

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. RES. 406

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

MAY 17, 2021

Mr. LIEU (for himself, Mr. WELCH, Mr. RUSH, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. CARSON, Mr. SWALWELL, Mr. CONNOLLY, Ms. SCHAKOWSKY, Mr. QUIGLEY, Mr. NEGUSE, Ms. DEAN, Mr. CICILLINE, Mrs. DEMINGS, and Mr. RASKIN) submitted the following resolution; which was referred to the Committee on Rules

---

# 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  
4 Inherent Contempt Resolution”.

5       **SEC. 2. ADDITIONAL SUBPOENA ENFORCEMENT POWER.**

6           Rule XI of the Rules of the House of Representatives  
7 is amended by adding at the end the following new clauses:

**1 “Additional Subpoena Enforcement Power**

2 “7.(a) Whenever any committee or subcommittee  
3 makes a written request to any department or agency of  
4 the Government for the attendance of named witnesses or  
5 the production of such books, records, correspondence,  
6 memorandum, papers, documents, and electronic or digital  
7 files, data or information, in any form, including any elec-  
8 tronic or digital files, data or information in any search-  
9 able formats in which they are available to or can be pro-  
10 duced by the agency, as the committee or subcommittee  
11 considers necessary, a senior responsible official shall ei-  
12 ther comply with that request or file written objections  
13 within the time frame for response set forth in the request.

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

20 “(c) If the senior responsible official fails to file ob-  
21 jections or make available the designated witnesses or full  
22 production of responsive records and information within  
23 the timeframe for response, the chair of the committee  
24 may issue a subpoena to the senior responsible official for  
25 any unproduced records or information as to which no ob-

1 jection was filed, and to any designated witness to which  
2 no objection was filed.

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

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

12 “(2) a vote of the committee.

13 “(e) The senior responsible official and other wit-  
14 nesses to whom a subpoena is issued have the right to  
15 be accompanied only by non-government private counsel  
16 during all proceedings conducted pursuant to this clause  
17 (even if the witness is a government official or employee).  
18 The committee in taking testimony will follow the proce-  
19 dures for taking depositions and resolving disputes over  
20 objections to questions that are prescribed by the House  
21 Rules Committee for such testimonial proceedings [see  
22 165 Cong. Rec. H1216–17 (Jan. 25, 2019)].

23 “(f) If the senior responsible official files written ob-  
24 jections to a subpoena issued under paragraphs (c) or (d)  
25 within the timeframe for response, or the President per-

1 sonally and in writing asserts a claim of executive privilege  
2 with respect to the records, information, and witnesses at  
3 issue, the committee may hold a hearing to consider these  
4 objections. The senior responsible official shall personally  
5 attend this hearing but may not assert Executive Privilege  
6 on behalf of the President, and the committee chair may  
7 grant an exception for good cause shown.

8       “(g) If the committee overrules some or all of the ob-  
9 jections asserted, it may issue an order of compliance  
10 which states the grounds for rejection of the objections,  
11 the date for compliance, and an advisement of the legal  
12 consequences of a failure to comply. The senior responsible  
13 official and subpoenaed witnesses shall comply with such  
14 order within the timeframe for response. If prior to such  
15 time, the President asserts a claim of executive privilege,  
16 it shall be made personally and in writing, and will be con-  
17 sidered by the committee with all other timely objections.  
18 Witnesses may not assert a claim of executive privilege  
19 in the absence of such an assertion by the President.

20       “(h) On the failure of the senior responsible official  
21 or subpoenaed witnesses to comply with the order, the  
22 committee shall meet to assess whether the noncompliance  
23 rises to the level of a breach of the constitutional privilege  
24 and duty of the House to be fully informed in order to  
25 properly perform its legislative responsibilities without

1 undue obstruction and thereby warrants condemnation  
2 and punishment. If so, the committee shall report a privi-  
3 leged resolution of contempt. The accompanying report  
4 shall include a detailed history and nature of the con-  
5 troversy and attempts at accommodation; the legal issues  
6 raised; the legislative need for the information sought; the  
7 legal and practical reasons for the determination that the  
8 objections were rejected; and the recommended monetary  
9 penalties.

10       “(i) If the committee reports a resolution of con-  
11 tempt, it shall be treated as a rule IX question of privilege  
12 of the House requiring precedence over all other questions  
13 until resolved and promptly scheduled for floor consider-  
14 ation. The chair of the committee shall present the case  
15 for passage of the resolution. At the conclusion of the al-  
16 lotted period for presentations, questions and debate, a  
17 vote on passage of the resolution will be taken. If the vote  
18 is for passage, a second vote will be taken on the commit-  
19 tee’s recommendation for imposition of a monetary pen-  
20 alty. A proffer of an amendment to alter the recommended  
21 penalty is in order.

22       “(j)(1) Upon House passage of the resolution of con-  
23 tempt the contemnor shall be assessed by the body an ini-  
24 tial penalty of not more than \$25,000 and total penalties  
25 of not more than \$100,000. The amount of the ultimate

1 penalty depends on timeliness of the contemnor's compli-  
2 ance in providing information withheld. The initial penalty  
3 of not more than \$25,000 may be increased by the com-  
4 mittee chair by increments of not more than \$25,000 after  
5 a one-time waiting period of 10 calendar days from the  
6 initial penalty until the \$100,000 maximum is reached.  
7 The 10-day period shall only be observed after the first  
8 penalty. Upon expiration of the 10-day waiting period, if  
9 the chair deems the measure of compliance by the  
10 contemnor is insufficient to satisfy the legislative needs  
11 of the committee, the chair may, over a period of not more  
12 than fifteen days, at his or her discretion, increase the  
13 penalty by increments of not more than \$25,000 until the  
14 maximum is reached. Upon expiration of the 10-day wait-  
15 ing period, the General Counsel is authorized to recover  
16 any accrued penalties, but only if the contemnor has failed  
17 to comply with the subpoena before the end of such 10-  
18 day period. Nothing in this clause shall be interpreted to  
19 limit the ability of the House to impose additional legisla-  
20 tive punishments on the contemnor for noncompliance.

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

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

13       “(k) Nothing in this clause shall be interpreted to di-  
14 minish the inherent institutional self-protective authori-  
15 ties, methods and practices of the House for enforcing  
16 committee subpoenas, nor shall anything in this clause be  
17 interpreted to diminish the discretionary power of any  
18 committee to determine the acceptability of any constitu-  
19 tional or common law based privilege asserted to justify  
20 noncompliance with a congressional subpoena.

21       “(l) As used in this clause:

22               “(1) The term ‘senior responsible official’ refers  
23 to an executive branch official with control or cus-  
24 tody over the records or information or the subordi-  
25 nate officials or employees that are sought and who

1 is a civil officer subject to removal from the office  
2 under Article II, section 4, of the Constitution, un-  
3 less no such civil officer has control or custody over  
4 the records or information sought.

5 “(2) The term ‘objections’ includes an appro-  
6 priate privilege log, which shall describe with par-  
7 ticularity the records or information withheld and  
8 the basis for withholding. The log shall be in such  
9 form as instructed by the committee or, in the ab-  
10 sence of such instruction, shall be in the form that  
11 would be required by the rules and practice of the  
12 United States District for the District of Columbia.  
13 Failure to file an appropriate and timely privilege  
14 log shall be a basis for overruling or disregarding  
15 any objection.

16 **“Additional Subpoena Enforcement Power**

17 “8.(a) Whenever any committee or subcommittee  
18 makes a written request to any person for testimony or  
19 the production of such books, records, correspondence,  
20 memorandum, papers, documents, and electronic or digital  
21 files, data or information, in any form, including any elec-  
22 tronic or digital files, data or information in any search-  
23 able formats in which they are available to or can be pro-  
24 duced by that person, as the committee or subcommittee  
25 considers necessary, such person shall either comply with



1 that request or file written objections within the time  
2 frame for response set forth in the request.

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

8 “(c) If such person fails to file objections or provide  
9 testimony or full production of responsive records and in-  
10 formation within the timeframe for response, the chair of  
11 the committee may issue a subpoena to such person for  
12 any unproduced testimony or records or information as  
13 to which no objection was filed.

14 “(d) With respect to any portion of the written re-  
15 quest for documents and testimony to which timely objec-  
16 tion was made, a subpoena may be issued, following con-  
17 clusion of the negotiations referred to in paragraph (b),  
18 by—

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

22 “(2) a vote of the committee.

23 “(e) Any person to whom a subpoena is issued has  
24 the right to be accompanied only by non-government pri-  
25 vate counsel during all proceedings conducted pursuant to

1 this clause. The committee in taking testimony will follow  
2 the procedures for taking depositions and resolving dis-  
3 putes over objections to questions that are prescribed by  
4 the House Rules Committee for such testimonial pro-  
5 ceedings [see 165 Cong. Rec. H1216–17 (Jan. 25, 2019)].

6 “(f) If such person files written objections to a sub-  
7 poena issued under paragraphs (c) or (d) within the time-  
8 frame for response, the committee may hold a hearing to  
9 consider these objections. The person shall personally at-  
10 tend this hearing, but the committee chair may grant an  
11 exception for good cause shown.

12 “(g) If the committee overrules some or all of the ob-  
13 jections asserted, it may issue an order of compliance  
14 which states the grounds for rejection of the objections,  
15 the date for compliance, and an advisement of the legal  
16 consequences of a failure to comply. The person shall com-  
17 ply with such order within the timeframe for response.

18 “(h) On the failure of the person to comply with the  
19 order of compliance, the committee shall meet to assess  
20 whether the noncompliance rises to the level of a breach  
21 of the constitutional privilege and duty of the House to  
22 be fully informed in order to properly perform its legisla-  
23 tive responsibilities without undue obstruction and thereby  
24 warrants condemnation and punishment. If so, the com-  
25 mittee shall report a privileged resolution of contempt.

1 The accompanying report shall include a detailed history  
2 and nature of the controversy and attempts at accommo-  
3 dation; the legal issues raised; the legislative need for the  
4 information sought; the legal and practical reasons for the  
5 determination that the objections were rejected; and the  
6 recommended monetary penalties.

7 “(i) If the committee reports a resolution of con-  
8 tempt, it shall be treated as a rule IX question of privilege  
9 of the House requiring precedence over all other questions  
10 until resolved and promptly scheduled for floor consider-  
11 ation. The chair of the committee shall present the case  
12 for passage of the resolution. At the conclusion of the al-  
13 lotted period for presentations, questions and debate, a  
14 vote on passage of the resolution will be taken. If the vote  
15 is for passage, a second vote will be taken on the commit-  
16 tee’s recommendation for imposition of a monetary pen-  
17 alty. A proffer of an amendment to alter the recommended  
18 penalty is in order.

19 “(j)(1) Upon House passage of the resolution of con-  
20 tempt the contemnor shall be assessed by the body an ini-  
21 tial penalty of not more than \$25,000 and total penalties  
22 of not more than \$100,000. The amount of the ultimate  
23 penalty depends on timeliness of the contemnor’s compli-  
24 ance in providing information withheld. The initial penalty  
25 of not more than \$25,000 may be increased by the com-

1 mittee chair by increments of not more than \$25,000 after  
2 a one-time waiting period of 10 calendar days from the  
3 initial penalty until the \$100,000 maximum is reached.  
4 The 10-day period shall only be observed after the first  
5 penalty. Upon expiration of the 10-day waiting period, if  
6 the chair deems the measure of compliance by the  
7 contemnor is insufficient to satisfy the legislative needs  
8 of the committee, the chair may, over a period of not more  
9 than fifteen days, at his or her discretion, increase the  
10 penalty by increments of not more than \$25,000 until the  
11 maximum is reached. Upon expiration of the 10-day wait-  
12 ing period, the General Counsel is authorized to recover  
13 any accrued penalties, but only if the contemnor has failed  
14 to comply with the subpoena before the end of such 10-  
15 day period. Nothing in this clause shall be interpreted to  
16 limit the ability of the House to impose additional legisla-  
17 tive punishments on the contemnor for noncompliance.

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

23       “(3) No person, group, entity, organization, or cor-  
24 poration may make payments to, reimburse or offer remun-  
25 eration of any kind to compensate a contemnor for, or

1 assist a contemnor in paying, any portion of a monetary  
2 penalty imposed by the House. Nor shall any person,  
3 group, entity, organization, or corporation be permitted to  
4 pay any monetary penalties directly on behalf of a  
5 contemnor. The House may regard such actions to com-  
6 pensate, reimburse or provide remunerations or payments  
7 to a contemnor as an obstruction of its investigative and  
8 information gathering prerogatives and responsibilities  
9 and a contempt of the House.

10 “(k) Nothing in this clause shall be interpreted to di-  
11 minish the inherent institutional self-protective authori-  
12 ties, methods and practices of the House for enforcing  
13 committee subpoenas, nor shall anything in this clause be  
14 interpreted to diminish the discretionary power of any  
15 committee to determine the acceptability of any constitu-  
16 tional or common law based privilege asserted to justify  
17 noncompliance with a congressional subpoena.

18 “(l) As used in this clause:

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

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

○