116TH CONGRESS 2D SESSION

H. RES. _______

Amending the Rules of the House of Representatives with respect to the enforcement of committee subpoenas to executive branch officials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Ted Lieu of California submitted the following resolution; which was referred to the Committee on ___________________________

RESOLUTION

Amending the Rules of the House of Representatives with respect to the enforcement of committee subpoenas to executive branch officials, and for other purposes.

1 Resolved,

2 SECTION 1. SHORT TITLE.

3 This resolution may be cited as the “Congressional Inherent Contempt Resolution”.

4 SEC. 2. ADDITIONAL SUBPOENA ENFORCEMENT POWER.

5 That rule XI of the Rules of the House of Representatives is amended by adding at the end the following new clauses:

“Additional Subpoena Enforcement Power

7.(a)(1) Whenever any committee or subcommittee makes a written request to any department or agency of the Government, or to any individual, for the attendance of named witnesses or the production of such books, records, correspondence, memorandum, papers, documents, and electronic or digital files, data or information, in any form, including any electronic or digital files, data or information in any searchable formats in which they are available to or can be produced by the agency, as the committee or subcommittee considers necessary, a senior responsible official shall either comply with that request or file written objections within the time frame for response set forth in the request. In the absence of a senior responsible official, the witness himself or herself is responsible for the duties that would otherwise have fallen on that official.

“(2) Nothing in this clause shall be interpreted as preventing a witness from asserting personal privileges regardless of the decisions and actions of the senior responsible official.

“(b) If the senior responsible official files written objections within the timeframe for response, the committee or subcommittee shall seek to resolve these objections through negotiation and accommodation. If a resolution
cannot be reached, staff shall so certify to the chair of
the committee.

“(c) If the senior responsible official fails to file ob-
jections or make available the designated witnesses or full
production of responsive records and information within
the timeframe for response, the chair of the committee
may issue a subpoena to the senior responsible official for
any unproduced records or information as to which no ob-
jection was filed, and to any designated witness to which
no objection was filed.

“(d) With respect to any portion of the written re-
quest for documents and witnesses to which timely objec-
tion was made, a subpoena to the senior responsible offi-
cial and to designated witnesses, may be issued, following
conclusion of the negotiations referred to in paragraph (b),
by—

“(1) the chair, upon 48 hours notice to the
ranking member, unless the ranking member objects
during that period; or

“(2) a vote of the committee.

“(e) If the senior responsible official files written ob-
jections to a subpoena issued under paragraphs (c) or (d)
within the timeframe for response, or the President per-
sonally and in writing asserts a claim of executive privilege
with respect to the records, information, and witnesses at
issue, the committee may hold a hearing to consider these objections. The senior responsible official shall personally attend this hearing but may not assert Executive Privilege on behalf of the President, and the committee chair may grant an exception for good cause shown.

“(f) If the committee overrules some or all of the objections asserted, it may issue an order of compliance which states the grounds for rejection of the objections, the date for compliance, and an advisement of the legal consequences of a failure to comply.

“(g) On the failure of the senior responsible official to comply with the order, the committee shall meet to assess whether the noncompliance rises to the level of a breach of the constitutional privilege and duty of the House to be fully informed in order to properly perform its legislative responsibilities without undue obstruction and thereby warrants condemnation and punishment. If so, the committee shall report a privileged resolution of contempt. The accompanying report shall include a detailed history and nature of the controversy and attempts at accommodation; the legal issues raised; the legislative need for the information sought; the legal and practical reasons for the determination that the objections were rejected; and the recommended monetary penalties.
“(j) If the committee reports a resolution of contempt, it shall be treated as a rule IX question of privilege of the House requiring precedence over all other questions until resolved and promptly scheduled for floor consideration. The chair of the committee shall present the case for passage of the resolution. At the conclusion of the allotted period for presentations, questions and debate, a vote on passage of the resolution (including any fine, if any). A proffer of an amendment to alter the recommended penalty is in order.

“(k) (1) Upon House passage of the resolution of contempt the contemnor shall be assessed by the body an initial penalty of not more than $25,000 and total penalties of not more than $100,000. The amount of the ultimate penalty depends on timeliness of the contemnor’s compliance in providing information withheld. The initial penalty of not more than $25,000 may be increased by increments of not more than $25,000 after a one-time waiting period of 20 calendar days from the initial penalty until the $100,000 maximum is reached. The 20-day period must only be observed after the first penalty. On House passage of the resolution of contempt, the General Counsel is authorized to file an immediate suit for a judicial order to freeze the contemnor’s assets. On expiration of the 20-day period for compliance, the General Counsel
is authorized to file suit for recovery of any accrued penalties, but only if the contemnor has failed to comply with the subpoena before the end of such 20-day period.

“(2) No appropriated funds, funds provided from any accounts in the Treasury, funds derived from collection of fees, or other Government funds shall be used to pay a monetary penalty imposed by the House under this clause.

“(3) No person, group, entity, organization, or corporation may make payments to, reimburse or offer remuneration of any kind to compensate a contemnor for, or assist a contemnor in paying, any portion of a monetary penalty imposed by the House. Nor shall any person, group, entity, organization, or corporation be permitted to pay any monetary penalties directly on behalf of a contemnor. The House may regard such actions to compensate, reimburse or provide remunerations or payments to a contemnor as an obstruction of its investigative and information gathering prerogatives and responsibilities and a contempt of the House.

“(1) As used in this clause:

“(1) The term ‘senior responsible official’ refers to an executive branch official with control or custody over the records or information or the subordinate officials or employees that are sought and who
is a civil officer subject to removal from the office under Article II, section 4, of the Constitution, unless no such civil officer has control or custody over the records or information sought.

“(2) The term ‘objections’ includes an appropriate privilege log, which shall describe with particularity the records or information withheld and the basis for withholding. The log shall be in such form as instructed by the committee or, in the absence of such instruction, shall be in the form that would be required by the rules and practice of the United States District for the District of Columbia. Failure to file an appropriate and timely privilege log shall be a basis for overruling or disregarding any objection.

“Additional Subpoena Enforcement Power

“8.(a) Whenever any committee or subcommittee makes a written request to any person for the attendance of named witnesses or the production of such books, records, correspondence, memorandum, papers, documents, and electronic or digital files, data or information, in any form, including any electronic or digital files, data or information in any searchable formats in which they are available to or can be produced by that person, as the committee or subcommittee considers necessary, such per-
son shall either comply with that request or file written objections within the time frame for response set forth in the request.

“(b) If such person files written objections within the timeframe for response, the committee or subcommittee shall seek to resolve these objections through negotiation and accommodation. If a resolution cannot be reached, staff shall so certify to the chair of the committee.

“(c) If such person fails to file objections or make available the designated witnesses or full production of responsive records and information within the timeframe for response, the chair of the committee may issue a subpoena to such person for any unproduced records or information as to which no objection was filed, and to any designated witness to which no objection was filed.

“(d) With respect to any portion of the written request for documents and witnesses to which timely objection was made, a subpoena to designated witnesses may be issued, following conclusion of the negotiations referred to in paragraph (b), by—

“(1) the chair, upon 48 hours notice to the ranking member, unless the ranking member objects during that period; or

“(2) a vote of the committee.
“(e) If such person files written objections to a subpoena issued under paragraphs (c) or (d) within the timeframe for response, the committee may hold a hearing to consider these objections. The person shall personally attend this hearing, but the committee chair may grant an exception for good cause shown.

“(f) If the committee overrules some or all of the objections asserted, it may issue an order of compliance which states the grounds for rejection of the objections, the date for compliance, and an advisement of the legal consequences of a failure to comply. The person shall comply with such order within the timeframe for response.

“(g) On the failure of the person to comply with the order of the compliance of the committee shall meet to assess whether the noncompliance rises to the level of a breach of the constitutional privilege and duty of the House to be fully informed in order to properly perform its legislative responsibilities without undue obstruction and thereby warrants condemnation and punishment. If so, the committee shall report a privileged resolution of contempt. The accompanying report shall include a detailed history and nature of the controversy and attempts at accommodation; the legal issues raised; the legislative need for the information sought; the legal and practical
reasons for the determination that the objections were re-
jected; and the recommended monetary penalties.

“(j) If the committee reports a resolution of con-
tempt, it shall be treated as a rule IX question of privilege
of the House requiring precedence over all other questions
until resolved and promptly scheduled for floor consider-
ation. The chair of the committee shall present the case
for passage of the resolution. At the conclusion of the al-
lotted period for presentations, questions and debate, a
vote on passage of the resolution (including any fine, if
any). A proffer of an amendment to alter the rec-
ommended penalty is in order.

“(k) (1) Upon House passage of the resolution of
contempt the contemnor shall be assessed by the body an
initial penalty of not more than $25,000 and total pen-
alties of not more than $100,000. The amount of the ulti-
mate penalty depends on timeliness of the contemnor’s
compliance in providing information withheld. The initial
penalty of not more than $25,000 may be increased by
increments of not more than $25,000 after a one-time
waiting period of 20 calendar days from the initial penalty
until the $100,000 maximum is reached. The 20-day pe-
riod must only be observed after the first penalty. On
House passage of the resolution of contempt, the General
Counsel is authorized to file an immediate suit for a judi-
cial order to freeze the contemnor’s assets. On expiration
of the 20-day period for compliance, the General Counsel
is authorized to file suit for recovery of any accrued pen-
alties, but only if the contemnor has failed to comply with
the subpoena before the end of such 20-day period.

“(2) No appropriated funds, funds provided from any
accounts in the Treasury, funds derived from collection
of fees, or other Government funds shall be used to pay
a monetary penalty imposed by the House under this
clause.

“(3) No person, group, entity, organization, or cor-
poration may make payments to, reimburse or offer remu-
neration of any kind to compensate a contemnor for, or
assist a contemnor in paying, any portion of a monetary
penalty imposed by the House. Nor shall any person,
group, entity, organization, or corporation be permitted to
pay any monetary penalties directly on behalf of a
contemnor. The House may regard such actions to com-
pensate, reimburse or provide remunerations or payments
to a contemnor as an obstruction of its investigative and
information gathering prerogatives and responsibilities
and a contempt of the House.

“(1) As used in this clause:

“(1) The term ‘person’ includes an individual,
partnership, corporation, association, or public or
private organization other than an department or agency of the Government.

“(2) The term ‘objections’ has meaning given to such term in section 7(m).”.