

CONGRESSIONAL SUBPOENA COMPLIANCE AND
ENFORCEMENT ACT OF 2017

OCTOBER 23, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 4010]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4010) to amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Congressional Subpoena Compliance and Enforcement Act of 2017”.

SEC. 2. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by inserting after section 1365 the following:

“§ 1365a. Congressional actions against subpoena recipients

“(a) SPECIAL RULES.—In any civil action brought by the United States House of Representatives, the United States Senate, or a committee or subcommittee thereof, against the recipient of a subpoena to secure declaratory, injunctive, or other relief as may be appropriate concerning the failure to comply with a subpoena issued by a congressional committee or subcommittee, the following rules shall apply:

“(1) The action shall be filed in a United States district court of competent jurisdiction.

“(2) It shall be the duty of the United States district courts, the United States courts of appeal, 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 such action and appeal.

“(3) If a three-judge court is expressly requested by the plaintiff in the initial pleading, the action shall be heard by a three-judge court convened pursuant to section 2284 of title 28, United States Code, and shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

“(b) MONETARY PENALTIES IN CASES INVOLVING GOVERNMENT AGENCIES.—

“(1) The court may impose monetary penalties directly against the head of a Government agency or a component thereof held to have willfully failed to comply with any part of a congressional subpoena.

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

“(c) WAIVER OF PRIVILEGE.—Any assertion of a privilege or other ground for non-compliance (whether statutory, common law, or otherwise) asserted by the recipient of a congressional subpoena may be determined to have been waived as to any particular record withheld from production if the court finds that the recipient failed in a timely manner to comply with the requirement of section 105 of the Revised Statutes of the United States that it produce a privilege log with respect to such record.

“(d) DEFINITION.—For purposes of this section, the term ‘Government agency’ means an executive department listed in section 101 of title 5, United States Code, an independent establishment, commission, board, bureau, division, or office in the executive branch, or other agency of the Federal Government, including wholly or partly owned Government corporations.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by inserting after the item relating to section 1365 the following:

“1365a. Congressional actions against subpoena recipients.”.

SEC. 3. COMPLIANCE WITH CONGRESSIONAL SUBPOENAS.

(a) IN GENERAL.—Chapter seven of title II of the Revised Statutes of the United States (2 U.S.C. 191 et seq.) is amended by adding at the end the following:

“SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.

“(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—Any recipient of any subpoena from a congressional committee or subcommittee shall appear and testify or produce records in a manner consistent with the subpoena and this section.

“(b) CONGRESSIONAL SUBPOENAS FOR RECORDS.—

“(1) IDENTIFICATION OF RECORDS WITHHELD.—In the case of a record that is withheld, in whole or in part, by the subpoena recipient, the subpoena recipient shall provide a log containing the following information concerning such record:

“(A) An express assertion and description of the legal basis asserted for withholding the record.

“(B) The type of record.

“(C) The general subject matter.

“(D) The date, author, and addressee.

“(E) The relationship of the author and addressee to each other.

“(F) The custodian of the record.

“(G) Any other descriptive information that may be produced or disclosed regarding the record that will enable the congressional committee or subcommittee issuing the subpoena to assess the legal basis asserted for withholding the record.

“(2) MISSING RECORDS.—In the case of any record responsive to the subpoena submitted under paragraph (1) that was, but no longer is, in the possession, custody, or control of the subpoena recipient, the subpoena recipient shall identify the record (including the date, author, subject, and each recipient of the record) and explain the circumstances under which the record ceased to be in the possession, custody, or control of the subpoena recipient.

“(3) ELECTRONIC RECORDS.—Electronic records shall be produced pursuant to this subsection in their native or original file format. Electronic records shall be delivered on a storage device (such as compact disk, memory stick, or thumb drive) and, to the extent feasible, shall be organized, identified, and indexed electronically and shall include an index describing the contents of the production.

“(c) DEFINITIONS.—For purposes of this section the term ‘record’ includes any books, papers, documents, data, or other objects requested in a subpoena issued by a congressional committee or subcommittee.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 7 of title II of the Revised Statutes of the United States is amended by adding at the end the following:

“105. Response to congressional subpoenas.”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act shall be interpreted to diminish Congress’ inherent authority or previously established methods and practices for enforcing compliance with congressional subpoenas, nor shall anything in this Act be interpreted to establish Congress’ acceptance of any privilege or other legal basis for noncompliance with a congressional subpoena.

Purpose and Summary

The Congressional Subpoena Compliance and Enforcement Act enhances compliance with subpoenas issued by congressional committees and strengthens and clarifies the ability of the House and Senate to enforce subpoenas issued by their respective committees. It does this in two principal ways. First, it requires recipients of congressional committee subpoenas to comply with such subpoenas and, to the extent that a legal privilege may apply to subpoenaed material, the bill requires the production of a privilege log. Second, the bill provides for expedited judicial enforcement of congressional committee subpoenas in cases in which the House or the Senate authorize a civil action to enforce a subpoena. By addressing these matters related to congressional subpoenas, this legislation helps to reinforce Congress’s Article I powers.

Background and Need for the Legislation

A. CONGRESSIONAL SUBPOENA POWER

A congressional committee’s power to investigate and issue subpoenas in furtherance of an investigation derives from the legislative authority granted to Congress in Article I of the Constitution. Although “there is no [constitutional] provision expressly investing either house with power to make investigations and exact testimony . . . the power of inquiry—with process to enforce it—is an

essential and appropriate auxiliary to the legislative function.”¹ Indeed, “the Necessary and Proper Clause gives rise to Congress’s implied right to issue and enforce subpoenas”² as Congress must have the “auxiliary powers as are necessary and appropriate to [the legislative] end.”³

As the Supreme Court reasoned in *McGrain v. Daugherty*,

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.⁴

In other words, as the district court observed in *House Judiciary Committee v. Miers*, “there can be no question that Congress has a right—derived from its Article I legislative function—to issue and enforce subpoenas, and a corresponding right to the information that is the subject of such subpoenas.”⁵ Several Supreme Court decisions confirm the view of the court in *Miers*. In *Eastland v. U.S. Servicemen’s Fund*, the Court held that “[t]he power to investigate and to do so through compulsory process plainly falls within [the] definition [of Congress’s legislative function].”⁶ And, in *Barenblatt v. United States*, the Court stated that the “scope of the power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”⁷ The Court in *Watkins v. United States* reasoned that “[i]t is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigations.”⁸

In short, the congressional subpoena power is “a fundamental underpinning of Congress’s critical constitutional oversight, inves-

¹ *McGrain v. Daugherty*, 273 U.S. 135, 161, 174 (1927).

² *Committee on Judiciary, U.S. House of Representatives v. Miers*, 558 F.Supp.2d 53, 84 (D.D.C. 2008).

³ *McGrain*, 273 U.S. at 175.

⁴ *Id.* at 175.

⁵ *Miers*, 558 F.Supp.2d at 84.

⁶ 421 U.S. 491, 504–05 (1975).

⁷ 360 U.S. 109, 111 (1959).

⁸ 354 U.S. 178, 187–88 (1957).

tigative, and legislative functions.”⁹ It is inherent in the Constitution that Congress has the authority to inquire into all matters that potentially may be the subject of legislation. This authority, however, “would be quite meaningless absent ‘some means of compulsion . . . to obtain what is needed.’ Accordingly, Congress has the power, also inherent in the Constitution, to issue investigatory subpoenas and punish witnesses who fail to comply therewith.”¹⁰

B. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS

Congress has three formal methods through which it can seek to enforce compliance with a congressional subpoena. First, the inherent contempt power permits Congress to rely on its own constitutional authority to detain and imprison a subpoena recipient who fails to comply with congressional demands. “Under the inherent contempt power the individual is brought before the House or Senate by the Sergeant-at-Arms, tried at the bar of the body, and can be imprisoned or detained in the Capitol or perhaps elsewhere.”¹¹ Second, the criminal contempt statute permits Congress to certify a contempt citation to the appropriate U.S. attorney for criminal prosecution.¹² It is a misdemeanor criminal offense, punishable by a fine of up to \$1,000 and imprisonment of up to one year for a witness under congressional subpoena to fail to appear or to withhold testimony or documents. The procedural mechanism for initiating the criminal contempt provision provides that the President of the Senate or Speaker of the House must certify the fact of contempt “to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.”¹³ The Department of Justice, however, has asserted that it retains the prosecutorial discretion not to act on a contempt referral despite the mandatory language of the contempt statute.¹⁴

Finally, Congress may seek judicial enforcement of a congressional subpoena. In general, under this procedure, a single house of Congress authorizes its committee that issued the subpoena to file suit in federal district court seeking a declaration that the recipient is legally obligated to comply with the subpoena. In 1978, Congress passed the Ethics in Government Act, which, among other things, grants the Senate and its committees the authority to seek civil enforcement of its subpoenas from the U.S. District Court for the District of Columbia.¹⁵ This Act, however, specifically does not apply to subpoenas of federal government officials and does not apply to actions brought by the House of Representatives. While the House cannot pursue actions under the Senate’s civil enforcement statute, past precedent and the decision of the U.S. District Court for the District of Columbia in *Miers* indicate that the

⁹Christopher F. Corr & Gregory J. Spak, *The Congressional Subpoena: Power, Limitations and Witness Protection*, 6 BYU J. Pub. L. 37 (1992).

¹⁰Stanley M. Brand and Sean Connelly, *Constitutional Confrontations: Preserving a Prompt and Orderly Means by Which Congress May Enforce Investigative Demands Against Executive Branch Officials*, 36 Cath. U. L. Rev. 71 (1986).

¹¹Todd Garvey, Cong. Research Serv., RL34097, *Congress’s Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure* 10 (2017).

¹²2 U.S.C. §§ 192, 194.

¹³2 U.S.C. § 194.

¹⁴*See, e.g.*, *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101 (1984).

¹⁵28 U.S.C. § 1365; 2 U.S.C. § 288d.

House may authorize a committee to seek a civil enforcement action to force compliance with a subpoena.

C. THE CONGRESSIONAL SUBPOENA COMPLIANCE AND ENFORCEMENT ACT

In light of *Miers* and other decisions, it is clear that Congress does not require an explicit statutory authority in order to enforce its subpoenas. Nevertheless, recent litigation has shown that there are certain practical barriers to the enforcement of subpoenas through declaratory judgment actions. First, the D.C. Circuit and the Supreme Court have not issued rulings that squarely and directly affirm the use of the Declaratory Judgment Act to enforce congressional subpoenas. Second, congressional subpoena enforcement actions brought in federal court under the current framework do not receive expedited judicial review and, therefore, significant time may be required to achieve a final, enforceable ruling in an enforcement case. Finally, the current non-statutory framework does not adequately address the assertion of legal privileges and the production of privilege logs in instances in which legal privileges are asserted in response to congressional subpoenas.

The Congressional Subpoena Compliance and Enforcement Act addresses all of these issues and, in so doing, strengthens Congress's ability to enforce the subpoenas issued by its committees and subcommittees, thereby reinforcing the powers granted Congress in Article I of the Constitution. The legislation creates a statutory framework for compliance with and enforcement of congressional subpoenas through a few targeted changes to federal law. And it does so without negating any of Congress's existing powers to require compliance with its subpoenas.

First, the bill puts in place a statutory requirement that recipients comply with congressional subpoenas. Second, the bill statutorily requires subpoena recipients to provide a congressional committee with a privilege log if they assert a legal privilege as a reason for withholding subpoenaed materials. Third, the bill provides that failure to produce a privilege log in a timely manner may result in waiver of a privilege by the court and, in the case of a head of a government agency or a component thereof, that willful failure to comply with a subpoena may result in a court imposed monetary penalty. Finally, the bill establishes that a committee may seek expedited court review by a three-judge panel of the district court, with direct appeal to the Supreme Court, in any case involving the enforcement of a congressional subpoena.

Current statutory requirements related to compliance with and enforcement of a committee subpoena are also limited. Indeed, the existing civil subpoena enforcement statute only covers the Senate and does not apply to Senate subpoenas issued to the Executive Branch. It is time that Congress put in place a statutorily created, expedited civil enforcement mechanism for congressional subpoenas. Relying on the existing framework to enforce congressional subpoenas has proved to be an inadequate means of protecting congressional prerogatives.

Although this bill is important, it should not be seen as legislation that will open the floodgates to congressional subpoena enforcement litigation. As the district court observed in *Miers*, allowing civil enforcement of congressional subpoenas,

[would not] overwhelm the federal courts and paralyze the accommodations process between the political branches. Prior cases, particularly *United States v. Nixon*, *AT&T I*, and *Senate Select Comm. III*, have already paved the way for claims of this type. Notwithstanding that fact, there have been very few lawsuits brought in federal court raising this issue—certainly no rush to the courthouse by either political branch is evident. The process of negotiation between the executive and legislative branches has functioned as always. Indeed, there are powerful reasons to believe that most disputes of this nature will continue to be resolved through the informal processes of negotiation and accommodation.¹⁶

Hearings

The Committee on the Judiciary held no hearings on H.R. 4010.

Committee Consideration

On October 12, 2017, the Committee met in open session and ordered the bill H.R. 4010 favorably reported, with an amendment, by a roll call vote of 26 to 0, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 4010.

Motion to report H.R. 4010, as amended, favorably to the House. Approved by a roll call vote of 26 to 0.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|------------------------------------|------|------|---------|
| Mr. Goodlatte (VA), Chairman | X | | |
| Mr. Sensenbrenner, Jr. (WI) | | | |
| Mr. Smith (TX) | X | | |
| Mr. Chabot (OH) | X | | |
| Mr. Issa (CA) | X | | |
| Mr. King (IA) | X | | |
| Mr. Franks (AZ) | | | |
| Mr. Gohmert (TX) | X | | |
| Mr. Jordan (OH) | | | |
| Mr. Poe (TX) | | | |
| Mr. Marino (PA) | | | |
| Mr. Gowdy (SC) | | | |
| Mr. Labrador (ID) | X | | |
| Mr. Farenthold (TX) | X | | |
| Mr. Collins (GA) | X | | |
| Mr. DeSantis (FL) | | | |
| Mr. Buck (CO) | | | |
| Mr. Ratcliffe (TX) | X | | |

¹⁶558 F.Supp.2d at 96.

ROLLCALL NO. 1—Continued

| | Ayes | Nays | Present |
|---|-------------|-------------|----------------|
| Ms. Roby (AL) | X | | |
| Mr. Gaetz (FL) | X | | |
| Mr. Johnson (LA) | X | | |
| Mr. Biggs (AZ) | X | | |
| Mr. Rutherford (FL) | | | |
| Ms. Handel (GA) | X | | |
| Mr. Conyers, Jr. (MI), Ranking Member | X | | |
| Mr. Nadler (NY) | X | | |
| Ms. Lofgren (CA) | X | | |
| Ms. Jackson Lee (TX) | | | |
| Mr. Cohen (TN) | X | | |
| Mr. Johnson (GA) | | | |
| Mr. Deutch (FL) | | | |
| Mr. Gutierrez (IL) | | | |
| Ms. Bass (CA) | | | |
| Mr. Richmond (LA) | | | |
| Mr. Jeffries (NY) | X | | |
| Mr. Cicilline (RI) | X | | |
| Mr. Swalwell (CA) | X | | |
| Mr. Lieu (CA) | X | | |
| Mr. Raskin (MD) | X | | |
| Ms. Jayapal (WA) | X | | |
| Mr. Schneider (IL) | X | | |
| Total | 26 | 0 | |

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 4010, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 20, 2017.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4010, the Congressional Subpoena Compliance and Enforcement Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran, who can be reached at 226–2860.

Sincerely,

KEITH HALL,
Director.

Enclosure.

cc: Honorable John Conyers, Jr.,
Ranking Member

**H.R. 4010—Congressional Subpoena Compliance and
Enforcement Act of 2017**

As ordered reported by the House Committee on the Judiciary on
October 12, 2017

Under current law, the Congress may file a civil action and seek judgment from a federal court that a recipient of a subpoena is legally obligated to comply with that subpoena. H.R. 4010 would modify those procedures with an aim to enhance compliance with and enforce Congressional subpoenas.

H.R. 4010 would require recipients of subpoenas to provide information on the nature of withheld records. The bill also would require the courts to expedite civil actions related to compliance with Congressional subpoenas. CBO expects that the bill's provisions could lead to a small increase in the administrative costs of federal agencies receiving subpoenas and the federal Judiciary. However, based on the small number of expected cases, CBO estimates that those costs would not be significant.

The bill's provisions would extend to agencies that are not funded through annual appropriations (such as the Tennessee Valley Authority). The bill also would authorize the courts to impose monetary penalties, which are recorded in the budget as revenues, against any government official found to have willfully failed to comply with a subpoena. Because we expect the number of such cases to be small, CBO estimates that increased revenues under the bill would be insignificant for each year. Because enacting H.R. 4010 could affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 4010 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4010 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 4010 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee finds that H.R. 4010 contains no directed rule making within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4010 enhances compliance with subpoenas issued by congressional committees and strengthens and clarifies the ability of the House and Senate to enforce subpoenas issued by their respective committees.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4010 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short title

This section sets forth the short title of the bill as the “Congressional Subpoena Compliance and Enforcement Act of 2017.”

Sec. 2. Enforcement of congressional subpoenas

This section amends title 28, United States Code, to put in place statutory procedures for the civil enforcement of congressional subpoenas. First, the section creates special rules for cases involving congressional subpoenas. These special rules require congressional subpoena enforcement actions filed pursuant to the newly created 28 U.S.C. § 1365a to be brought in federal district court, mandate that the federal courts expedite to the greatest extent possible such cases, and provide that the congressional entity bringing a civil action may request in its initial pleading that the action be heard by a three-judge panel of a district court with direct appeal to the U.S. Supreme Court. Second, the section provides that a court may impose a monetary penalty on the head of a government agency or a component thereof who the court determines willfully failed to comply with a congressional subpoena and that any such penalty shall not be paid with federal taxpayer dollars. Third, it allows a

court to reject the assertion of a privilege or other ground for non-compliance with a congressional subpoena if the court finds that the subpoena recipient failed to timely comply with the requirement set forth in section 3 of the bill that a privilege log be produced. Finally, the section provides a broad definition of the term government agency to include, among others, executive branch and independent federal agencies.

Sec. 3. Compliance with congressional subpoenas

This section creates a new section in the Revised Statutes of the United States to place certain requirements on the recipients of subpoenas issued by congressional committees and subcommittees. First, it establishes that a recipient of a congressional subpoena shall appear and testify or produce records consistent with the subpoena and the requirements of the section. Second, it requires a subpoena recipient to provide a log that makes an express assertion and description of the legal basis asserted for withholding the record along with additional specified details regarding a withheld record. The section also contains requirements regarding missing records and the provision of electronic records.

Sec. 4. Rule of construction

This section contains a rule of construction establishing that nothing in the bill should be interpreted to diminish any of Congress’s existing authorities, such as inherent contempt of Congress, to enforce compliance with its subpoenas. The rule of construction also makes clear that the provisions in the bill addressing legal privileges should not be interpreted as congressional acceptance of any privilege or other legal basis for noncompliance with a congressional subpoena.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * *

PART IV—JURISDICTION AND VENUE

* * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.

1330. Actions against foreign states.

* * * * *

1365. Senate actions.

1365a. Congressional actions against subpoena recipients.

* * * * *

§ 1365a. Congressional actions against subpoena recipients

(a) *SPECIAL RULES.*—In any civil action brought by the United States House of Representatives, the United States Senate, or a committee or subcommittee thereof, against the recipient of a subpoena to secure declaratory, injunctive, or other relief as may be appropriate concerning the failure to comply with a subpoena issued by a congressional committee or subcommittee, the following rules shall apply:

(1) *The action shall be filed in a United States district court of competent jurisdiction.*

(2) *It shall be the duty of the United States district courts, the United States courts of appeal, 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 such action and appeal.*

(3) *If a three-judge court is expressly requested by the plaintiff in the initial pleading, the action shall be heard by a three-judge court convened pursuant to section 2284 of title 28, United States Code, and shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.*

(b) *MONETARY PENALTIES IN CASES INVOLVING GOVERNMENT AGENCIES.*—

(1) *The court may impose monetary penalties directly against the head of a Government agency or a component thereof held to have willfully failed to comply with any part of a congressional subpoena.*

(2) *No appropriated funds, funds provided from any accounts in the Treasury, funds derived from the collection of fees, or other Government funds shall be used to pay any monetary penalty imposed by the court pursuant to this section.*

(c) *WAIVER OF PRIVILEGE.*—Any assertion of a privilege or other ground for noncompliance (whether statutory, common law, or otherwise) asserted by the recipient of a congressional subpoena may be determined to have been waived as to any particular record withheld from production if the court finds that the recipient failed in a timely manner to comply with the requirement of section 105 of the Revised Statutes of the United States that it produce a privilege log with respect to such record.

(d) *DEFINITION.*—For purposes of this section, the term “Government agency” means an executive department listed in section 101 of title 5, United States Code, an independent establishment, commission, board, bureau, division, or office in the executive branch, or other agency of the Federal Government, including wholly or partly owned Government corporations.

* * * * *

REVISED STATUTES OF THE UNITED STATES

* * * * *

TITLE II. THE CONGRESS

* * * * *

CHAPTER SEVEN. CONGRESSIONAL INVESTIGATIONS

Sec.

101. Oaths to witnesses, by whom administered.

* * * * *

105. Response to congressional subpoenas.

* * * * *

SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.

(a) *SUBPOENA BY CONGRESSIONAL COMMITTEE.*—Any recipient of any subpoena from a congressional committee or subcommittee shall appear and testify or produce records in a manner consistent with the subpoena and this section.

(b) *CONGRESSIONAL SUBPOENAS FOR RECORDS.*—

(1) *IDENTIFICATION OF RECORDS WITHHELD.*—In the case of a record that is withheld, in whole or in part, by the subpoena recipient, the subpoena recipient shall provide a log containing the following information concerning such record:

(A) An express assertion and description of the legal basis asserted for withholding the record.

(B) The type of record.

(C) The general subject matter.

(D) The date, author, and addressee.

(E) The relationship of the author and addressee to each other.

(F) The custodian of the record.

(G) Any other descriptive information that may be produced or disclosed regarding the record that will enable the congressional committee or subcommittee issuing the subpoena to assess the legal basis asserted for withholding the record.

(2) *MISSING RECORDS.*—In the case of any record responsive to the subpoena submitted under paragraph (1) that was, but no longer is, in the possession, custody, or control of the subpoena recipient, the subpoena recipient shall identify the record (including the date, author, subject, and each recipient of the record) and explain the circumstances under which the record ceased to be in the possession, custody, or control of the subpoena recipient.

(3) *ELECTRONIC RECORDS.*—Electronic records shall be produced pursuant to this subsection in their native or original file format. Electronic records shall be delivered on a storage device (such as compact disk, memory stick, or thumb drive) and, to the extent feasible, shall be organized, identified, and indexed electronically and shall include an index describing the contents of the production.

(c) *DEFINITIONS.*—For purposes of this section the term “record” includes any books, papers, documents, data, or other objects re-

*quested in a subpoena issued by a congressional committee or sub-
committee.*

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