know what you were doing?" A lot of times we sit back and say, "Well, the law had very good intentions." And, if you read the statutory language, it sounded pretty good. But the final rules implementing the statutory language leave a lot to be desired.

This proposal would say that when the regulatory agencies make their final rule, notification of that final rule will be sent to Congress, and sent to the GAO. And we can review it. If it is a major rule, or significant rule as determined by the administration, usually if it has an economic impact over $100 million on the economy, that rule will be suspended for 45 days. So it does not go into effect immediately. So we have a chance to listen to people, and before it becomes final we can stop it. Under this proposal, Congress can pass a joint resolution of disapproval. We have expedited procedures in the bill so no one can filibuster, or stop the will of the majority.

So, you can get a vote in both Houses passing a resolution of disapproval, and send it to the White House, and say, "No. We think this rule is a mistake. This is not what we meant. We think it goes too far. It is too expensive, too cumbersome"—for whatever reason; maybe because our constituents are telling us this rule does not make sense. Maybe the rule does not have an economic impact over $100 million. It does not have to, if our constituents convince us that the rule does not make sense. We can stop it.

That is what this legislation is all about. This is going to encourage congressional review of rules and I think put more responsibility on Congress. We have not done very good in legislative oversight. Maybe we are too busy. For whatever reason, there are lots of rules and regulations out there that many people say are idiotic and do not make sense, and they are too expensive.

I see the occupant of the chair. I know of his profession prior to coming to the Senate as a physician. And I can think of one law that passed—the Clinical Laboratory Improvement Act. It had very good intentions. But the net result was that in a lot of areas it was very expensive. As a matter of fact, I had physicians in my State telling me, "Wait a minute. We cannot do lab tests in our own office. We have been doing it for 20 years. And I have to give blood tests. I have to give results to my patients, and quickly, if I am going to give quality health care. And now I have a rule implementing the Clinical Laboratory Improvement Act which says that I cannot do that in my office. I have to send it off to a pathologist in Nashville, TN, or Oklahoma City, or Maine. Their office is 200 miles away, and it may take 24 hours or 48 hours to turn that around." That is dangerous medicine. Maybe that rule implementing the legislative act went too far.

This proposal would give us a chance, if a regulatory agency comes down with a rule, to review that rule. And, if we do not like it for any reason, we can stop it and we send it to the President. If he disagrees with us, he can veto it.

Mr. President, I can think of any number of agencies that Congress needs to spend more time watching. And, again, maybe all of the legislation had very good intent. But the regulations' impact went too far.

There is a rule floating around right now in OSHA called ergonomics. It sounds very good. It protects people from injuries caused by repetitive motions. But, all of a sudden, the Department of Labor is telling people how high their desk has to be, or are getting ready to tell people that they cannot lift a box or a package which is over 25 pounds. The Department of Labor is suggesting you must have two people. There are implications from this regulatory proposal that could cost billions of dollars. Maybe something needs to be done to prevent injury to people from repetitive motions in the workplace. However, if the Department of Labor comes up with a final rule that is similar to the ergonomics language they have been floating, I think of a lot of us would say, "Stop that. Wait a minute."

I grew up in a machine shop. If you had someone saying that you cannot move anything over 25 pounds—we move a lot of heavy equipment around—that rule would not work.

So again we need a little common sense. That is what this legislation is all about. It is congressional review. If regulatory agencies pass a rule and it does not make sense, we have 45 days to pass a joint resolution of disapproval, and we have expedited procedures. People will not be able to filibuster that rule. So we can get it through the Senate, if you have 51 votes, and through the House if they have a majority vote, and send it to the President. If he feels very strongly that that rule does not need to be rewritten or reviewed, he can veto it. And we can try to override his veto. So we still have checks and balances. We do not suspend all rules for the 45 days, but only those rules that have significant economic impact as defined by the administration.

We made a few changes—which are different in the legislation that we passed last year in March. We changed

the name of the legislation to the Congressional Review Act. We put in an exemption for hunting and fishing rules. The 45-day delay provision was changed to a complete exemption—which is different in the legislation the Senate passed last March. That was sought by Senator STEVENS. And I appreciate his input.

Also, final rules that were issued pursuant to the Telecommunications Act of 1996 are made exempt from the automatic 45-day delay provision to ensure that short deadlines recently given the FCC under Telecommunications Act can better be met.

Also, the look-back provision that was provided to permit congressional review of significant final rules issued between November 20, 1994 and date of enactment was modified by replacing "November 20, 1994" with "March 1, 1996." In other words, we say that this law will be effective for congressional review beginning March 1, 1996.

Again, I thank my colleagues—most of all, Senator REID because I have worked with him on many issues over the years, and regulatory reform has been in the forefront of our efforts. We know that we need to reduce—if not eliminate—unnecessary, burdensome, and excessively costly regulations. Adoption of our amendment is an important step in putting Congress back to the table.

This bill that we will pass shortly—finally I guess next Tuesday—in the Senate is going to make Congress be more responsible. Then if the regulatory agency passes a bad rule and we do not review it, that is our fault. Congress needs to step up. Committee chairs need to step up and monitor what the regulatory agencies are doing. And, if they do a bad job, we need to hold them accountable.

So it puts more responsibility on the Congress. We just cannot blame the agencies and wash our hands. If we pass a good bill—and say, "I cannot believe those regulatory agencies interpreted it that way. I cannot believe they did it"—now we have a chance to say, "Wait, agencies. You went too far. Rewrite your rules. Change it. Take into account what people are saying in rural Tennessee, or rural Missouri, or whatever that impact is in Arkansas."

So I think it is vitally important. This is good legislation. This will help.

Again, I thank my colleagues from Missouri and Arkansas for their legislation both on reg flex, and for their cooperation and support on congressional review.

I yield the floor.

Mr. REID. Mr. President, last year, this same amendment passed this body unanimously by a vote of 98 to 0. I remain convinced that this legislation, offered by my good friend, the senior Senator from Oklahoma, and myself, is a good solution to the problem of excessive bureaucratic regulation. This amendment, like this bill, will do a lot to put common sense back into our regulations.

As I visit the communities around Nevada, big and small, I see many small businesses trying to compete in these evolving markets. I know of many local shops and enterprises that cater to small towns just trying to remain solvent. It is the same in our big cities, Mr. President. Government should not be an obstacle to commerce and competition. I am afraid that in too many cases it is.

The U.S. Chamber of Commerce has estimated the cost of complying with regulations is $510 billion a year, approximately 9 percent of our gross domestic product.

The amount of time spent filling out paperwork has also been estimated at about $7 billion. I think that is too low. I think it is much higher than that. Now, not all regulations are bad. Some regulations are valuable and serve important purposes, but because of the regulatory efforts that we have made, we have made great progress. Our workplaces are generally safer. We have much cleaner water than we used to have, both in our rivers and streams and in our drinking water. Air quality standards are better than they used to be. The problem, though, is that many times we pass laws and then the bureaucrats step in and make very complicated regulations that go beyond the intent of our law, beyond our sound policy.

These complex regulations, as I have stated, go way beyond the intent of Congress and fail to recognize the practical implications and impact of these regulations. Under the current regulatory environment, small business owners must hire entire legal departments to comply with these countless regulations. This reality has led Americans to become frustrated and skeptical of Government, and that is not the way it should be. According to polls, more than half the American public believe that regulations affecting businesses do more harm than good. That is certainly too bad.

This amendment will allow the Congress to look at these major rules before they go into effect. We are going to pass some more laws, but when the regulations are promulgated, we are going to have the opportunity to look at them. If we do not like these regulations, we can veto them, in effect. That is the way it should be.

This amendment will allow Congress to look at these major rules. This amendment enables Congress to examine the regulations that are being promulgated and decide whether they achieve the purposes they were supposed to achieve in a rationale, economic, and least burdensome way. Congress is intended to be more than just a roadblock for regulators, but a voice representing the many segments of society to put democracy back in public policy.

This amendment is one that Members on both sides of the aisle can vote for because when we first offered it, it passed 98 to 0. And, second, it takes a commonsense approach to an issue that we all agree is a significant problem, that is, complex and burdensome regulations.

Mr. President, Americans want Congress to work together to get Government working for them, not against them. This amendment is one of those that will probably not receive a single line of print in a newspaper. Why? Because it is going to be accepted unanimously, probably, unless someone makes a mistake and votes against it. But it will pass overwhelmingly. It is being offered by the chairman of the Democratic Policy Committee and the chairman of the Republican Policy Committee—Senators REID and NICKLES. We need to do more stuff together. We need to set an example to the American public that we can work together in a bipartisan fashion to solve burdensome problems.

The way regulations are promulgated is a burdensome problem, and this amendment will do a lot to alleviate a problem that faces all Americans.

The PRESIDING OFFICER (Mr. FRIST). Who yields time?

Mr. BOND. Mr. President, I yield myself 1 minute. As I have already said, I believe that this is an excellent amendment. We have reviewed it on both sides. I commend Senator NICKLES, Senator REID, and the others for it. We are prepared to accept it.

Mr. BUMPERS. Mr. President, I compliment the Senator from Oklahoma for offering the amendment. I think it is an excellent amendment. We certainly are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment (No. 3535) was agreed to.

Mr. BUMPERS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BUMPERS. Mr. President, at this point I ask unanimous consent that Senators BAUCUS and FEINGOLD be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. How much time does the Senator from Virginia wish? Five minutes?

I yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Thank you, Mr. President. I thank my colleagues from Arkansas and from Missouri.

Mr. President, I rise today as a cosponsor of S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996 as reported from the Small Business Committee.

As our colleagues know, several of us—actually quite a number of us—have been working for many months to try to develop a responsible comprehensive regulatory reform package which can achieve bipartisan support.

The bill that we are debating this morning and will vote on on Tuesday contains elements that were included in that broader package, and I am very pleased to see those provisions move forward now with very significant support on both sides of the aisle.

Specifically, this bill on which I have had a chance to work with Senator BOND, the National Federation of Independent Businesses, and others, allows judicial review of the Regulatory Flexibility Act.

We passed the Regulatory Flexibility Act in 1980 to guarantee that the special concerns of small businesses were addressed by agencies when issuing rules, but the provisions of that act were not reviewable in court. Unfortunately, the fact that the act was therefore, in effect, unenforceable led many agencies to simply disregard its provisions. Needless to say, this has created enormous frustrations for small businesses. Not only were agencies failing to consider the impact of regulations on small businesses, but some agencies were actually flouting the law by that failure. Because of agency failure to take small business concerns into account as the law required, small businesses in many instances were forced to comply with rules that were more onerous than necessary simply because the agencies were refusing to follow the law because no courts were looking over their shoulders to make sure that they complied.

In order to make the Regulatory Flexibility Act work as intended, it has become necessary to make it judicially enforceable. Agencies will now be required to explain how a rule likely to have significant impact on small businesses has been crafted to minimize that impact on those businesses or else risk court action.

While I am pleased that the regulatory flexibility provision is moving swiftly toward becoming law, I hope—and I ask my colleagues to join in this effort—that it will not divert our effort to continue to work on a more comprehensive bill. I still believe that we can develop legislation requiring agencies to regulate in a more cost-effective fashion without undermining the ability to protect our environment, our workers or our public health. As I have stated in the past, if we can maintain the level of protections and increase the efficiency in how we attain it, consumers will ultimately reap the benefits. Of course, every dollar that business spends beyond what is necessary to protect us in our environment is one less dollar that can be used to hire an employee or fund a pay raise or pay for plant expansion. Not only will consumers benefit but so will the economy.

Regulating in a cost-effective fashion simply makes sense. If we can achieve the same environmental benefit for less money, or, even better, achieve more environmental benefit for the same money, then we simply ought to do it. I will continue to work with our colleagues to try to make that happen. Senator JOHNSTON of Louisiana and I are circulating today a discussion draft which I believe meets the dual and not mutually exclusive goals of eliminating unnecessary costs while safeguarding our environment and ourselves.

Again, Mr. President, I commend our colleagues, particularly the chairman and ranking members of the Small Business Committee, Senators BOND and BUMPERS, for taking the first steps in moving responsible regulatory reform. I look forward to continuing to work with all of our colleagues as we try to craft a responsible comprehensive regulatory reform bill.

With that, Mr. President, I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I will be happy to yield the Senator such time as she may require.

Mrs. HUTCHISON. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I want to take this opportunity to say how much I appreciate the leadership that the Senator from Missouri, Senator BOND, the Senator from Arkansas, Senator BUMPERS, have provided for the small business people of our country.

We have been working together in the Small Business Committee for over a year to try to get regulatory relief for those who cannot afford the excesses to spend money, frankly, on things that do not help the bottom line, that do not help the ability to create jobs, that do not help the ability to create new capital, and that is our small business people.

They are the ones that just do not have that margin to be able to fight excessive regulations that sometimes do not make sense. I think all of us have come together in a very bipartisan spirit, under the leadership of Senator BUMPERS and Senator BOND, to say, let us give relief at least to the small business people of our country so that they will be able to grow and prosper because what will make this country economically viable once again is strong small businesses.

That is what this bill does. This bill will give some relief where it is so needed. I especially appreciate the willingness of Senator BOND and Senator BUMPERS to work with Senator NICKLES and myself on the amendment that will allow congressional review. Of course, that bill has passed the Senate by an overwhelming margin. That would allow Congress to be able to review regulations that come through.

I think that is going to be a very important first step for accountability in our regulatory agencies. It is really a matter of Congress taking responsibility for the laws it passes and the delegation that it gives to our regulators.

Mr. President, I ask unanimous consent to be listed as a cosponsor of the Nickles amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I applaud the efforts of Senator BOND and Senator BUMPERS once again. I hope that we can pass this regulatory bill, regulatory relief bill for our small businesses with a 100-percent vote. I cannot imagine anyone not wanting to do this on a very timely basis. The small business owners of our country deserve this relief. It will help our economy because once we free small businesses to be able to grow and prosper, what will happen is more jobs will be available for the working people of our country. That is in all of our best interests.

So I applaud the sponsors of the bill. I appreciate the time, and yield back my time. Thank you.

Mr. BUMPERS. Mr. President, I yield myself such time as I may consume. I compliment Senator HUTCHISON on a very fine statement. She is also one of the faithful attendants at the Small Business Committee. Sometimes we have difficulty getting a quorum. She is dedicated to the small business community and manifests that dedication by being a good steward on that committee.

Ms. SNOWE. Mr. President, the legislation that is before us today—S. 942, the Small Business Regulatory Enforcement Fairness Act, addresses what I believe is one of the most significant problems facing America's entrepreneurs and small business people, and that is the burden of excessive Federal regulations. These overreaching regulations prevent the birth and stunt the growth of small businesses all across the country. As part of our continuing efforts on this committee to stimulate business activity and increase job opportunities, this legislation acts as a Heimlich maneuver for the small businesses community that is choking on gobs of Federal redtape.

I would first like to thank the chairman of the Small Business Committee, Senator BOND, for crafting the legislation that is before us—and for working to develop the strong bipartisan consensus that now exists for its passage. Although many often speak of their support for relieving the regulatory burden shouldered by our Nation's small entrepreneurs, Senator BOND has taken action in the offering of this legislation.

Using the recommendations of the White House Conference on Small Business, S. 942 provides fundamental regulatory reform in the small business sector. This legislation contains several important measures essential to the future of small business in America.

It requires that regulators provide for a cooperative and consultative regulatory environment, no longer viewing small business as the enemy.

It establishes a Small Business and Agriculture Enforcement Ombudsman at the Small Business Administration [SBA] that will allow small businesses

to express their concerns and complaints concerning the enforcement actions of agencies without fear of reprisal or retaliation.

It requires agencies to simplify language and to use forms that can actually be read and understood. I don't know how many of my colleagues have attempted to read the thousands of pages of regulations that are issued by Federal agencies, but as the small business owners in my State can attest, finding the time to read the regulations is only one one-hundreth of the battle—actually understanding them is the rest of the war.

And perhaps most importantly, it allows small businesses to finally be able to enforce a law that was enacted to fundamentally change the process by which Federal regulations are written and considered with respect to small businesses: the Regulatory Flexibility Act of 1980.

I believe the Regulatory Flexibility Act remains an excellent tool for serving the needs of the Nation's small business community. But I also believe it must be strengthened if it is to ever fulfill its objective of forcing agencies to consider the impact of their regulations on small businesses and giving small business owners a louder voice in the regulatory process.

For years, the call for judicial enforcement of Reg Flex has been clearly sounded by our Nation's small businesses. Indeed the annual report of the Chief Counsel for Advocacy in the Small Business Administration even concludes that "the only solution is to subject agency decisions * * * to judicial scrutiny." Therefore, by providing for judicial enforcement of the Regulatory Flexibility Act, the legislation we are now considering will at last provide small businesses with the fundamental right to enforce a law that has been on the books for over 16 years.

Small businesses play a critical role in the long-term growth and prosperity of our Nation by providing stable, permanent jobs. My home State of Maine is particularly reliant on small businesses for economic growth and job creation. Of the 29,920 firms with employees in Maine, all but 700 are small businesses. In addition, 61.4 percent of Maine's private nonfarm workers were employed by small businesses in 1991—far exceeding the national average of 54 percent.

Nationwide, the number of small businesses has increased by 49 percent since 1982. These entrepreneurs are responsible for 52 percent of all sales in the country, and for 50 percent of private GDP. As these numbers show, small business truly is the backbone of the U.S. economy.

This legislation recognizes that the health of the small business community has far-reaching implications for the future, and that the excessive regulatory climate facing today's small businesses is a threat to the overall strength of the entire American economy.

This legislation represents a significant step toward our goal of releasing the American entrepreneurial spirit from the bonds of excessive Federal regulation, and I urge my colleagues to join me in supporting it.

Mr. FEINGOLD. Mr. President, I rise to support this legislation, the committee substitute amendment to S. 942, and I want to commend the distinguished chairman of the Small Business Committee, Mr. BOND, for his leadership on this bill.

The measure before us contains several provisions that will afford regulatory relief to our Nation's small businesses, and will also help begin to change the attitude of Government regulators who are often viewed by small business as adversaries rather than as sources of help and guidance.

I am pleased that S. 942 contains many of the provisions that are also in bills I have introduced, S. 1350, the Small Business Fair Treatment Act of 1995, and S. 554, a bill I introduced about a year ago that strengthens the Equal Access to Justice Act.

Mr. President, the regulatory structure that has developed over the years performs important safety, health, and consumer protection functions. At the same time, few would dispute that the current regulatory system needs meaningful reform.

Mr. President, I have held nearly 250 listening sessions in my home State of Wisconsin during the past 3 years at which many of my constituents have expressed their tremendous frustration and anger with certain aspects of the regulatory process that sometimes is impractical, impersonal, and needlessly burdensome.

This body debated a regulatory reform proposal last summer that sought to respond to this widespread frustration and anger. But, in large part, that debate focused more on changes in the actual rulemaking process, and featured solutions that, if not entirely Washington-centered, at best took a Washington perspective in addressing the issue.

The measure before us takes a different approach—focusing on the day-to-day, practical problems of regulation with which small businesses must contend. I want to point to just a few of the bill's provisions in which I have had a special interest, and let me begin with the language strengthening the Equal Access to Justice Act.

That 1980 law that was intended to help small businesses and individuals who get into the ring with the Federal Government over enforcement of regulations by allowing them to recover their legal fees and certain other expenses if they prevail.

In general, I oppose the so-called loser pays or English rule under which the loser in civil litigation must pay the costs of the prevailing party. The additional risk of those costs can act as a barrier to the courts for those who are most vulnerable. That is not true, however, for the Government.

In cases where the Government brings an action against a small business or an individual, the potential cost of losing poses no such barrier to Government with its vast resources. In fact, the opposite is true.

The costs confronting a small business or an individual that is the target of a Government action may become a barrier to a just outcome, possibly forcing them to concede a violation, even when none existed, just to avoid costly litigation.

When I was elected to the Wisconsin State Senate, I authored our State Equal Access to Justice Act, and have been working to strengthen the Federal protections since coming to this body, introducing S. 554 to update and streamline the law.

The language in this bill raises the rate at which attorney's fees may be awarded from $75 to $125 an hour.

Further, it modifies the present standard by easing the requirement that a successful claimant, in addition to prevailing on the merits, show that the Government's actions were unreasonable.

To its credit, this bill makes that standard easier to attain, and in turn helps small businesses and individuals to recover their attorney's fees. I am pleased they were included.

Frankly, I believe that the substantial justification defense by Federal agencies should be deleted entirely and proposed doing so in my own legislation, S. 554.

While I look forward to pursuing the additional reforms found in my bill in the future, I applaud the authors for the improvements they have included in this legislation.

We all know how difficult it can be on a small business owner to overcome what is sometimes overbearing Government regulation.

I believe that the Equal Access to Justice Act helps ease that burden and that the improvements offered in S. 942 will make the act work better in the future.

Mr. President, as I noted earlier, there are a number of provisions in this bill that were the basis of many of the provisions in my own small business regulatory reform initiative, S. 1350, the Small Business Fair Treatment Act.

And I was glad to see the committee retained a number of those provisions, including a modified version of the sections requiring agencies to publish compliance guides describing regulations in straightforward, understandable language, and then holding agencies to that description when they are enforcing the regulation.

Beyond the obvious help these guides could provide to businesses affected by a Government regulation, requiring an agency to think out and describe a new regulation in a clear and understandable way will only enhance the ability of that agency to administer the regulation.

Another provision common to S. 942 and my proposal relates to so-called No-action Letters.

Again, though the provision is slightly different from the approach I took, it represents a real step forward in helping small businesses needing clarification of a law or regulation in a particular instance.

I was also pleased to see the section in S. 942 requiring agencies to establish procedures under which, in some circumstances, they will waive penalties on small businesses.

I had included a number of provisions in my own bill that included similar features, because it is far better to allow small firms that want to comply with laws and regulations to devote their limited resources to correcting problems rather than paying fines.

Mr. President, this provision will also help improve and enhance the relationship between small businesses and Government agencies.

In listening to small businessmen and women in Wisconsin, one of the most troubling complaints that is raised with respect to Government regulation is the feeling that Government agencies too often take a confrontational or adversarial approach in dealing with the business.

Whether or not this feeling is justified in every instance, in many instances, or in only a few, it is honestly felt and reveals a problem that needs fixing.

In one instance, the owner of a small contracting company that does construction on older houses contacted my office expressing concern that certain OSHA regulations being applied to his business were probably originally created for larger construction companies dealing with different types of structures and should be modified for companies engaged in his kind of business.

He cited requirements that he prepare a safety program for every job he does—even though the homes on which he works are much the same—as being inappropriate and time-consuming, and he outlined various other concerns.

After my office contacted the agency and asked its views on his suggestions, OSHA showed up at his work site to conduct a surprise inspection.

Mr. President, a small business ought to be able to raise concerns about an agency's regulations without fear of triggering an enforcement action.

When the relationship between those who oversee and enforce regulations and those who must observe them deteriorates in this manner, it only hinders compliance.

By requiring agencies to establish procedures to waive penalties under certain circumstances, the bill can help shape the regulatory structure in a way that will begin to change the attitude of regulators to encourage cooperation rather than confrontation.

The provisions establishing a Small Business and Agriculture ombudsman to review agency enforcement activities will also help in changing agency attitudes.

I took a slightly different approach in my own legislation, by explicitly prohibiting agency personnel practices that reward employees based on the number of violations they can find or the fines they can levy.

I included this provision in response to comments made to my office by small business people who have reported that agency personnel have felt compelled to find something wrong, even if it is small, in order to justify their visit to the firm.

Again, though the provision in my own legislation differs from the bill before us, the language in S. 942 is headed in the right direction, and I commend the chairman for his leadership in advocating the kinds of structural changes that I believe will help change the relationship between regulators and small business.

Mr. President, the current system is not acceptable; the need for reform is clear and imperative.

And though the larger regulatory reform legislation has bogged down, I very much hope a compromise can be worked out and a meaningful reform package can be enacted into law.

But, even if a compromise on the larger regulatory reform measure can be hammered out, it is likely to reflect a process-oriented approach that may provide large corporate interests with avenues for relief, but does little to address the day-to-day problems facing small business.

Nor does such legislation address the very real feeling of small businesses that Government regulators too often act as adversaries rather than to provide guidance in helping firms to comply with the law.

By contrast, the provisions outlined in this measure both provide some practical regulatory relief and can improve the relationship between businesses and agencies.

Mr. President, I again congratulate the senior Senator from Missouri for his leadership on this measure, and I urge my colleagues to support the bill.

I yield the floor.

Mr. FAIRCLOTH. Mr. President, I am proud to support the Small Business Regulatory Fairness Act as a cosponsor.

Before I was elected to the Senate in 1992, I spent more than 40 years in the private sector as a farmer and a businessman. I know firsthand how hard it is to run a small business successfully, and how much harder it has become due to burdensome Government regulations.

It is only fair that we recognize the limited resources of small businesses, and the need to provide the small business community with greater access to the regulatory process. This bill contains important provisions that encourage comment from small business on proposed regulations; promote easier compliance with regulatory requirements; provide that regulations be explained in a way that they can be understood by small businessmen, not just by bureaucrats; and offer improved protection for small business from punitive or capricious actions by regulators.

It is encouraging that this effort to provide greater consideration for small business in the regulatory process is a bipartisan effort. Many of the provisions in this bill are based on recommendations from last year's White House Conference on Small Business. The staging of this conference is a noteworthy exception to the hostility that the Clinton administration has otherwise shown to small business.

Hillary Clinton built her health care plan around an employer mandate that would have devastated small business. And the President vetoed increased deductibility for health insurance purchased by the self-employed. Also, President Clinton's vocal support for a higher minimum wage demonstrates his indifference to the precarious conditions that are the norm for most small businesses.

Mr. President, I think it is ironic that President Clinton would like to take credit for creating more than 8 million jobs over the past 3 years, when he has done so much to cripple the largest producer of new jobs, small business.

I hope that we can pass the Small Business Regulatory Fairness Act as the first of several bills that would provide much needed relief for small business. In particular, product liability reform, and broader regulatory reform are desperately needed. Also, I believe that we should not ignore small business when we take up health care reform. We should include the deducibility provisions for the self-employed, as well as provisions like medical savings accounts that would make health care more affordable for small businessmen and their employees.

I commend the Senator from Missouri for his work on behalf of the small business community. The provisions of his bill add some badly needed common sense to the regulatory process. I urge my colleagues to support it.

Mr. BAUCUS. Mr. President, I rise in very strong support of the Small Business Regulatory Enforcement Fairness Act. This bill is regulatory reform in the very best sense. It will make a practical difference in the daily lives of men and women who operate small businesses and create jobs in Montana and all across the country. It will do so without undermining the environmental and health and safety laws that protect our families and our communities.

Mr. President, we need to cut back the Federal bureaucracy. I do not think there is anybody who disagrees with that. There is too much redtape. People know that. They tell Congress that. They are correct. Already the administration has eliminated some 16,000 pages of Federal rules and redtape. Think of that. The administration has already eliminated 16,000 pages. It is a good start but we can do more.

Moreover, some Federal regulations just do not make sense like the rule

that required loggers in northwest Montana to buy steel toed boots even though they work on slippery frozen slopes where those kinds of boots can actually create a hazard, or the rule that would have banned the use of common bear sprays that hikers need to protect themselves.

Rules like these drive Montanans crazy, with good reason.

We got those rules withdrawn. But we need a more comprehensive solution, so we do not have to react to every stupid rule that comes along. And, in large measure, this bill provides it.

Three aspects of the bill are particularly important.

The first is making is simpler for business to comply with the law.

We need strong health and safety laws. And we need them enforced. But, when it comes to small businesses, regulators need to start with an attitude of cooperation rather than confrontation.

Montana small businesses want to comply with the law. After all, they live in the community. They want it to be clean and safe.

But, in too many cases, the laws and regulations are written in such gobbledy-gook that average folks cannot figure out what they are supposed to do.

This bill helps. For example, it requires agencies to issue guidebooks, written in plain English, explaining what steps a small business must take to comply with new rules.

And it requires agencies to give decent answers to small businesses that have specific questions about how a new rule applies to them.

Now, these requirements may be bad news for lawyers, but they are good news for small businesses.

The second is strengthening the Regulatory Flexibility Act.

Reg flex, as it is called, is designed to make sure that as they write new rules, the bureaucrats pay specific attention to how small businesses and towns will be affected. Unfortunately, this requirement has been ignored to often.

So the bill allows a small business to go to court to require an agency to comply with the law.

During last year's debate on regulatory reform, I was concerned about creating dozens of new opportunities for lawsuits, especially from large corporations, that would clog the courts and bring things to a halt.

But I think the provision in this bill makes good sense. It will not have that same defect. It is focused on small business. And it just assures that agencies have taken a reasonable look at the impact their rules will have on small businesses.

The third is the Nickles-Reid amendment. This provision requires agencies to submit major new rules to Congress for review before they become effective.

This review will inject an important check into the system. We in Congress can be a backstop for common sense. We can help sort out the good rules from the bad.

If an agency goes haywire, like OSHA did with its logging rule, Congress can reject the rule. But if an agency is doing a good job, protecting public health and safety, things will stay right on track.

All told, Mr. President, this is a solid bill. It will cut redtape and make the bureaucracy more responsive to the concerns of small businesses.

Moreover, it is a bipartisan bill. It is a model of how we should be legislating around here.

I compliment the chairman of the Small Business Committee, Senator BOND, and the ranking member, Senator BUMPERS, for their hard work drafting this bill, developing a consensus, and bringing the bill to the floor. I am proud to cosponsor it and hope it will pass with overwhelming support.

Mr. GRAMS. Mr. President, as a former small businessman, I understand the need for regulatory relief and flexibility for small businesses.

Recent estimates indicate that regulations cost employees more than $5,000, with much of the cost wrapped into an unbelievable 1.9 billion hours filling out forms, each year.

In addition to killing jobs, the cost of this red tape is passed directly to consumers through higher prices on goods and services. The workers are tired of Washington bureaucrats eating up their wage increases.

Over the last 3 years I have met with hundreds of workers who have detailed the tremendous burdens of Government rules and regulations.

I also met with many job providers at last year's White House Conference on Small Business. Delegates from every State came together to discuss the problems that job providers face and to suggest ways in which Congress could help.

The bill before us today is a direct result of their efforts. Although it addresses just a few of their suggestions, I am here to lend my support to this first step in providing small business with some real regulatory relief.

In 1980, Congress passed the Regulatory Flexibility Act. This bill required that Federal agencies consider the impact of proposed regulations on job. Unfortunately, that law didn't give job providers much of an enforcement mechanism.

This bill will change that.

At the suggestion of the White House Conference, this legislation will reduce the impact of Federal regulations on job providers by authorizing judicial review of the Regulatory Flexibility Act. A court could set aside a rule, or order an agency to take corrective action if it finds an action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

The bill will also create an atmosphere of cooperation between job providers and regulatory agencies, by giving job providers the opportunity to participate in the rulemaking process and by allowing agencies to wave penalties for first-time rule infractions.

This bill allows job providers to conduct their work on a level playing field by providing an opportunity to correct arbitrary enforcement actions and require Federal agencies to be less punitive and more solution oriented.

Most importantly, the Small Business Regulatory Enforcement Fairness Act will require Federal agencies to examine the need for regulations and weigh them against the Nation's need for job creation.

In closing, Mr. President, regulatory reform is absolutely essential if job providers and workers are going to grow and continue to create the jobs that propel the economy and promote prosperity.

I encourage my colleagues to support this bill. It is a first step in changing Federal agencies policies that kill jobs, and a first step toward removing the shackles of unnecessary Government rules and regulation from American workers.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 6 minutes and 20 seconds.

Mr. BOND. Six minutes.

The PRESIDING OFFICER. Six minutes, twenty-four seconds, and twenty-four minutes on the other side.

Mr. BOND. I yield the Senator from Georgia 3 minutes.

Mr. COVERDELL. I thank my distinguished colleague from Missouri.

I rise in support of his extended efforts to reduce and relieve American business of the enormous regulatory burdens that we have put on the sector of our economy that generates the vast majority of the new jobs.

We just held a field hearing of the Small Business Committee in Georgia, and this quote was most alarming. One businessman came before the committee, and he said:

> The Federal Government of the United States of America has become the No. 1 enemy of small business.

It was astounding to hear the presentations of these business people as they pointed time and time again to the onerous burdens that are being put on them and their inability to match them. Sixty percent of America's businesses have four employees or less. How in the world can they possibly keep up with the staggering requirements coming year after year on these small businesses? The result is they do not hire another employee.

The Lord's prayer has 66 words; the Gettysburg Address 286 words. There are 1,322 words in the Declaration of Independence, Mr. President. But Government regulations on the sale of cabbage has a total of 26,911 words—on the sale of cabbage. According to the Georgia NFIB, there are 168,000 businesses in Georgia, and 53 percent have four or less employees.

I wish to reiterate again and again, there is absolutely no way for these very small businesses to match the enormous regulatory burden that has built up over the last 20 years. This is where we are creating new jobs. We have to take steps, as this bill does, to make it more possible for small businesses to expand and to hire new employees.

The greatest thing we can do for that person standing in line trying to find a new job is to make a healthier climate for small business in America.

I yield back whatever time is remaining to the chairman.

Mr. BOND. Mr. President, I might say to my colleague from Georgia that we have been graciously offered additional time from the minority side. If the Senator has additional comments, we would be happy to yield, speaking on behalf of the minority, 3 minutes.

Mr. COVERDELL. I thank the Senator. I appreciate the extension of the time from the minority. I do have a few more things to say about the hearing that was held in Georgia.

The Georgia Public Policy Foundation conducted a survey on behalf of my own small business advisory task force and found the following: The estimated cost of regulation as a percentage of sales was approximately 1.5 percent; 24 percent of these businesses have been involved in regulation-related lawsuits. That means that one in four companies, one in four small businesses in our State has had to be involved in a lawsuit, a lawsuit and all the expenses associated with that, over regulation; 53 percent of the respondents indicated—and this is the most important fact—53 percent, over half, responded that they would hire additional employees in the last 3 years if it had not been for the costs of regulation.

So, once again, as I said a moment ago, regulation itself and the extent of it and the size of it and scope of it is causing people to not get hired because the money is going to manage the regulations and not to pay the salary of a person who is looking for a job.

Prof. Gerald Gay, chairman of the department of finance at Georgia State University, strongly endorsed the concept of strengthening the Regulatory Flexibility Act, which is what we are doing today, specifically calling for judicial review, which is what we are doing today.

He went on to note that regulations are of concern to large and small businesses. The difference is that small business cannot absorb the excessive regulatory compliance costs that larger businesses can. This puts them at a competitive disadvantage. As I said, it keeps them from hiring another employee, and keeps them from starting a business in the first place.

Professor Gay, in his testimony, had an interesting quote from one of our early Presidents and writers of the Declaration of Independence, Thomas Jefferson. I have often used this quote:

> A wise and frugal government which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and which shall not take from the mouth of labor the bread it has earned.

This is the sum of good government. It is that very salient point that American Government has forgotten in the last 20 or 30 years. We are denying the people the ability to be entrepreneurial, we are denying people the opportunity to focus on their work, and we have turned the Government from being a good partner into being a bully boss. This legislation remembers that the Government is supposed to be a partner first.

I yield.

Mr. BOND. Mr. President, I ask unanimous consent that the Senator from Tennessee be granted 4 minutes from the minority side on the bill.

The PRESIDING OFFICER (Mr. COVERDELL). Without objection, it is so ordered.

Mr. FRIST. Mr. President, I rise today to speak in strong support of S. 942, the Small Business Regulatory Enforcement Fairness Act. First, I want to commend the distinguished managers of this legislation, Senator BOND and Senator BUMPERS, for their tireless, bipartisan efforts to bring this legislation to the floor of the Senate. Today, I am proud to join them and my colleagues on the Small Business Committee in providing regulatory relief for our Nation's job creation engine—small business.

Mr. President, the high cost of Federal regulations is restricting economic growth in this country. Regulations are really hidden taxes; they drive up the cost of doing business. As this chart shows, the cost of regulations has risen rapidly over the last 10 years. Today, regulatory costs exceed $600 billion a year, a 30-percent increase over a decade ago. That's $600 billion in lost job creation, lost productivity, and lost economic growth. By the year 2000, regulatory costs are expected to continue growing.

However, this chart does not show that regulatory burdens fall disproportionately on small business. Recent research by the SBA found that small businesses bear over 60 percent of total business regulatory costs. Specifically, the average annual cost of regulatory, paperwork, and tax compliance for small business is $5,000 per employee while the cost for large businesses is only $3,400 per employee. This is no way to treat our Nation's No. 1 job creators who employ more than half of our entire work force.

Mr. President, let me briefly illustrate this problem in more personal terms. Last year, Chairman BOND joined me in Memphis for a Small Business Committee field hearing where we listened directly to the regulatory problems of small business owners. Ron Coleman, an auto parts manufacturer in Memphis, told us about the unique regulatory burdens that he faces. He said "Government regulation is the single most time-consuming aspect of my business. Small businesses must deal with the same rules and regulations as large businesses, only we are unable to call the human resource director, the vice president of governmental affairs, the corporate legal department, or the OSHA coordinator for help." The legislation before us today will help hard-working entrepreneurs like Ron.

S. 942 includes many provisions that will reform the regulatory process, but I want to highlight the enforcement reforms in particular. One of the stated purposes of this bill is "to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented."

Senator SHELBY and I have worked very hard over the last year to enact a small business regulatory bill of rights to change the confrontational nature of regulatory enforcement. We believe that small businesses should be able to participate in voluntary compliance audit and compliance assistance programs that protect them from excessive fines and penalties. We also believe that agencies should factor ability to pay into their penalty assessments so that small firms are not driven out of business by an excessive fine. Section 202 begins to address these concerns, but it can be strengthened. I thank Senators BOND and BUMPERS for working with me and Senator SHELBY on this section. I look forward to working with both of you in further hearings on this issue.

Mr. President, I would like to close today with this thought. For years, business owners and their employees on the front lines have been delivering the same clear and concise message to Congress: the Federal Government is strangling us with regulations, compliance, burdens, and aggressive enforcement, and we need relief. If Congress passes the bill before us today and the President signs it into law, we at last can reply to them with an equally clear message: we have heard you, and we are taking action. I strongly urge my colleagues to support this legislation that will foster a new era of entrepreneurial growth in America.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I want to take a minute to say how much we appreciate the contributions of the Senator from Tennessee. He organized a very productive field hearing for us. It was most informative. He has been an active participant in the work of the Small Business Committee, and we certainly appreciate his efforts. I thank him for his remarks today as well as his contributions in making this a better bill.

Mr. President, we have no other business on this side and not much time. If the ranking member agrees, I think we might proceed to a voice vote on the adoption of the substitute amendment

or such comments as the Senator from Arkansas might have.

Mr. BUMPERS. Mr. President, I just want to close my part of the program by complimenting my very able and long-time assistant, John Ball, who has been with the Small Business Committee as both staff director and director for the ranking member now for many, many years. He has performed yeoman service on this.

I also hasten to say that the work of Keith Cole and Louis Taylor has been truly outstanding. Between these three people, and Senator BOND and myself, but especially the staff members, we think we have crafted a pretty good bill. I want to pay my special thanks publicly to these staffers who have labored very hard to make this possible.

I am prepared to go forward with final passage.

The PRESIDING OFFICER (Mr. FRIST). The question is on agreeing to the substitute amendment, as amended.

The amendment (No. 3534), as amended, was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. BOND. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BOND. Mr. President, I ask that this measure be set aside pursuant to the previous agreement.

The PRESIDING OFFICER. The bill is set aside.

Mr. BOND. Mr. President, pursuant to a previous agreement between the leaders, the vote will be set aside until Tuesday.

Mr. President, I ask unanimous consent that Senator MURKOWSKI be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I join with my ranking member in complimenting the staff. John Ball I have worked with for several years. We are very pleased with the leadership of Louis Taylor on the Small Business Committee and Keith Cole who has had previous experience on the other side in Congress, and we are delighted that he has come to be with us on the Senate side.

These three staffers have had a very interesting several weeks. They have had an opportunity to meet more people in this administration. We have had the support from the elected officials in the Federal Government for regulatory reform, but we have certainly had a tremendous amount of interest and attention and full-time, around-the-clock work for our staff members dealing with the members of the agencies who will be affected.

I can say to all of our friends in small businesses and small entities around the country that it is quite apparent that this measure will have an impact on the way that agencies deal with small entities and small businesses.

I believe that we have, with the help of many useful comments from the agencies themselves, crafted a workable but significant change in the culture of the Federal agencies in regard to small entities and small businesses.

Mr. BUMPERS. Mr. President, I have nothing further to add. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 942.

The assistant legislative clerk read as follows:

A bill (S. 942) to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. BINGAMAN. Mr. President, I intend to support the small business regulatory fairness bill, S. 942, as modified by the managers' amendment.

This bill is a testament to the good work that occurred at the White House Conference on Small Business organized here in Washington last June. This national conference was the final step in a grassroots public discourse about small business needs and concerns that involved more than 21,000 small business people participating in 59 State conferences across the country. Starting with more than 3,000 issue recommendations at the State level, regional groups shaved the list to a set of 293 concerns. And finally, the White House Conference focused on 60 specific recommendations that might substantially improve the environment for the growth and success of small business activity.

I think that the work of the White House Conference has given us a good roadmap of items to debate and discuss which directly impact our Nation's economic health. One of the major concerns of small business owners today is simply complying with Federal regulations, being able to understand the regulations—which are often extraordinarily complex, and not falling subject to arbitrary enforcement and penalties. It is important that our Government be accountable to those it governs and must avoid arbitrary and ad hoc enforcement.

Mr. President, this legislation requires that Federal agencies produce small entity-compliance guides that outline in simple, understandable language what is required from small businesses. This is a commonsense adjustment in which both Federal regulators and small firms win. Furthermore, this act creates five-person regional citizen small business review boards in each of the 10 Government regions covered by the Small Business Administration. This measure gives small business a voice at the table when Federal guidelines are discussed, and this is as it should be.

Also central to this act is the creation of more cooperative and less punitive regulatory environment between agencies and small business that is less threatening and more solution-oriented than we have achieved in the past. And equally important are provisions in this legislation making Federal regulators more accountable for enforcement actions by providing small businesses a meaningful opportunity for redress of excessive or arbitrary enforcement activities.

As our Nation's larger firms continue a process of downsizing, restructuring, and outsourcing, our small business sector will continue to grow rapidly and will continue to be the major jobs generator for the country. It is crucial that the Federal Government do what it can to help small businesses thrive in a regulatory environment that is well defined and user friendly rather than to suffer because of uncertainty and unclear codes.

I am frequently visited by small business people and groups from my own State of New Mexico and am very much pleased by their attention to the debates that occur in Washington about legislation that might impact them and their companies. These firms typically don't have a staff section designed to study the tax implications of everything we do here in this Chamber; nor do they have the time and personnel to devote to close monitoring of our legislative activities. But still, tens of thousands of small business people in the Nation do invest time and become personally involved with the legislative process and have committed themselves to improving the interaction between Government and the small business sector.

I would like to mention one example from New Mexico, a person who demonstrates well a combination of entrepreneurial excellence, community concern and strong civic involvement. Ioana McNamara, the president and founder of an Albuquerque-based small business called Wall-Write, was one of those who participated from New Mexico in the White House Conference on Small Business. I want to publicly commend her for getting involved and working on these issues. She and others from the New Mexico small business delegation, including another small business person—Diane Denish—who served as the delegation chair for the White House Conference—have done a great deal to make sure that small firms in New Mexico do their part to achieve a more productive relationship between Government and business.

Clearly, people like Ioana McNamara and Diane Denish have more than enough to do in growing their businesses without paying attention to whether this Chamber is about to do something that harms or helps their businesses—but they have decided to do what they can to help implement the measures decided on at the White House Conference. I think our Nation should express its gratitude to these people and the thousands of others who participate in the making of good policy.

Mr. KERRY. Mr. President, the Small Business Regulatory Enforcement Fairness Act, represents an opportunity to change not only the regulatory burden on small business, but more importantly, to begin to change the way all Federal agencies, including the Internal Revenue Service [IRS], deal with small business. I am pleased to be a cosponsor of the bill.

In far too many cases, the Federal Government has acted as the judge, jury, and executioner for small businesses. Testimony before the Small Business Committee indicated many small businesses fear agencies like the IRS will levy huge fines on them for failure to comply with minor rules and regulations—of which they may be entirely ignorant. The Federal Government must become a partner in the growth and development of small businesses, not an adversary.

While not perfect, this legislation includes a number of provisions which will ease regulatory burdens and give small businesses some recourse when Federal bureaucrats are over zealous in the exercise of their power.

The bill requires agencies to publish in plain English a guide to assist small business in complying with regulations. Federal regulations are often too difficult for anyone to understand, let alone a small businessperson who is trying to run his or her business. It will also allow Small Business Development Centers to offer assistance to small businesses in complying with Federal regulations.

The bill would also establish an ombudsman to help small businesses get fair and legal treatment from the Government if they have been treated unfairly. The ombudsman would also assist small businesses in recovering legal fees as a result of unfair Government actions.

Under the bill, Federal agencies would be required to waive civil penalties for first violations by small businesses that do not constitute a serious threat to public health, safety, or the environment.

The bill provides that small business representatives are to be consulted in Federal agency rulemaking decisions that would have a significant impact on small businesses so that small business interests would be considered at the outset in the development of regulations.

While these reforms will not end the difficulties many small businesses face in complying with Federal regulations, they should help ease the burden. I hope this legislation will mark the beginning of a new era of better relations between Government and small business. The Federal Government should be working in partnership with small businesses—not at cross-purposes with them.

I am proud to support this legislation and would like to thank the chairman of the Small Business Committee, Senator BOND, and the ranking member Senator BUMPERS along with their staffs for their effort in producing this legislation.

Mrs. MURRAY. Mr. President, I would like to take this opportunity to commend Senator BOND for his leadership on small business issues, and lend my support to the Small Business Regulatory Fairness Act, which will lessen regulatory burdens imposed on small businesses by Federal agencies.

Mr. President, I have talked with many small business owners in my home State and one thing they all tell me is how difficult and costly it has become to comply with many of the Federal regulations imposed upon the. Among other things, this legislation will require agencies to publish materials in plain language to help small businesses comply with regulations.

The bill will also enhance the small business communities' voice with the Small Business Administration by providing them a role in determining future regulations.

When I was growing up, my father ran a small business in Bothell, WA. I know the time and energy small business people put into their companies. And, throughout my term, I have worked to reform a Government that continues to hamper small business owners.

I was a cosponsor of the S-Corporation Reform Act of 1993, and returned as a cosponsor of S. 758 last year, which would remove obsolete provisions from the tax code, making it easier for small businesses to raise capital. I cosponsored the Family Health Insurance Protection Act which would provide health insurance market reform for small businesses and families. And, on the first full day of this Congress, I introduced the American Family Business Preservation Act which would reduce the rate of estate tax imposed on a family owned business, encouraging families to keep their businesses intact. And, as many of my colleagues will remember, last Congress, we fixed a problem that has been plaguing small businesses that wanted to refinance their SBA 503 loans. Now, many small businesses in Washington State and across the country will be able to refinance their 503 loans.

Mr. President, I strongly believe Government cannot solve every problem in this country, but it can foster a healthy economic environment in which all businesses may prosper. I encourage each of my colleagues to support S. 942. The Small Business Regulatory Fairness Act continues our work by reducing redtape and making it easier for our small businesses to comply with often burdensome Federal regulations. I believe this is the type of reform our small businesses want and deserve.

Mr. GLENN. Mr. President, I support the managers' amendment to S. 942, the Small Business Regulatory Enforcement Fairness Act. I have been a long supporter of regulatory reform, and I believe this legislation provides significant regulatory relief to small businesses, small governments, and other small entities.

I congratulate the managers of this bill—Senator BOND, chairman of the Small Business Committee, and Senator BUMPERS, Ranking Democrat on the committee—for their efforts to craft a workable bill. I know they have consulted frequently with other members, the small business community, and the administration to address concerns and improve the legislation. In the midst of contentious debate about other regulatory reform issues, Senator BOND and Senator BUMPERS have put together a regulatory reform bill that will provide significant relief to small business. This legislation should get broad bipartisan support in both the Senate and House, and I am sure will soon be signed into law.

The purposes of this legislation are important and I support them. Some of the details, however, still concern me. For example, the bill provides for judicial review of Regulatory Flexibility Act decisions. This will put needed teeth into the Reg Flex Act and ensure that agencies prepare required regulatory impact analyses and pay more attention to the special impact of their rules on small business and other small entities, such as local governments. I am concerned, however, that these judicial review provisions may be overly broad and will lead to unnecessary litigation. Only time will tell whether my concern is well founded. At this point, I am prepared to give the new provisions the benefit of some doubt.

The bill also establishes a small business ombudsman process to help improve cooperation between regulatory agencies and regulated businesses. I support this idea. But, I am concerned that the implementation process, with its Small Business Fairness Boards, will end up creating a one-sided record of complaints that will distort the broad public mission of our agencies. Our agencies should not be viewed as the enemy when they carry out the laws passed by the people's representatives in Congress. I am happy, at least, that in the final version of the bill before us, the Ombudsman will focus on general agency enforcement activity and not attempt to evaluate or rate the performance of individual agency personnel.

Finally, the legislation creates small business review panels to ensure that small business perspectives are fully considered by agencies during rulemaking. Again, I support the important purpose of ensuring that agencies hear the voices of the little guys who do not always get through the maze of agency process and the larger more organized commenters. It is, however, important to ensure that this opportunity for comment does not create a precedent of giving special leverage to one segment of the public. I am, at least, heartened by the fact that review panel comments on an agency proposed rule will go into the public record, and that other interested parties will have an opportunity to respond to those comments before the agency makes its rulemaking decision. The fact that these review panels, as well as the Fairness Boards, will be subject to the Federal Advisory Committee Act [FACA] and the Government in the Sunshine Act will also help ensure that the new process will be open to the public.

On balance, I believe the managers' amendment should be supported. Again, I commend Senator BOND and Senator BUMPERS for their openness to concerns about the bill. Since we first saw drafts a week or so ago, significant changes and improvements have been made. Given these changes, I will vote for the managers amendment. But given my concerns, let me also say that these provisions should not be modified by the House. If they are made more onerous, then they should not be supported. If House action leads to changes in conference, then the Senate should say no to the conference report.

Let me clear up one fact about this legislation. A week and a half ago, on Thursday, March 7, 1996, Senator BOND stood here on the floor and described his hopes for a bipartisan agreement on this legislation. Our Minority Leader, Senator DASCHLE, agreed, saying that Democrats hoped to provide broad, if not unanimous, support for the final bill. Unfortunately, several other of our colleagues on the other side of the aisle then went on to accuse Democrats of delaying the bill and even of engaging in a filibuster. That could not be further from the truth.

When the Small Business Committee considered the legislation on Wednesday, March 6, there was general agreement that a managers' amendment would be prepared for the bill. On the 7th, as we waited to see the proposed amendment, we were surprised to hear our Republican colleagues accusing Democrats of holding up the bill. As it turned out, I did not see the final proposed manager's amendment for another whole week—March 14, an entire week after Thursday the 7th. Far from Democrats holding up this legislation, the fact is that the managers of this bill were not ready to bring the bill to the floor until at least a full week after we were being accused of delay. I am definitely not criticizing the managers. Their careful deliberations are to be commended. But certainly, other Senators should not be falsely accused of delaying the bill, when they were only waiting to see the results of those deliberations.

I hope I have set the record straight. There was never a filibuster on this legislation. We are happy there is finally an agreement on the managers' amendment. We are pleased that we now have it and can move forward and quickly pass the legislation.

I must say though, that once again, I am very disappointed in the rhetorical excesses of my colleagues on the other side of the aisle. Rather than even admit to working cooperatively, which is the case with the bipartisan bill before us, they tried to mislead the public about the status of this legislation. There certainly are enough instances where we honestly disagree, but here where we are working together, there is nothing to disagree about.

We need more of the bipartisan cooperation seen in the work of Senators BOND and BUMPERS and the other members of the Small Business Committee on this legislation. We need much less of partisan sniping.

THE NICKLES-REID CONGRESSIONAL REVIEW AMENDMENT

S. 942 comes to the floor with an agreement to consider one other amendment. This is the Nickles-Reid Congressional Review legislation and I urge my colleagues to support this

amendment. We passed this legislation last year, as a substitute to the Regulatory Moratorium. Congressional Review will create more work for us, but its expedited legislative veto process will ensure congressional accountability for Federal agency rules. I believe we need this process so that we can do our part for regulatory reform.

I have always been struck when in hearings, agency officials—under successive administrations—have pointed out that most agency regulations are strictly required by laws passed by Congress. The Nickles-Reid Congressional Review process will close the loop, so that when an agency issues a rule that some may oppose, we will have an opportunity to consider it in the context of the law and determine its reasonableness. This will not only help with accountability for individual rules, but will also help us identify specific statutory provisions that need revision. For these reasons, I am happy to support the Nickles-Reid amendment, and urge my colleagues to do so, as well.

CONCLUSION

With the combination of Small Business Regulatory Fairness and Congressional Review, we have significant bipartisan regulatory reform legislation. It should be passed by the House and be signed into law by the President.

Our job as legislators is to create laws that can work and can improve conditions in our country. Some have wanted to bull through and legislate now on a larger regulatory reform package. The truth is that there is simply too much there that is unsettled and about which too many do not agree. Now is the time to move legislation that can work and that will improve the regulatory process.

If in the quiet of committee we can return to the other regulatory reform issues of cost-benefit analysis and risk assessment, I think we should. But for now, let us work together on bills such as the legislation before us today that can pass and should pass.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 942, the Small Business Regulatory Enforcement Fairness Act.

Mr. President, America's small businesses badly need relief from excessive and unnecessary regulations. For years, those of us on the Small Business Committee have heard first hand from men and women in small businesses about the disproportionate regulatory burden they face. This burden was confirmed late last year in a report by the Small Business Administration's Office of Advocacy. Among other things, the report found that while small businesses employ 53 percent of the workforce, they bear 63 percent of total business regulatory costs.

The annual average cost of regulation, paperwork, and tax compliance for small businesses is about $5,000 per employee. By contrast, the comparable burden for businesses with over 500 workers is $3,400 per employee. This difference is significant. Big businesses already enjoy a competitive advantage over their smaller counterparts because of economies of scale. The Federal Government should not further disadvantage small businesses by imposing uniform regulations where tiering the regulation to account for business size would be just as effective.

Mr. President, the bill before us will give teeth to the Regulatory Flexibility Act Congress passed in 1980. That act, known as the Reg Flex Act, requires agencies to assess the effects of their proposed rules on small entities. Based on this assessment, agencies either have to conduct a regulatory flexibility analysis describing the impact on small entities, or they must certify that their rule will not have a significant economic impact on a substantial number of small entities.

Despite Congress's best intentions, agencies all too often have refused to comply with the Reg Flex Act. Unfortunately, there is nothing small businesses can do currently to enforce compliance. S. 942 would correct this problem. The bill would enable small businesses to take agencies to court to challenge an agency's determination. This should provide the spur necessary to ensure much greater compliance in the future.

In addition, this bill will require agencies to publish compliance guides for small businesses. In the study commissioned by SBA, 94 percent of small businesses said that it was unclear what they had to do to be in compliance with regulations. By providing easily understood explanations of regulations, agencies will ensure greater compliance. In addition, the bill directs agencies to provide informal guidance to small businesses about what is required of them to be in compliance.

In the case of regulations for which a regulatory flexibility analysis is required, small businesses will now be part of the rulemaking process by providing advice and recommendations to agencies before proposed and final rules are issued. To further help small businesses make their way through complicated regulations, the bill permits Small Business Development Centers and Manufacturing Technology Centers to offer regulatory compliance assistance and onsite assessments for small businesses.

Finally, Mr. President, S. 942 makes it easier, in certain instances, for small businesses to obtain attorneys fees from the government for claims upon which they prevail. I had serious concerns about the language we considered in the Small Business Committee mark up, which modified the so-called Equal Access to Justice Act. I did, however, have the assurance of the Senator from Missouri that our offices would change these provisions so that we would not be rewarding companies with attorneys fees when they violated the law, because, for example, they prevailed on 1 of 10 claims. I believe the new language contained in sections 301 and 302 accomplishes the goal of aiding firms that had to fight the Government on meritless suits, while protecting taxpayers from paying the attorneys fees for companies that have broken the law.

Mr. President, I want to commend Senator BOND and his staff for their willingness to adopt recommended changes suggested by myself and other members of the Small Business Committee. Most Members of this body express their desire to work with their colleagues across the aisle, but those expressions often prove hollow. In this case, however, I am happy to say that S. 942 is truly a bipartisan bill and I hope we will have many more such bills before the end of the 104th Congress.

I also want to acknowledge the work of the Clinton Administration's "Reinventing Government" initiative and last year's White House Conference on Small Business. Their efforts laid the groundwork for the legislation we are considering today.

Again, I want to thank Senator BOND and Small Business Committee staffers Keith Cole and John Ball for their assistance on this legislation, and I hope my colleagues will join me in supporting S. 942.

Mr. MURKOWSKI. Mr. President, no one more strongly supports the goals sought by the statutes and regulations of this country than I do.

I come from a beautiful State blessed with resources that I have worked to see used productively and conserved wisely, I myself enjoy the great outdoors in Alaska, along with my family, and intend to have these same kinds of experiences enjoyed by my children and grandchildren; I have been a banker, where it has been my privilege to see individuals succeed in small business; I have seen first hand how issues like safety and worker protection go hand in hand with ensuring that success, but there is no doubt that achieving better protection of human health and the environment can only happen if we regulate smarter.

Individuals and businesses, big and small, spend too much time trying to comply with too much paperwork, and too much regulation from too many Washington bureaucrats. For example: above-ground storage tanks must comply with five different regulations that each require a separate spill prevention plan; this means that a business with tanks files five different sets of plans—one to the State, and two each to the EPA and the Coast Guard.

If you buy a business that was once registered to produce pesticides, even if you don't produce pesticides, or never have, the EPA will still want you to send in annual production reports with zeros filled in. If you don't, you can be sued and potentially fined. For just one statute, the Resource Conservation and Recovery Act, EPA has issued 17,000 pages of regulations and proposed regulations. The volume I'm holding has over 1,000 pages, and on any one of

them is a place where a small business can get tripped up. By the way, this is one volume of title 40 of the Code of Federal Regulations. Title 40 deals with environmental protection. Title 40 has 20 more volumes like this one. And its only title 40.

The Code of Federal Regulations occupies an entire 4 foot by 8 foot bookcase in the Senate library. A copy of the code costs almost $1,000, and is updated four times a year. Even if a small business could afford to buy it, it would be impossible to read it all. Why do we want to force every business in America to have to keep a battery of lawyers around just to advise about the overwhelming details in the Code of Federal Regulations?

Now, usually when I describe these examples, I talk about Anchorage, AK. There, fish guts were added to the waste water to comply with regulations that require a certain amount of organic waste removed during sewage treatment. The water was too clean, so material had to be added just to comply with the requirement to get a minimum amount out. But I am happy to say that today I am no longer using that example. It seems that in response to a lawsuit, EPA announced its intention to lift some of the restrictions on sewage treatment plants such as the one in Anchorage.

EPA states, "This change would provide the affected municipalities with additional flexibility and, in some cases, cost savings without compromising environmental quality."

If we are to move forward to a safer, cleaner, healthier future, we have to change the way Washington regulates. This bill is a positive and helpful step in that direction. S. 942 will ensure small business participates in rulemaking. This in turn will mean that rules will take small business needs into consideration before a rule is enacted. The bill also allows judicial review of regulations for compliance with the 16-year-old Regulatory Flexibility Act. A court can now examine whether agencies considered adverse impacts to Small Business when it writes regulations, and determine if an agency acted in an arbitrary manner. Penalty waivers and reductions when appropriate for small business violations. Recovery of attorney's fees when small business is forced into defensive litigation due to enforcement excesses. Comprehensive regulatory reform will continue to be a high priority for this Senator.

As science and technology continue to change, we must have a Federal Government that can be responsive to such changes. We need to plan for the future, not just for today, and that means a regulatory system that can keep up with improvements.

Four fundamental changes to the regulatory system will have to occur to ensure those improvements in the future. First, we must do a thorough review of existing regulations in place, decide what we need and what we don't, and avoid adding any more we don't need; second, Washington should be required to disclose the expected cost of current and new regulations. The public has a right to know what laws and regulations cost; third, when making regulatory decisions, the Government should use best estimates and realistic assumptions rather than worst case scenarios advanced by extremists; and fourth, new regulations should be based on the most advanced and credible scientific knowledge available.

Common sense must be returned to regulating. I applaud Senators BOND and BUMPERS, and all those who worked to bring this bill to the floor. It is an important first step toward a safer, cleaner, healthier future.

Mr. WELLSTONE. Mr. President, I am very pleased to vote for this bill, reported out of the Small Business Committee 2 weeks ago. I commend Chairman BOND for moving the bill through our Committee, as well as ranking member Senator BUMPERS. I appreciate the cooperation of both in working with me and my staff to help ensure that the easing of regulatory burden accomplished in this bill, which is needed and desirable, will not turn back the clock in the area of necessary enforcement of worker safety laws and regulations when there are serious violations.

The bill provides judicial review for agency actions under the Regulatory Flexibility Act. And it would require agencies to publish plain-English compliance guides to help small business meet Government rules. I appreciate that the Senate is taking this positive, bipartisan action in the area of regulatory reform policy with a bill that came from the Small Business Committee. It brings badly needed common sense to regulations affecting small businesses.

Mr. President, it is important that we take this step on a key item from the agenda of the White House Conference on Small Business. Minnesota delegates to the White House Conference selected this issue, as expressed in a Conference resolution, to be one of their top priorities.

Mr. STEVENS. Mr. President, I strongly support the Small Business Regulatory Enforcement Fairness Act. Small business is overloaded with unreasonable regulatory requirements and paperwork. We are long overdue in doing something about it.

This legislation will help small business in several major ways. First, it provides judicial review of the Regulatory Flexibility Act to ensure that agencies will consider the impact of regulations on small businesses, small towns, and nonprofit organizations. The Reg-Flex Act has been on the books for 16 years, but agencies have ignored it because it could not be enforced in court. We are putting an end to that.

Second, this legislation helps small business to participate in the federal regulatory process. Third, it provides an opportunity for small businesses to redress arbitrary Government enforcement actions.

In addition, Senator NICKLES is adding a provision that would allow Congress to review new rules under expedited procedures. This can provide redress for both big and small business, governments, and non-profit organizations. If a rule is unreasonable, Congress will have an opportunity to veto it.

Mr. President, small business is critical to the well-being of the country and my home State of Alaska. Over 99 percent of Alaska's businesses are small businesses. They are the largest employers of minorities, women, and youth in Alaska. Alaska boasts a higher percentage of women-owned businesses than any State. Small business creates new jobs, is a crucial source of entrepreneurial innovation, and makes the American dream a reality for countless Americans.

Federal bureaucrats must be more sensitive to the devastating impact that overregulation can have on small business. About 65 percent of Alaska's small businesses employ one to four employees. Many could drown unless we stem the rising tide of federal rules and redtape. I congratulate Senator BOND and my other colleagues who have promoted this important legislation.

SMALL BUSINESS REVIEW PANELS

Mr. GLENN. Let me make sure I understand how the Small Business Review Panels will work. Before the publication of an initial regulatory flexibility analysis for a proposed EPA or OSHA rule, the SBA's Chief Counsel for Advocacy will gather information from individual representatives of small businesses, and other small entities such as small local governments, about the potential impacts of that proposed rule. That information will then be reviewed by a panel composed of members from EPA or OSHA, OIRA, and the Chief Counsel. The panel will then issue a report on those individual's comments, which will become part of the rulemaking record. Then, after the proposed rule is published in the Federal Register and prior to the publication of a final regulatory flexibility analysis, a second review panel will be convened, and again it will review and report on the individual's comments on the proposed rule. Is this correct?

Mr. BOND. Yes; my colleague from Ohio has correctly summarized the review panel process.

Mr. GLENN. Good, now let me ask specifically with regard to the first review panel stage: I trust that it is the managers' intention that the review panel's report and related information be placed in the rulemaking record in a timely fashion so that others interested in the proposed rule may have a reasonable opportunity to review that information and submit their own responses to it before the close of the agency's public comment period for the proposed rule.

Mr. BOND. That is correct.

Mr. GLENN. Good. Now, let me ask about the second review panel stage: I trust that it is the managers' intention that should an agency decide to significantly modify a proposed final rule on the basis of the panel's report, the agency will reopen the rulemaking proceeding and allow public comment on the newly revised proposal. I believe that not to do so would be to overturn longstanding rules against ex parte communications. Again, securing meaningful input from small entities should not be at the price of undercutting the openness and fairness of the Government decisionmaking process.

Mr. BOND. I agree. Again, our purpose is to ensure that the concerns of small business and other small entities be fully and carefully considered by rulemaking agencies. If those concerns lead to a significant change in the regulatory proposal, the process should be reopened to allow all interested parties to comment on the revised proposal.

Mr. GLENN. I thank the Senator very much. I am glad that we agree on how this process will work.

Mr. LEVIN. Mr. President, one of the proposals we have before us, in S. 942, would establish an ombudsman in the Small Business Administration. That ombudsman would solicit information from small businesses on Federal regulatory enforcement practices and develop ratings of how well Federal agencies perform their enforcement duties. The ombudsman would have the ability to refer serious cases of abuse to an agency's inspector general.

This provision seeks to make regulatory agencies more responsive to the concerns of small businesses by giving small businesses a means to respond to excessive regulatory enforcement practices. While I firmly believe that we need to fight for fundamental change in the culture of small business regulation, I question whether this proposal, although well-intentioned, is the best catalyst for affecting that change.

I am concerend that the Small Business Committee did not fully consider other options that could provide a better mechanism for giving small businesses a stronger voice within agencies that regulate them. In particular, I think the committee should have taken more time to look at the pros and cons of placing an ombudsman in each regulatory agency, rather than relying on a lone ombudsman in the Small Business Administration to cover all agencies.

I have been working for the past several months on a proposal that would create an office of ombudsman in each major regulatory agency. My proposal would give the ombudsman sufficient authority within the agency to solve problems and sufficient independence from the regulatory structure to act fairly. The ombudsman would be the mediator or honest broker between the small business who is the subject of an inspection or enforcement action and the regulatory apparatus of the agency.

This was a recommendation of the Administrative Conference of the United States back in 1990, and I think it makes a lot of sense. I believe that much of the dissatisfaction of the regulated public with regulations is not only with the content of some of our regulations but also with the way in which they are enforced. Agencies often view a small business as a violator to be caught instead of as a company to be helped into compliance. And that's a big difference. The ombudsman would be there to put a friendly place—the spirit of cooperation—on the implementation of regulatory requirements.

I agree that we need to give small businesses a stronger voice in the agencies that regulate them, but we must make sure that agencies are ready and willing to listen. That's why we need to consider placing an ombudsman in each agency and not just rely on a single ombudsman in the Small Business Administration.

Mr. President, I have a number of concerns about placing a lone ombudsman in the Small Business Administration.

First, the ombudsman would be responsible for soliciting comments about and developing ratings of programs and offices in each Federal agency that regulates the small business community. Carrying out this responsibility would require the ombudsman to become familiar with the operations of hundreds of programs in dozens of agencies. That's just not a reasonable expectation.

Second, ombudsmen have traditionally been neutral officials who field complaints and recommend solutions to individual disputes between the Government and the regulated public. The broad jurisdiction of the office proposed in this bill would prohibit the ombudsman from focusing on the day-to-day problems small businesses face in dealing with agency regulators. The EPA Small Business ombudsman fields thousands of such inquiries every year, and that's just for one agency. Rather than investigating and mediating individual disputes himself or herself, the ombudsman would have to refer alleged cases of agency misconduct to the inspector general of the relevant agency.

In other words, the ombudsman wouldn't receive information for the purpose of mediating disputes, solving problems, and fostering collaboration between agencies and regulated parties. Instead the ombudsman would receive information primarily for assessing agency performance. That doesn't help get immediate and specific problems solved.

At the hearing on S. 942 in the Small Business Committee, several representatives of the small business community said that they would prefer to have a single ombudsman in the Small Business Administration rather than an ombudsman in each individual regulatory agency. They argued that agency ombudsmen could be influenced by internal agency politics and that, because of this, small businesses would be susceptible to intimidation by regulators if they came forward with complaints. While I understand the reluctance of small businesses to complain directly to an agency official about inappropriate regulatory practices, I believe that ombudsmen in regulatory agencies can be given sufficient independence from the regulatory structure to act fairly and to assure regulated parties that their inquiries will not be used against them.

One witness, Wendy Lechner from the Printing Industries of America, made a point of praising the work of the Small Business Ombudsman at the Environmental Protection Agency and recommended that such ombudsman programs should be replicated throughout the regulatory agencies. The EPA office is one of approximately half a dozen ombudsman offices operating throughout the Federal Government that address disputes between agencies and the regulated public. By and large, these ombudsmen have improved communications between the agencies and regulated parties, uncovered systemic problems and chronic abuses in the regulatory process, and saved valuable resources through informal dispute resolution that otherwise would have been wasted on the costs of formal legal proceedings.

Mr. President, I do not think the ombudsman provision in S. 942 solves the enforcement problem for small businesses. I will continue to work on legislation that would place an ombudsman in each regulatory agency. I think such an approach would foster collaboration between small businesses and the agencies that regulate them and achieve better results.

I commend the chairman and ranking Democrat on the Small Business Committee for their hard work on this bill and look forward to working with them as my ombudsman proposal is developed.

THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

Mr. DOMENICI. Mr. President, I know I do not have to tell you that small businesses create most of the jobs in America. Small businesses are the engine that keep the American economy running. I know that in my State small businesses make up 85 to 90 percent of private employers. In that regard, I have created a New Mexico small business advisory board.

I have also participated in Small Business Committee field hearings throughout my State. Indeed, I was privileged to have had the chairman of the Small Business Committee, Senator BOND, come out to New Mexico and hear from those New Mexico small businesses firsthand at a Small Business Committee field hearing in Albuquerque.

Mr. President, what we found was that almost all of the small business owners we talked to—who are the people who create almost all of the private sector jobs in my State—told us just

how smothering the explosion in Federal regulations has become.

In particular, those small business owners identified the Occupational Safety and Health Administration [OSHA] and the Environmental Protection Agency [EPA] as the two Federal agencies which promulgate the most unreasonable and burdensome regulations. Mr. President, these small business painted a picture of the Federal bureaucracy at its worst: arrogant, unresponsive, inefficient, and unaccountable.

Further, Mr. President, because a great number of new businesses are being started by women, some of the most vocal critics of EPA's and OSHA's unreasonable regulations are women-owned businesses.

I believe one of the biggest reasons for these bureaucratic problems is that small businesses are just not adequately consulted when regulations affecting them are being proposed and promulgated. I am not alone in this belief. In 1994 five agencies—including the Small Business Administration, EPA, and OSHA—held a small business forum on regulatory reform, and they came up with some conclusions about the problems with the current regulatory process.

Let me quote from the administration's own report summarizing the principal concerns identified at the forum:

Concern: "The inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant;"

Concern: "The need for agency regulatory officials to understand the nuances of the regulated industry and the compliance constraints of small business;"

Concern: "The perceived existence of an adversarial relationship between small business owners and federal agencies;"

And finally, Mr. President, and I think most important:

Concern: "The need for more small business involvement in the regulatory development process, particularly during the analytic, risk assessment and preliminary drafting stages."

Mr. President, this is the agencies' own report on the problems with the regulatory process.

During the floor debate on last year's regulatory reform bill, Chairman BOND and I successfully added an amendment that would have squarely addressed those concerns. That amendment had the support of the National Federation of Independent Business, and was accepted by the Senate. As we all know, however, the broader regulatory bill did pass.

That is why I am so happy to have worked with Chairman BOND to ensure that my small business advocacy panel initiative was included as a section of the bill we are about to vote on today, the Small Business Regulatory Enforcement Fairness Act of 1996. The small business community has no greater champion than my good friend from Missouri, and I am proud to be associated with his outstanding bill.

Mr. President, the structure and process of these advocacy panels is as follows:

First, prior to publication of an initial regulatory flexibility—reg flex—analysis, an agency would notify the Chief Counsel for Advocacy of the Small Business Administration of potential impacts of a proposed rule on small business.

Second, the Chief Counsel would identify individual representatives of small business for advice and recommendations about the proposed rule.

Third, the agency would convene a review panel consisting of representatives of the agency, the Office of Information and Regulatory Affairs, and the Chief Counsel, to review the information collected on the impact of the proposed rule on small business.

Pursuant to the information obtained at the review panels, and where appropriate, the agency shall modify its proposed rule.

Finally, the findings and comments of the review panel shall be included as part of the rulemaking record.

This process shall be repeated prior to the final publication of a reg flex analysis.

Remember, Mr. President, the agencies themselves have recognized that small businesses are underrepresented during rulemakings. I believe that these review panels, convened before the initial and the final reg flex analyses, will ensure that small businesses finally have an adequate voice in the regulatory process. In addition, these panels, working together so all viewpoints are represented, will be the crux of reasonable, consistent, and understandable rulemaking. Finally, Mr. President, and perhaps most important, these panels will help reduce counterproductive, unreasonable Federal regulations at the same time they are helping to foster the nonadversarial, cooperative relationships that most agree are long overdue between small businesses and Federal agencies.

Mr. HELMS. Mr. President, the pending bill, S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996, deserves the support of all Senators—and the able chairman of the Small Business Committee, our good friend from Missouri, Mr. BOND, is to be commended for his persistence.

This legislation is badly needed. In North Carolina literally hundreds of small businesses are struggling under the heavy regulatory burdens imposed by the Washington bureaucracy. These businesses are seeing their profit margins gobbled up by oppressive Federal regulations.

Mr. President, S. 942, will go a long way toward leveling the playing field and giving small businesses some long overdue relief from a portion of existing burdensome regulations. Small businesses now will be better able to challenge burdensome regulations in the courts.

Federal agencies hereafter will be required to obtain the views and opinions of small businesses before regulations are drafted, making small businesses players before regulations are drafted and imposed.

Mr. President, Mary McCarthy in the October 18, 1958, New Yorker Magazine observed, "Bureaucracy, the rule of no one, has become the modern form of despotism."

How true, and I'm hopeful that both the Senate and the House will pass this legislation, and that the President will sign it, because no bureaucracy or bureaucrat should be permitted to be a despot over the people they are supposed to be serving.

DUTIES AND FUNCTIONS OF THE OMBUDSMAN

Mr. LEVIN. One of the proposals put forward in S. 942 would establish an ombudsman position in the Small Business Administration. The proposal of the Senator from Missouri would provide a way to gather and publicize information about how agencies across the board treat small businesses in the regulatory enforcement process. I have concerns about the language the bill uses to describe the duties and functions of the ombudsman.

Specifically, I would like to ask the Senator from Missouri about title II, section 30(b)(2) (A) and (C). In an earlier version of the bill, these sections, which outline the duties of the ombudsman, stated that the ombudsman shall

work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are [provided with a means to comment on and rate the performance of such personnel],

and,

based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies [concerning the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices and personnel of each agency].

This language appeared to direct small businesses and the ombudsman to publish employment ratings of specific agency employees who carry out regulatory enforcement actions. While the boards and the ombudsman are specifically directed to report on substantiated actions of agency personnel, I am concerned that this provision would have focused attention inappropriately on public ratings of individuals rather than on rating the performance of the agencies and agency offices. Such an individual rating system could interfere with the employment relationship between agencies and their employees.

The language of the bill before us today is somewhat different from the earlier version. The current version of the bill states that the ombudsman shall

work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by

agency personnel are [provided with a means to comment on the enforcement activity conducted by such personnel],

and

based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies [evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency].

While the current language still allows for comment on the enforcement activities of agency personnel in order to identify potential abuses of the regulatory process, it appears to remove the mandate for the boards and the ombudsman to create a public performance rating of individual agency employees. Senator BOND, is this interpretation correct and, if so, was the change in language made in order to focus the reports of the boards and the ombudsman on rating overall agency performance rather than on rating individual regulators?

Mr. BOND. The Senator's interpretation of the change in language is correct. My goal is to reduce the instances of excessive and abusive enforcement actions. Those actions obviously originate in the acts of individual enforcement personnel. Sometimes the problem is with the policies of an agency, and we are very definitely trying to change the culture and policies of Federal regulatory agencies. At other times, the problem is really that there are some bad apples at these agencies. It is for that reason that we specifically included a provision to allow the ombudsman, where appropriate, to refer serious problems with individuals to the agency's inspector general for proper action. The ombudsman's report to Congress should not single out individual agency employees by name or assign an individual evaluation or rating that might interfere with agency management and personnel policies. The intent of the bill is to give small businesses a voice in evaluating the overall performance of agencies and agency offices in their dealings with the small business community.

Mr. LEVIN. I thank the chairman of the Small Business Committee. This is an important change and clarifies that the purpose of the ombudsman's report is not to rate individual agency personnel, but to assess each program's or agency's performance as a whole.

Mr. DASCHLE. Mr. President, passage of the Small Business Regulatory Fairness Act will mark an important milestone in our efforts to provide American business with reasonable, common sense regulatory relief. It is a bill that should be passed by Congress and sent to the President with dispatch.

This legislation, which was approved unanimously by the Senate Small Business Committee, and which I expect will pass the Senate with overwhelming bipartisan support, will provide much needed change in the way Federal agencies deal with American small business. It acknowledges that the Federal bureaucracy often chokes small business in red tape, and institutes a number of reforms that will unleash their productive energy without diminishing the Federal responsibility to protect the public health and safety. Passage of this bill will send an important message to small business owners across the country that their voice is being heard in Washington, DC.

Small businesses already face a daunting array of challenges, from the uncertain economic climate to the myriad daily paperwork burdens of accounting, bookkeeping, and bill paying. The further burden of keeping up with, and complying with, Federal regulations can discourage even the most stalwart business men and women from striving to achieve their dream of entrepreneurship.

The Federal Government has a responsibility to protect worker health and safety, public health, and the environment. In that effort, agencies issue regulations, but experience shows that many of those regulations look good on paper, but don't work in the real world. This bill acknowledges that fact and demonstrates our determination to both confront and correct mistakes.

Federal agencies should be as sensitive as possible to the challenges faced by small businesses in America, and I expect this bill will help achieve that goal. Many of this bill's provisions were developed by small business owners from South Dakota and across the country during the White House Conference on Small Business last summer. No one knows more about the risks and pitfalls associated with owning a small business than businesspeople themselves. The White House conference gave them a forum in which to discuss how the regulatory process could be improved, and I am glad that Congress has taken to heart what they had to say on this subject.

One of the most frequent criticisms I hear from small business owners is that Federal agencies bring harsh enforcement actions against businesses for relatively insignificant and unintentional violations of Federal rules. This legislation responds to that concern by requiring agencies to develop policies to waive fines for first-time, nonserious violations.

The legislation also requires Federal agencies to publish easy-to-read guidance for small business to comply with Federal rules and creates a small business and agricultural ombudsman at the Small Business Administration to provide a means to comment on agency enforcement personnel and to develop a customer satisfaction rating of Federal agencies. It assists small businesses in recovering attorneys' fees if they have been subject to excessive and unsustainable enforcement actions, and subjects final agency actions under the Regulatory Flexibility Act to judicial review. Small businesses will now be able to hold the feet of Federal agencies to the fire and ensure that they comply with the letter and spirit of the Regulatory Flexibility Act

Finally, I am very pleased that the congressional veto legislation developed by Senators Reid and NICKLES and passed by the Senate last year has been added to the Small Business Regulatory Fairness Act. The REID/NICKLES provision establishes a process through which Congress can review major regulations before they are issued, thereby ensuring that the agencies developing these rules adhere to the intent of Congress and develop reasonable requirements for American business.

Mr. President, the Small Business Regulatory Fairness Act was written with advice from the small business community and will pass the Senate with strong bipartisan support. It reaffirms Congress' belief in the essential role that small business plays in the American economy and sends a clear signal that the public and private sectors are ready to work together in promoting the economic growth and expansion we will need to compete in the 21st century. I urge all my colleagues to support this important bill.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—100

Abraham	Feinstein	Mack
Akaka	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Pell
Brown	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Coats	Inouye	Sarbanes
Cochran	Jeffords	Shelby
Cohen	Johnston	Simon
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Dole	Lautenberg	Thurmond
Domenici	Leahy	Warner
Dorgan	Levin	Wellstone
Exon	Lieberman	Wyden
Faircloth	Lott	
Feingold	Lugar	

The bill (S. 942) was passed, as follows:

S. 942

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 2. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the White House Conference on Small Business involve reforms to the way Government regulations are developed and enforced, and reductions in Government paperwork requirements;

(5) the requirements of the Regulatory Flexibility Act have too often been ignored by Government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by the Regulatory Flexibility Act.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of the Regulatory Flexibility Act;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

SEC. 4. EFFECTIVE DATE.

This Act shall become effective on the date 90 days after enactment, except that the amendments made by title IV of this Act shall not apply to interpretive rules for which a notice of proposed rulemaking was published prior to the date of enactment.

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 102. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources if information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, including providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to small business concerns; and

"(S) developing programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures.".

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS AND PROGRAMS ESTABLISHED UNDER SECTION 507 OF THE CLEAN AIR ACT AMENDMENTS OF 1990.

(a) GENERAL.—The Manufacturing Technology Centers and other similar extension centers administered by the National Institute of Standards and Technology of the Department of Commerce shall, as appropriate, provide the assistance regarding regulatory requirements, develop and distribute information and guides and develop the programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to the same extent as provided for in section 104 of this Act with respect to Small Business Development Centers.

(b) SECTION 507 PROGRAMS.—Nothing in this Act in any way limits the authority and operation of the small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990.

SEC. 106. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency's area of interest at the Federal and State levels impact small businesses. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

TITLE II—REGULATORY ENFORCEMENT REFORMS

SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, onsite inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section

7 of the Inspector General Act of 1978 (5 U.S.C. App.);

"(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings, and recommendations of the Boards to the Administration and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under paragraph (C) and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members appointed by the Administration, who are owners or operators of small entities, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate.

"(4) Members of the Board shall serve for terms of three years or less.

"(5) The Administration shall select a chair from among the members of the Board who shall serve for not more than 2 years as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.—

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business: *Provided*, That the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation: *Provided*, That members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a State;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to Congress no later than 2 years from the effective date on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

Section 504 of title 5, United States Code, is amended—

(1) in subsection (b), by striking "$75" in subparagraph (b)(1) and inserting "$125"; and

(2) in subsection (a) by adding the following new paragraph:

"(4) In an adversary adjudication brought by an agency, an adjudicative officer of the agency shall award attorney's fees and other expenses to a party or a small entity, as defined in section 601, if the decision of the adjudicative officer is disproportionately less favorable to the agency than an express demand by the agency, unless the party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award of attorney's fees unjust. For purposes of this paragraph, an 'express demand' shall not include a recitation by the agency of the maximum statutory penalty (A) in the administrative complaint, or (B) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this paragraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31, United States Code.".

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended—

(1) in paragraph (d), by striking "$75" in subparagraph (2)(A) and inserting "$125"; and

(2) in paragraph (d)(1) by adding the following new subparagraph:

"(D) In a civil action brought by the United States, a court shall award attorney's fees and other expenses to a party or a small entity, as defined in section 601 of title 5, United States Code, if the judgment finally obtained by the United States is disproportionately less favorable to the United States than an express demand by the United States, unless the party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award of attorney's fees unjust. For purposes of this subparagraph, an 'express demand' shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this subparagraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31, United States Code.".

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603(a) of title 5, United States Code, is amended—

(1) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States"; and

(2) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretive rule involving the internal revenue laws of the United States, this chapter applies to interpretive rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretive rules impose on small entities a collection of information requirements, as defined in the Paperwork Reduction Act of 1995.".

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or is otherwise required to publish an initial regulatory flexibility analysis, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small business was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 402. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled

to judicial review of agency compliance with the requirements of this chapter, except the requirements of sections 602, 603, 609 and 612.

"(2) Each court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review any claims of noncompliance with this chapter, except the requirements of sections 602, 603, 609 and 612.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to a petition for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, a petition for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the one year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) If the court determines, on the basis of the rulemaking record, that the final agency action under this chapter was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court shall order the agency to take corrective action consistent with this chapter, which may include—

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities, unless the court finds good cause for continuing the enforcement of the rule pending the completion of the corrective action.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Except as otherwise required by this chapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct a rulemaking.

"(d) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(e) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code, is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof, "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTER-AGENCY COORDINATION.—Section 609 of title 5, United States Code, is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities", by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following new subsection:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full-time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c): *Provided*, That such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) Prior to publication of a final regulatory flexibility analysis that a covered agency is required by this chapter to conduct—

"(1) an agency shall reconvene the review panel established under paragraph (b)(3), or if no initial regulatory flexibility analysis was published, undertake the actions described in paragraphs (b) (1) through (3);

"(2) the panel shall review any material the agency has prepared in connection with this chapter, including any draft rule, collect the advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4) and (5);

"(3) not later than 15 days after the date a covered agency convenes a review panel pursuant to paragraph (1), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 604(a), paragraphs (3), (4) and (5): *Provided*, That such report shall be made public as part of the rulemaking record; and

"(4) where appropriate, the agency shall modify the final rule, the final regulatory flexibility analysis or the decision on whether a final regulatory flexibility analysis is required.

"(d) An agency may in its discretion apply subsections (b) and (c) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(e) For purposes of this section, the term 'covered agency' means the Environmental Protection Agency and the Occupational Health and Safety Administration of the Department of Labor.

"(f) The Chief Counsel for Advocacy, in consultation with the individuals identified in paragraph (b)(2) and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of paragraphs (b)(3), (b)(4), and (b)(5), and subsection (c) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows—

"(1) in developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration; or in developing a final rule, the extent to which the covered agency took into consideration the comments filed by the individuals identified in paragraph (b)(2);

"(2) special circumstances requiring prompt issuance of the rule; and

"(3) whether the requirements of subsection (b) or (c) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

TITLE V—CONGRESSIONAL REVIEW

SEC. 501. SHORT TITLE.

This title may be cited as the "Congressional Review Act of 1996".

SEC. 502. FINDING.

The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the effectiveness of certain significant final rules is imposed in order to provide Congress an opportunity for review.

SEC. 503. MORATORIUM ON REGULATIONS; CONGRESSIONAL REVIEW.

(a) REPORTING AND REVIEW OF REGULATIONS.—

(1) REPORTING TO CONGRESS AND THE COMPTROLLER GENERAL.—

(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule; and

(iii) the proposed effective date of the rule.

(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to section 603, section 604, section 605, section 607, and section 609 of Public Law 96-354;

(iii) the agency's actions relevant to title II, section 202, section 203, section 204, and section 205 of Public Law 104-4; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders, such as Executive Order 12866.

(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

(2) REPORTING BY THE COMPTROLLER GENERAL.—

(A) The Comptroller General shall provide a report on each significant rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 504(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by subparagraph (B) (i) through (iv).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under paragraph (2)(A) of this section.

(3) EFFECTIVE DATE OF SIGNIFICANT RULES.—A significant rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

(A) the later of the date occurring 45 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register;

(B) if the Congress passes a joint resolution of disapproval described under section 504 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 504 is enacted).

(4) EFFECTIVE DATE FOR OTHER RULES.—Except for a significant rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) FAILURE OF JOINT RESOLUTION OF DISAPPROVAL.—Notwithstanding the provisions of paragraph (3), the effective date of a rule shall not be delayed by operation of this title beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 504.

(b) TERMINATION OF DISAPPROVED RULEMAKING.—A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 504.

(c) PRESIDENTIAL WAIVER AUTHORITY.—

(1) PRESIDENTIAL DETERMINATIONS.—Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this title may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) GROUNDS FOR DETERMINATIONS.—Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws; or

(C) necessary for national security.

(3) WAIVER NOT TO AFFECT CONGRESSIONAL DISAPPROVALS.—An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 504 or the effect of a joint resolution of disapproval under this section.

(d) TREATMENT OF RULES ISSUED AT END OF CONGRESS.—

(1) ADDITIONAL OPPORTUNITY FOR REVIEW.—In addition to the opportunity for review otherwise provided under this title, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 504 shall apply to such rule in the succeeding Congress.

(2) TREATMENT UNDER SECTION 504.—

(A) In applying section 504 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report must be submitted to Congress before a final rule can take effect.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

(e) TREATMENT OF RULES ISSUED BEFORE THIS TITLE.—

(1) OPPORTUNITY FOR CONGRESSIONAL REVIEW.—The provisions of section 504 shall apply to any significant rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on March 1, 1996, through the date on which this title takes effect.

(2) TREATMENT UNDER SECTION 504.—In applying section 504 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of the enactment of this Act; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 504.

(f) NULLIFICATION OF RULES DISAPPROVED BY CONGRESS.—Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under section 504 shall be treated as though such rule had never taken effect.

(g) NO INFERENCE TO BE DRAWN WHERE RULES NOT DISAPPROVED.—If the Congress does not enact a joint resolution of disapproval under section 504, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

SEC. 504. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) JOINT RESOLUTION DEFINED.—For purposes of this section, the term "joint resolution" means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 503(a) is received by Congress and ending 45 days thereafter, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.". (The blank spaces being appropriately filled in.)

(b) REFERRAL.—

(1) IN GENERAL.—A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

(2) SUBMISSION DATE.—For purposes of this subsection the term "submission or publication date" means the later of the date on which—

(A) the Congress receives the report submitted under section 503(a)(1); or

(B) the rule is published in the Federal Register.

(c) DISCHARGE.—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain

the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

(3) FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) TREATMENT IF OTHER HOUSE HAS ACTED.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) NONREFERRAL.—The resolution of the other House shall not be referred to a committee.

(2) FINAL PASSAGE.—With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 505. SPECIAL RULE ON STATUTORY, REGULATORY AND JUDICIAL DEADLINES.

(a) IN GENERAL.—In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of the enactment of a joint resolution under section 504, that deadline is extended until the date 12 months after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 503(a).

(b) DEADLINE DEFINED.—The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

SEC. 506. DEFINITIONS.

For purposes of this title—

(1) FEDERAL AGENCY.—The term "Federal agency" means any "agency" as that term is defined in section 551(1) of title 5, United States Code (relating to administrative procedure).

(2) SIGNIFICANT RULE.—The term "significant rule"—

(A) means any final rule that the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget finds—

(i) has an annual effect on the economy of $100,000,000 or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(iii) materially alters the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866; and

(B) shall not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by such Act.

(3) FINAL RULE.—The term "final rule" means any final rule or interim final rule. As used in this paragraph, "rule" has the meaning given such term by section 551 of title 5, United States Code, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

SEC. 507. JUDICIAL REVIEW.

No determination, finding, action, or omission under this title shall be subject to judicial review.

SEC. 508. APPLICABILITY; SEVERABILITY.

(a) APPLICABILITY.—This title shall apply notwithstanding any other provision of law.

(b) SEVERABILITY.—If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this title, shall not be affected thereby.

SEC. 509. EXEMPTION FOR MONETARY POLICY.

Nothing in this title shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

SEC. 510. EXEMPTION FOR HUNTING AND FISHING.

Nothing in this title shall apply to rules that establish, modify, open, close, or conduct a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping.

SEC. 511. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

Mr. BOND. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, I would like to express my appreciation to my colleagues for the overwhelming endorsement of this small business regulatory relief measure. Particularly, I want to thank my ranking member, Senator BUMPERS. He and all the members of the committee worked very hard on this bill.

The purpose of the bill is to provide targeted relief to small businesses, small entities such as townships, counties, and cities, and not-for-profit organizations who feel overwhelmed by Government regulation.

This is a measure providing judicial enforcement and therefore, putting teeth into the requirements of the measure that Congress adopted in 1980 saying that regulations affecting small business and small entities must have an analysis to make sure that flexibility for these small entities was included and was a No. 3 priority for small business. At the White House Conference on Small Business held in Washington last year, 2,000 delegates from all across the country said this was the third most important item on their agenda.

We took that message from the small businesses, from small entities, from people who attended our hearings across the country and in Washington, and people who contacted us in our States, and we crafted a measure that had the strongest bipartisan support. Our staffs worked with a wide variety of groups. We had the full support of the President and the Administrator of the Small Business Administration. But lots of people had lots of concerns and lots of little issues that needed to be addressed in this bill. As a result, we made significant numbers of minor changes to make sure that the bill did what it accomplishes.

I believe that while the project is not perfect, it is an excellent measure. I hope we will see quick action on it in the House so that we may come to conference and agree, and send to the President something at least very close to this measure.

I wish to extend a very special thanks to the counsel for the minority, John Ball, to the director of the Small Business Committee, Louis Taylor, and to Keith Cole. Among them, they listened to many, many hours of telephone calls and concerns from people who had a little fix here and a little fix there. The end product, I think, reflected much good advice and some advice that could not be taken. But I express appreciation, first, to the members of the Small Business Committee themselves who worked hard on this, to all of their staffs, and to the representatives of small business who showed the strength and the resolve to keep us focused on this, a measure designed to provide regulatory relief to an area which has experienced tremendous burdens from Government regulations.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

104TH CONGRESS
2D SESSION

S. 942

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 1996

Referred to the Committee on the Judiciary, and in addition to the Committees on Small Business, and Rules, 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

AN ACT

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996"

SEC. 2. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the White House Conference on Small Business involve reforms to the way Government regulations are developed and enforced, and reductions in Government paperwork requirements;

(5) the requirements of the Regulatory Flexibility Act have too often been ignored by Government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by the Regulatory Flexibility Act.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of the Regulatory Flexibility Act;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

SEC. 4. EFFECTIVE DATE.

This Act shall become effective on the date 90 days after enactment, except that the amendments made by title IV of this Act shall not apply to interpretive rules

for which a notice of proposed rulemaking was published prior to the date of enactment.

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 102. COMPLIANCE GUIDES.

(a) COMPLIANCE GUIDE.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the

guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources if information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency, it shall be the practice of the agency to answer inquiries by small entities concerning informa-

tion on and advice about compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, in-

cluding providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to small business concerns; and

"(S) developing programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures.".

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS AND PROGRAMS ESTABLISHED UNDER SECTION 507 OF THE CLEAN AIR ACT AMENDMENTS OF 1990.

(a) GENERAL.—The Manufacturing Technology Centers and other similar extension centers administered by the National Institute of Standards and Technology of the Department of Commerce shall, as appropriate, provide the assistance regarding regulatory requirements, develop and distribute information and guides and develop the

programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to the same extent as provided for in section 104 of this Act with respect to Small Business Development Centers.

(b) SECTION 507 PROGRAMS.—Nothing in this Act in any way limits the authority and operation of the small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990.

SEC. 106. COOPERATION ON GUIDANCE.

Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency's area of interest at the Federal and State levels impact small businesses. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

TITLE II—REGULATORY ENFORCEMENT REFORMS

SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) "Board" means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) "Ombudsman" means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) SBA ENFORCEMENT OMBUDSMAN.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, onsite inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

"(C) based on substantiated comments received from small business concerns and the

Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

"(D) coordinate and report annually on the activities, findings, and recommendations of the Boards to the Administration and to the heads of affected agencies; and

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under paragraph (C) and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members appointed by the Administration, who are owners or operators of small entities, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate.

"(4) Members of the Board shall serve for terms of three years or less.

"(5) The Administration shall select a chair from among the members of the Board who shall serve for not more than 2 years as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) POWERS OF THE BOARDS.—

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business: *Provided,* That the donations and their sources are disclosed by the Board.

"(4) Members of the Board shall serve without compensation: *Provided,* That members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their

homes or regular places of business in the performance of services for the Board.".

SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a State;

(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) excluding violations involving willful or criminal conduct;

(5) excluding violations that pose serious health, safety or environmental threats; and

(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to Congress no later than 2 years from the effective date on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

Section 504 of title 5, United States Code, is amended—

(1) in subsection (b), by striking "$75" in subparagraph (b)(1) and inserting "$125"; and

(2) in subsection (a) by adding the following new paragraph:

"(4) In an adversary adjudication brought by an agency, an adjudicative officer of the agency shall award attorney's fees and other expenses to a party or a small entity, as defined in section 601, if the

decision of the adjudicative officer is disproportionately less favorable to the agency than an express demand by the agency, unless the party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award of attorney's fees unjust. For purposes of this paragraph, an 'express demand' shall not include a recitation by the agency of the maximum statutory penalty (A) in the administrative complaint, or (B) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this paragraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31, United States Code.".

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended—

(1) in paragraph (d), by striking "$75" in subparagraph (2)(A) and inserting "$125"; and

(2) in paragraph (d)(1) by adding the following new subparagraph:

"(D) In a civil action brought by the United States, a court shall award attorney's fees and other expenses to a party or a small entity,

as defined in section 601 of title 5, United States Code, if the judgment finally obtained by the United States is disproportionately less favorable to the United States than an express demand by the United States, unless the party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award of attorney's fees unjust. For purposes of this subparagraph, an 'express demand' shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this subparagraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31, United States Code.''.

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603(a) of title 5, United States Code, is amended—

(1) by inserting after "proposed rule", the phrase ", or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States"; and

(2) by inserting at the end of the subsection, the following new sentence: "In the case of an interpretive rule involving the internal revenue laws of the United States, this chapter applies to interpretive rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretive rules impose on small entities a collection of information requirements, as defined in the Paperwork Reduction Act of 1995.".

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or is otherwise required to publish an initial regulatory flexibility analysis, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and objectives of, the rule;

"(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

"(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

"(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

"(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule con-

sidered by the agency which affect the impact on small business was rejected."; and

(2) in subsection (b), by striking "at the time" and all that follows and inserting "such analysis or a summary thereof.".

SEC. 402. JUDICIAL REVIEW.

Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this chapter, except the requirements of sections 602, 603, 609 and 612.

"(2) Each court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review any claims of noncompliance with this chapter, except the requirements of sections 602, 603, 609 and 612.

"(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year,

such lesser period shall apply to a petition for judicial review under this section.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, a petition for judicial review under this section shall be filed not later than—

"(i) one year after the date the analysis is made available to the public, or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the one year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(4) If the court determines, on the basis of the rulemaking record, that the final agency action under this chapter was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court shall order the agency to take corrective action consistent with this chapter, which may include—

"(A) remanding the rule to the agency, and

"(B) deferring the enforcement of the rule against small entities, unless the court finds good cause for continuing the enforcement of the rule pending the completion of the corrective action.

"(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

"(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

"(c) Except as otherwise required by this chapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct a rulemaking.

"(d) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

"(e) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.".

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

(b) Section 612 of title 5, United States Code, is amended—

(1) in subsection (a), by striking "the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives".

(2) in subsection (b), by striking "his views with respect to the" and inserting in lieu thereof,

"his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the".

SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.—Section 609 of title 5, United States Code, is amended—

(1) before "techniques," by inserting "the reasonable use of";

(2) in paragraph (4), after "entities", by inserting "including soliciting and receiving comments over computer networks";

(3) by designating the current text as subsection (a); and

(4) by adding the following new subsection:

"(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

"(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

"(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

"(3) the agency shall convene a review panel for such rule consisting wholly of full-time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

"(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b),

paragraphs (3), (4) and (5) and 603(c): *Provided,* That such report shall be made public as part of the rulemaking record; and

"(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

"(c) Prior to publication of a final regulatory flexibility analysis that a covered agency is required by this chapter to conduct—

"(1) an agency shall reconvene the review panel established under paragraph (b)(3), or if no initial regulatory flexibility analysis was published, undertake the actions described in paragraphs (b) (1) through (3);

"(2) the panel shall review any material the agency has prepared in connection with this chapter, including any draft rule, collect the advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4) and (5);

"(3) not later than 15 days after the date a covered agency convenes a review panel pursuant to paragraph (1), the review panel shall report on the

comments of the small entity representatives and its findings as to issues related to subsection 604(a), paragraphs (3), (4) and (5): *Provided,* That such report shall be made public as part of the rulemaking record; and

"(4) where appropriate, the agency shall modify the final rule, the final regulatory flexibility analysis or the decision on whether a final regulatory flexibility analysis is required.

"(d) An agency may in its discretion apply subsections (b) and (c) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

"(e) For purposes of this section, the term 'covered agency' means the Environmental Protection Agency and the Occupational Health and Safety Administration of the Department of Labor.

"(f) The Chief Counsel for Advocacy, in consultation with the individuals identified in paragraph (b)(2) and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of paragraphs (b)(3), (b)(4), and (b)(5), and subsection (c) by including in the rulemaking record a written finding, with reasons there-

for, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows—

"(1) in developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration; or in developing a final rule, the extent to which the covered agency took into consideration the comments filed by the individuals identified in paragraph (b)(2);

"(2) special circumstances requiring prompt issuance of the rule; and

"(3) whether the requirements of subsection (b) or (c) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.".

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this

section and to act as permanent chair of the agency's review panels established pursuant to this section.

TITLE V—CONGRESSIONAL REVIEW

SEC. 501. SHORT TITLE.

This title may be cited as the "Congressional Review Act of 1996".

SEC. 502. FINDING.

The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the effectiveness of certain significant final rules is imposed in order to provide Congress an opportunity for review.

SEC. 503. MORATORIUM ON REGULATIONS; CONGRESSIONAL REVIEW.

(a) REPORTING AND REVIEW OF REGULATIONS.—

(1) REPORTING TO CONGRESS AND THE COMPTROLLER GENERAL.—

(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule; and

(iii) the proposed effective date of the rule.

(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to section 603, section 604, section 605, section 607, and section 609 of Public Law 96–354;

(iii) the agency's actions relevant to title II, section 202, section 203, section 204, and section 205 of Public Law 104–4; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders, such as Executive Order 12866.

(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

(2) REPORTING BY THE COMPTROLLER GENERAL.—

(A) The Comptroller General shall provide a report on each significant rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 504(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by subparagraph (B) (i) through (iv).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under paragraph (2)(A) of this section.

(3) EFFECTIVE DATE OF SIGNIFICANT RULES.—A significant rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

(A) the later of the date occurring 45 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register;

(B) if the Congress passes a joint resolution of disapproval described under section 504 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 504 is enacted).

(4) EFFECTIVE DATE FOR OTHER RULES.—Except for a significant rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) FAILURE OF JOINT RESOLUTION OF DISAPPROVAL.—Notwithstanding the provisions of paragraph (3), the effective date of a rule shall not be delayed by operation of this title beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 504.

(b) TERMINATION OF DISAPPROVED RULEMAKING.—A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 504.

(c) PRESIDENTIAL WAIVER AUTHORITY.—

(1) PRESIDENTIAL DETERMINATIONS.—Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this title may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) GROUNDS FOR DETERMINATIONS.—Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws; or

(C) necessary for national security.

(3) WAIVER NOT TO AFFECT CONGRESSIONAL DISAPPROVALS.—An exercise by the President of the authority under this subsection shall have no effect

on the procedures under section 504 or the effect of a joint resolution of disapproval under this section.

(d) TREATMENT OF RULES ISSUED AT END OF CONGRESS.—

(1) ADDITIONAL OPPORTUNITY FOR REVIEW.—In addition to the opportunity for review otherwise provided under this title, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 504 shall apply to such rule in the succeeding Congress.

(2) TREATMENT UNDER SECTION 504.—

(A) In applying section 504 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report must be submitted to Congress before a final rule can take effect.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

(e) TREATMENT OF RULES ISSUED BEFORE THIS TITLE.—

(1) OPPORTUNITY FOR CONGRESSIONAL REVIEW.—The provisions of section 504 shall apply to any significant rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on March 1, 1996, through the date on which this title takes effect.

(2) TREATMENT UNDER SECTION 504.—In applying section 504 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register (as a rule that shall take effect as

a final rule) on the date of the enactment of this Act; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 504.

(f) NULLIFICATION OF RULES DISAPPROVED BY CONGRESS.—Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under section 504 shall be treated as though such rule had never taken effect.

(g) NO INFERENCE TO BE DRAWN WHERE RULES NOT DISAPPROVED.—If the Congress does not enact a joint resolution of disapproval under section 504, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

SEC. 504. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) JOINT RESOLUTION DEFINED.—For purposes of this section, the term "joint resolution" means only a joint resolution introduced during the period beginning on the

date on which the report referred to in section 503(a) is received by Congress and ending 45 days thereafter, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.". (The blank spaces being appropriately filled in.)

(b) REFERRAL.—

(1) IN GENERAL.—A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

(2) SUBMISSION DATE.—For purposes of this subsection the term "submission or publication date" means the later of the date on which—

(A) the Congress receives the report submitted under section 503(a)(1); or

(B) the rule is published in the Federal Register.

(c) DISCHARGE.—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee

may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution

shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

(3) FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) TREATMENT IF OTHER HOUSE HAS ACTED.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) NONREFERRAL.—The resolution of the other House shall not be referred to a committee.

(2) FINAL PASSAGE.—With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 505. SPECIAL RULE ON STATUTORY, REGULATORY AND JUDICIAL DEADLINES.

(a) IN GENERAL.—In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of the enactment of a joint resolution under section 504, that deadline is extended until the date 12 months after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 503(a).

(b) DEADLINE DEFINED.—The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

SEC. 506. DEFINITIONS.

For purposes of this title—

(1) FEDERAL AGENCY.—The term "Federal agency" means any "agency" as that term is defined

in section 551(1) of title 5, United States Code (relating to administrative procedure).

(2) SIGNIFICANT RULE.—The term "significant rule"—

(A) means any final rule that the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget finds—

(i) has an annual effect on the economy of $100,000,000 or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(iii) materially alters the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) raises novel legal or policy issues arising out of legal mandates, the Presi-

dent's priorities, or the principles set forth in Executive Order 12866; and

(B) shall not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by such Act.

(3) FINAL RULE.—The term "final rule" means any final rule or interim final rule. As used in this paragraph, "rule" has the meaning given such term by section 551 of title 5, United States Code, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

SEC. 507. JUDICIAL REVIEW.

No determination, finding, action, or omission under this title shall be subject to judicial review.

SEC. 508. APPLICABILITY; SEVERABILITY.

(a) APPLICABILITY.—This title shall apply notwithstanding any other provision of law.

(b) SEVERABILITY.—If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this title, shall not be affected thereby.

SEC. 509. EXEMPTION FOR MONETARY POLICY.

Nothing in this title shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

SEC. 510. EXEMPTION FOR HUNTING AND FISHING.

Nothing in this title shall apply to rules that establish, modify, open, close, or conduct a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping.

SEC. 511. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

Passed the Senate March 19, 1996.

Attest: KELLY D. JOHNSTON,

Secretary.

LEGISLATIVE
Bulletin

SOCIAL SECURITY ADMINISTRATION

104-14 December 6, 1995

HOUSE PASSES RETIREMENT EARNINGS TEST BILL

On December 5, 1995, the House passed H.R. 2684, the Senior Citizens' Right To Work Act of 1995, by a vote of 411-4. Members voting against the bill were: Beilenson (D-CA), Johnston (D-FL), LaFalce (D-NY), and Watts (D-NC). In the Senate, a companion bill, S. 1432, was introduced by Senator John McCain (R-AZ) on November 28. The Senate Committee on Finance is expected to take action on this issue before Congress adjourns for the holidays.

As passed by the House, H.R. 2684 includes the following:

Increase in the Earnings Test Annual Exempt Amount

- Beginning in 1996, gradually raise the earnings limit for the retirement earnings test (RET) for beneficiaries who have attained normal retirement age to $30,000 by 2002 (compared to $14,760 under current law based on the intermediate assumptions in the Trustees Report). The applicable 1996 exempt amount is $11,520. Exempt amounts under the bill would be:

Year	Proposed Exempt Amount
1996	$14,000
1997	15,000
1998	16,000
1999	17,000
2000	18,000
2001	25,000
2002	30,000

OFFICE OF THE DEPUTY COMMISSIONER FOR LEGISLATION AND CONGRESSIONAL AFFAIRS

After 2002, the annual exempt amount would be indexed to growth in average wages. The substantial gainful activity (SGA) amount applicable to individuals who are statutorily blind would no longer be linked to the RET exempt amount for individuals age 65 to 69. Instead, the SGA amount for blind people would continue to be adjusted annually as under present law, i.e., based on the national average wage index.

Dependency Test for Stepchildren

- To get benefits, a stepchild would have to be receiving at least one-half support from the stepparent when the child's claim is filed. (The option for finding dependency based on living-with would be eliminated.) This provision would be effective with applications filed after the third month following the month of enactment.

- If the natural parent and the stepparent of an entitled stepchild divorce, benefits to the stepchild would terminate 6 months after SSA is notified of the divorce. This provision would be effective for divorces that SSA is notified of on or after the date of enactment.

One-Year Delay in Benefit Recomputations

- Benefit recomputations for workers who have earnings in years after the year in which they reach normal retirement age would not be effective until the second year following the year of higher earnings (rather than the following January), unless the year being replaced is a year of zero earnings.

- The provision applies to benefit recomputations based on wages or self-employment income earned after 1994.

Revocation by Clergy of Exemption from Social Security Coverage

- Clergymen who have elected to be exempted from Social Security coverage can request revocation of the exemption for a limited time. The revocation must be requested by the due date of the tax return for the second taxable year after the year of enactment (by April 15, 1998, if enactment occurs in 1995).

Continuing Disability Review (CDR) Administration Revolving Account for Title II Disability Benefits

- Establishes through FY 2002 a CDR Administration Revolving Account in the Federal Disability Insurance (DI) Trust Fund as a source of non-appropriated administrative funds to help finance DI CDRs. The account would be initially funded with $300 million transferred from amounts otherwise available in the DI Trust Fund and would thereafter be credited at the start of each fiscal year with an amount equal to the estimated present value of savings to the OASDI and Medicare Trust Funds (as certified by SSA's Chief Actuary) flowing from CDRs conducted in the prior fiscal year. Expenditures from the Account could be used only for the purpose of conducting CDRs.

- Requires explicit annual certifications from SSA's Chief Actuary. Therefore, the provision also establishes statutorily the position of Chief Actuary.

- Requires the Commissioner to include in SSA's CDR Report to Congress a final accounting of the amounts transferred to the Account during the year, the amount made available from the Account during the year pursuant to certifications made by SSA's Chief Actuary, and the expenditures made for processing CDRs during the year, including a comparison of the number of CDRs conducted during the year with the estimated number of CDRs upon which the estimate for such expenditures was made.

- The provision is applicable only for fiscal years beginning on October 1, 1995, through September 30, 2002, and sunsets October 1, 2002.

Elimination of the Role of SSA in Processing Attorney Fees

- Eliminates the current law requirement that SSA withhold and pay attorney fees. Caps the amount a representative may charge for representing claimants in cases in which SSA makes a favorable determination at the administrative level at $4,000. Provides that a court may determine and allow as part of its judgment a reasonable fee for claimant representation, whenever a court renders a favorable determination.

- Applies to initial claims filed and claims with first time representation 60 days on or after enactment.

Denial of Disability Benefits to Drug Addicts and Alcoholics

- Prohibits DI and SSI eligibility to individuals whose drug addiction and/or alcoholism (DAA) is a contributing factor material to the finding of disability. This provision would apply with respect to monthly benefits for months beginning after enactment and to current beneficiaries on January 1, 1997. If current beneficiaries whose benefits terminate because of this provision reapply for benefits within 120 days after the date of enactment, SSA must make new medical determinations for such individuals no later than January 1, 1997.

- Applies representative payee requirements to any DI or SSI beneficiary who has a DAA condition, as determined by the Commissioner, that prevents that beneficiary from managing benefits. SSA would refer, as appropriate, these individuals to the appropriate State agency for treatment. These provisions would apply to applications filed after the date of enactment.

- Provides an appropriation of $100 million for each of FYs 1997 and 1998 to carry out activities relating to the treatment of drug and alcohol abuse under the Public Health Service Act.

Benefit and Tax Statements

- Requires SSA to conduct a pilot study of the efficacy of providing retired workers with information about their Social Security benefits and taxes. The study would involve a sample of retirement beneficiaries whose entitlement began in or after 1984. SSA would send them estimates of their aggregate covered earnings, their aggregate Social Security taxes (including the employer share), and the total amount of benefits paid on their record.

- The study would have to be conducted within a 2-year period beginning as soon as practicable in 1996 and a report on its results would be due to Congress within 60 days of its completion.

Other Recent Congressional Action:

- On November 29, the Senate Committee on the Judiciary, Subcommittee on Immigration approved S. 1394 which would impose new limits on the number of legal immigrants allowed into the U.S. each year. The Subcommittee also agreed to combine S. 1394 with S. 269 which, among other provisions, would restrict SSI benefits to noncitizens and establish an employment verification and benefit eligibility system (See Legislative Bulletin 104-8). The combined legislation will probably be taken up by the full committee early next year.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

104-15

December 15, 1995

SENATE FINANCE COMMITTEE APPROVES RETIREMENT EARNINGS TEST BILL

On December 14, 1995, the Senate Finance Committee unanimously approved S. 1470, the "Senior Citizens' Freedom to Work Act of 1995." The Senate is expected to take action on this legislation before the end of the year.

On December 5, the House passed H.R. 2684, the "Senior Citizens' Right to Work Act of 1995" (Legislative Bulletin No. 104-14). While several provisions of that bill are similar to the provisions of S. 1470, only the provision to increase the earnings test annual exempt amount is identical in both bills.

As approved by the Senate Finance Committee, S. 1470 includes the following:

Increase in the Earnings Test Annual Exempt Amount

- Beginning in 1996, gradually raise the earnings limit for the retirement earnings test (RET) for beneficiaries who have attained normal retirement age to $30,000 by 2002 (compared with $14,760 under current law based on the intermediate assumptions in the Trustees Report). The applicable 1996 exempt amount under current law is $11,520. Exempt amounts under the bill would be:

Year	Proposed Exempt Amount
1996	$14,000
1997	15,000
1998	16,000
1999	17,000
2000	18,000
2001	25,000
2002	30,000

After 2002, the annual exempt amount would be indexed to growth in average wages.

The substantial gainful activity (SGA) amount applicable to individuals who are statutorily blind would no longer be linked to the RET exempt amount for individuals ages 65 to 69. Instead, the SGA amount for blind people would continue to be adjusted annually as under present law, i.e., based on the national average wage index.

Denial of Disability Benefits to Drug Addicts and Alcoholics

Prohibits disability insurance (DI) and supplemental security income (SSI) eligibility to individuals whose drug addiction and/or alcoholism (DAA) is a contributing factor material to the finding of disability. This provision would apply to individuals who file for benefits on or after the date of enactment and to individuals whose claims are adjudicated on or after the date of enactment. This provision applies to current beneficiaries on January 1, 1997. If current beneficiaries whose benefits terminate because of this provision reapply for benefits within 120 days after the date of enactment, SSA must make new medical determinations for such individuals no later than January 1, 1997.

Applies representative payee requirements to any DI or SSI beneficiary who is unable to manage their benefits due to a DAA condition, as determined by the Commissioner. SSA would refer these individuals to the appropriate State agency for treatment. These provisions would apply to applications filed after the date of enactment.

Provides an appropriation of $50 million for each of FYs 1997 and 1998 to carry out on a priority basis activities relating to the treatment of drug and alcohol abuse under the Public Health Service Act.

Dependency Test for Stepchildren

- To get benefits, a stepchild would have to be receiving at least one-half support from the stepparent when the child's claim is filed. (The option for finding dependency based on living-with would be eliminated.) This provision would be effective for benefits of individuals who become entitled after the third month following the month of enactment.

  If the natural parent and the stepparent of an entitled stepchild divorce, benefits to the stepchild based on the work record of the stepparent would terminate the month after the month in which such divorce becomes final. This provision would be effective for final divorces occurring after the third month following the month of enactment.

Continuing Disability Review (CDR) Administration Revolving Account for Title II Disability Benefits

- Establishes through FY 2002 a CDR Administration Revolving Account in the Federal Disability Insurance (DI) Trust Fund as a source of non-appropriated administrative funds to help finance DI CDRs. The account would be initially funded with $300 million transferred from amounts otherwise available in the DI Trust Fund and would thereafter be credited at the start of each fiscal year with an amount equal to the estimated present value of savings to the OASDI and Medicare Trust Funds (as certified by SSA's Chief Actuary) flowing from CDRs conducted in the prior fiscal year. Expenditures from the Account could be used only for the purpose of conducting CDRs.

- Requires explicit annual certifications from SSA's Chief Actuary. Therefore, the provision also establishes statutorily the position of Chief Actuary.

- Requires the Commissioner to include in SSA's CDR Report to Congress a final accounting of the amounts transferred to the Account during the year, the amount made available from the Account during the year pursuant to certifications made by SSA's Chief Actuary, and the expenditures made for processing CDRs during the year, including a comparison of the number of CDRs conducted during the year with the estimated number of CDRs upon which the estimate for such expenditures was made.

- The provision is applicable only for fiscal years beginning on October 1, 1995, through September 30, 2002, and sunsets October 1, 2002.

Investment of Social Security and Medicare Trust Funds

Would prohibit the Secretary of the Treasury from refraining from investing Social Security and Medicare Trust Fund monies in Federal securities, and from redeeming securities held by the trust funds, to avoid increasing or to reduce outstanding public debt obligations. Effective upon enactment.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

104-19

March 28, 1996

THE HOUSE PASSES H.R. 3136 CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

On March 28, 1996 the House passed, by a vote of 328-91, H.R. 3136, the Contract With America Advancement Act of 1996. The bill is expected to be taken up in the Senate tomorrow.

In addition to extending the debt limit from $4.9 trillion to $5.5 trillion, the bill contains the following provisions of interest to Social Security:

Denial of Disability Benefits to Drug Addicts and Alcoholics

- Prohibits disability insurance (DI) and supplemental security income (SSI) eligibility to individuals whose drug addiction and/or alcoholism (DAA) is a contributing factor material to the finding of disability. This provision would apply to individuals who file for benefits on or after the date of enactment and to individuals whose claims are finally adjudicated on or after the date of enactment. This provision applies to current beneficiaries on January 1, 1997. SSA must: 1) notify current DAA beneficiaries of new provisions within 90 days of enactment; and 2) complete new medical determinations by January 1, 1997, for affected current beneficiaries who request such a determination within 120 days after the date of enactment.

- Applies representative payee requirements to DI or SSI beneficiaries who have a DAA condition, as determined by the Commissioner, and who are incapable of managing benefits. SSA would refer these individuals to the appropriate State agency for treatment. These provisions would apply to applications filed after the third month following the month of enactment. In addition, retains the $50 fee that representatives can collect for beneficiaries who have a DAA condition.

- Provides an appropriation of $50 million for each of FYs 1997 and 1998 to carry out on a priority basis activities relating to the treatment of drug and alcohol abuse under the Public Health Service Act.

Continuing Disability Reviews

- Provides additional funds to SSA for fiscal years 1996 through 2002 for the purpose of conducting Social Security disability insurance (DI) continuing disability reviews (CDRs) and Supplemental Security Income (SSI) CDRs and disability eligibility redeterminations. This would be accomplished by increasing the amount of funds available for appropriations under the discretionary spending cap.

- Directs the Commissioner of Social Security to ensure that the funds made available pursuant to this provision are used, to the greatest extent practicable, to maximize the combined savings to the old-age, survivors, and disability insurance (OASDI), SSI, Medicare, and Medicaid programs.

- Requires the Commissioner to report annually, for FYs 1996 through 2002, to Congress on the amount of money spent on CDRs, the number of reviews conducted (by category), the disposition of such reviews (by program), and the estimated savings over the short-, medium-, and long-term for OASDI, SSI, Medicare, and Medicaid programs from CDRs which result in cessations, and the estimated present value of such savings.

- Establishes statutorily in the Social Security Administration the position of Chief Actuary, to be appointed by, and report directly to, the Commissioner, and be subject to removal only for cause.

Dependency Test for Stepchildren

- Provides that a stepchild would have to be receiving at least one-half support from the stepparent when the child's claim is filed to get benefits. (The option for finding dependency based on living-with would be eliminated.) This provision would be effective for benefits of individuals who become entitled after the third month following the month of enactment.

  If the natural parent and the stepparent of an entitled stepchild divorce, benefits to the stepchild based on the work record of the stepparent would terminate the month after the month in which such divorce becomes final. This provision would be effective for final divorces occurring after the third month following the month of enactment.

Increase in the Earnings Test Annual Exempt Amount

- Gradually raises, beginning in 1996, the earnings limit for the retirement earnings test (RET) for beneficiaries who have attained normal retirement age to $30,000 by 2002 (compared with $14,760 under current law based on the intermediate assumptions in the Trustees Report). The applicable 1996 exempt amount under current law is $11,520. Exempt amounts under the bill would be:

Year	Proposed Exempt Amount
1996	$12,500
1997	13,500
1998	14,500
1999	15,500
2000	17,000
2001	25,000
2002	30,000

After 2002, the annual exempt amount would be indexed to growth in average wages.

The substantial gainful activity (SGA) amount applicable to individuals who are statutorily blind would no longer be linked to the RET exempt amount for individuals ages 65 to 69. Instead, the SGA amount for blind people would continue to be adjusted annually as under present law, i.e., based on the national average wage index.

Benefit and Tax Statements

- Requires SSA to conduct a pilot study of the efficacy of providing retired workers with information about their Social Security benefits and taxes. The study would involve a sample of retirement beneficiaries whose entitlement began in or after 1984. SSA would send them estimates of their aggregate covered earnings, their aggregate Social Security taxes (including the employer share), and the total amount of benefits paid on their record.

- Requires the study to be conducted within a 2-year period beginning as soon as practicable in 1996 and a report on its results be provided to Congress within 60 days of its completion.

Investment of Social Security and Medicare Trust Funds

- Prohibits the Secretary of the Treasury from refraining from investing Social Security and Medicare Trust Fund monies in Federal securities, and from redeeming securities held by the trust funds, to avoid increasing or to reduce outstanding public debt obligations. Effective upon enactment.

Professional Staff for the Social Security Advisory Board

- Authorizes the Social Security Advisory Board to appoint 3 professional staff employees, one of whom is to be appointed from among individuals approved by Advisory Board members who do not belong to the political party represented by the majority of the Board.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

104-20

March 29, 1996

SENATE PASSES H.R. 3136 CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

Late yesterday, March 28, 1996, the Senate passed by unanimous consent (with no amendments), H.R. 3136, the Contract With America Advancement Act of 1996. The House passed the bill earlier in the day (see Legislative Bulletin No. 104-19 for a description of provisions). It is expected to be sent to the President today.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

104-22

April 9, 1996

THE PRESIDENT SIGNS H.R. 3136 THE "CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996"

On March 29, 1996, the President signed into law the Contract With America Advancement Act of 1996 (H.R. 3136), as P.L. 104-121. The bill contains the Senior Citizens' Right to Work Act of 1996, the Small Business Growth and Fairness Act of 1996, establishes a new process for Congressional review of agency rulemaking, and provides for a permanent increase in the public debt limit from $4.9 trillion to $5.5 trillion. The bill contains the following provisions of interest to Social Security.

Denial of Disability Benefits to Drug Addicts and Alcoholics

- Prohibits disability insurance (DI) and supplemental security income (SSI) eligibility to individuals whose drug addiction and/or alcoholism (DAA) is a contributing factor material to the finding of disability. This provision would apply to individuals who file for benefits on or after the date of enactment and to individuals whose claims are finally adjudicated on or after the date of enactment. This provision applies to current beneficiaries on January 1, 1997. SSA must: 1) notify current DAA beneficiaries of new provisions by June 27, 1996; and 2) complete new medical determinations by January 1, 1997, for affected current beneficiaries who request such a determination within 120 days after the date of enactment.

- Applies representative payee requirements to DI or SSI beneficiaries who have a DAA condition, as determined by the Commissioner, and who are incapable of managing benefits. SSA would refer these individuals to the appropriate State agency for treatment. These provisions would apply to applications filed after June 1996. In addition, retains the $50 fee that representatives can collect for beneficiaries who have a DAA condition that leaves an individual incapable of managing their own benefits.

- Provides an appropriation of $50 million for each of FYs 1997 and 1998 to carry out on a priority basis activities relating to the treatment of drug and alcohol abuse under the Public Health Service Act.

Continuing Disability Reviews

- Authorizes additional funds to SSA for fiscal years 1996 through 2002 for the purpose of conducting Social Security disability insurance (DI) continuing disability reviews (CDRs) and Supplemental Security Income (SSI) CDRs and disability eligibility redeterminations. This would be accomplished by increasing the amount of funds available for appropriations under the discretionary spending cap in the Budget Enforcement Act.

- Directs the Commissioner of Social Security to ensure that the funds made available pursuant to this provision are used, to the greatest extent practicable, to maximize the combined savings to the old-age, survivors, and disability insurance (OASDI), SSI, Medicare, and Medicaid programs.

- Requires the Commissioner to report annually, for FYs 1996 through 2002, to Congress on the amount of money spent on CDRs, the number of reviews conducted (by category), the disposition of such reviews (by program), and the estimated savings over the short-, medium-, and long-term for OASDI, SSI, Medicare, and Medicaid programs from CDRs which result in cessations, and the estimated present value of such savings.

Chief Actuary

- Establishes statutorily in the Social Security Administration the position of Chief Actuary, to be appointed by, and report directly to, the Commissioner, and be subject to removal only for cause. Effective March 29, 1996.

Dependency Test for Stepchildren

- Provides that a stepchild would have to be receiving at least one-half support from the stepparent when the child's claim is filed to get benefits. (The option for finding dependency based on living-with would be eliminated.) This provision is effective for benefits of individuals who become entitled after June 1996.

  If the natural parent and the stepparent of an entitled stepchild divorce, benefits to the stepchild based on the work record of the stepparent would terminate the month after the month in which such divorce becomes final. This provision is effective for final divorces occurring after, June 1996.

Increase in the Earnings Test Annual Exempt Amount

- Gradually raises, beginning in 1996, the earnings limit for the retirement earnings test (RET) for beneficiaries who have attained normal retirement age to $30,000 by 2002 (compared with an estimated $14,760 for 2002 under prior law, based on the intermediate assumptions in the 1995 Trustees Report). The

applicable 1996 exempt amount under prior law was $11,520. Exempt amounts under P.L. 104-121 (exempt amounts under prior law are also shown) are:

Year	Exempt Amount Under P.L. 104-121	Estimated Exempt Amount Under Prior Law
1996	$12,500	$11,520
1997	13,500	12,120
1998	14,500	12,600
1999	15,500	13,080
2000	17,000	13,560
2001	25,000	14,160
2002	30,000	14,760

After 2002, the annual exempt amount will be indexed to growth in average wages.

The substantial gainful activity (SGA) amount applicable to individuals who are statutorily blind would no longer be linked to the RET exempt amount for individuals ages 65 to 69. Instead, the SGA amount for blind people would continue to be adjusted annually as under present law, i.e., based on the national average wage index.

Benefit and Tax Statements

- Requires SSA to conduct a pilot study of the efficacy of providing retired workers with information about their Social Security benefits and taxes. The study would involve a sample of retirement beneficiaries whose entitlement began in or after 1984. SSA would send them estimates of their aggregate covered earnings, their aggregate Social Security taxes (including the employer share), and the total amount of benefits paid on their record.

- Requires the study to be conducted within a 2-year period beginning as soon as practicable in 1996 and a report on its results be provided to Congress within 60 days of its completion.

Investment of Social Security and Medicare Trust Funds

- Prohibits the Secretary of the Treasury from refraining from investing Social Security and Medicare Trust Fund monies in Federal securities, and from redeeming securities held by the trust funds, to avoid increasing or to reduce outstanding public debt obligations. Effective March 29, 1996.

Professional Staff for the Social Security Advisory Board

- Authorizes the Social Security Advisory Board to appoint 3 professional staff employees, one of whom is to be appointed from among individuals approved by Advisory Board members who do not belong to the political party represented by the majority of the Board.

Review of Federal Regulations

- Requires that Federal regulations, including some of those issued by SSA, undergo an additional review of their economic impact. This review may be conducted, at various stages of the development of a regulation, by the Small Business Administration, the Courts, and the Congress.