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A Survey of House and Senate Committee Rules on Subpoenas

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Summary

House Rule XI, clause 2(m)(1) and (3) authorizes House committees and subcommittees to issue subpoenas for the attendance of witnesses and the production of documents. Senate Rule XXVI, paragraph 1 authorizes Senate committees and subcommittees to subpoena witnesses and documents. In turn, most House and Senate committees have adopted in their own rules subpoena provisions containing procedures for exercising this grant of power from their parent chamber.

Committee rules may cover authorization, issuance, and service of subpoenas; may cover just one or two of these actions; or may be silent on exercise of the subpoena power. A subpoena must be authorized pursuant to committee rules—a decision to approve this legal order to a person to appear or to provide documents. Once authorized, if the committee wishes to take the next step, a subpoena must be issued pursuant to committee rules—signed and given to an individual to deliver the subpoena to the person named in it. To deliver a subpoena to the person named is to serve the subpoena.

Most House and Senate committees have specifically included in their rules one or more provisions on committees' and subcommittees' power to authorize subpoenas by majority vote. Most House committees have also delegated to their chair the power to authorize subpoenas. Many of these rules delegating authority also require the chair to consult or notify the committee's ranking minority member.

Most Senate committees' subpoena rules delegate to the chair and ranking minority member together the power to authorize subpoenas.

In addition to rules on authorizing subpoenas, the rules of most committees in both chambers also address issuing subpoenas. Most House committees' rules delegate authority to issue subpoenas to the chair, and allow another committee member who has been *designated by the committee* to sign a subpoena. Most Senate committees' rules delegate authority to issue subpoenas to the chair, and allow another committee member *designated by the chair* to sign a subpoena.

Some committees' rules are explicit on procedures for subcommittees to authorize subpoenas; other committees' rules are not explicit.

Committees in both chambers have other rules on subpoenas than the prevailing approach in one chamber. Requirements or limitations pertaining to subpoenas may appear in committees' rules, such as conditions placed on a chair's exercise of subpoena authority delegated to the chair or on a ranking minority member's role in authorizing a subpoena. The distinctions among committees' subpoena rules are varied and nuanced.

Committees' other procedural rules affect scheduling and conducting meetings to authorize a subpoena. These other rules may deal with the notice for and agenda of a meeting, the quorum to conduct business, and voting.

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Introduction

The rules of both the House and the Senate provide power to committees and subcommittees to subpoena witnesses and documents. Committees' subpoena power is defined thus: "The authority granted to committees by the rules of their respective houses to issue legal orders requiring individuals to appear and testify, or to produce documents pertinent to the committee's functions, or both."[1] Consistent with this grant of power, most committees have adopted in their own rules subpoena provisions containing procedures for exercising this power.[2]

Committee rules may cover authorization, issuance, and service of subpoenas; may cover just one or two of these actions; or may be silent on exercise of the subpoena power. A subpoena must be authorized pursuant to committee rules—a decision to approve this legal order to a person to appear or to provide documents. Once authorized, if the committee wishes to take the next step, a subpoena must be issued pursuant to committee rules—signed and given to an individual to deliver the subpoena to the person named in it. To deliver a subpoena to the person named is to serve the subpoena.

Most House and Senate committees have specifically included in their rules one or more provisions on committees' and subcommittees' power to authorize subpoenas by majority vote.[3] Most House committees have also delegated to their chair the power to authorize subpoenas. Many of these rules delegating authority also require the chair to consult or notify the committee's ranking minority member.

Most Senate committees' subpoena rules delegate to the chair and ranking minority member together the power to authorize subpoenas. Most Senate committees also have rules on committee authorization of subpoenas, and many have rules on subcommittee authorization.[4]

In addition to rules on authorizing subpoenas, the rules of most committees in both chambers also address issuing subpoenas. Most House committees' rules delegate authority to issue subpoenas to the chair, and allow another committee member who has been *designated by the committee* to

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[1] Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary*, 3rd ed. (Washington, DC: CQ Press, 2001), p. 250.

[2] For an introduction to congressional subpoenas, see CRS Report RL34114, *Congress's Contempt Power and the Enforcement of Congressional Subpoenas: A Sketch*, by Todd Garvey and Alissa M. Dolan. For a more extensive discussion, see CRS Report RL34097, *Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure*, by Todd Garvey.

See also Morton Rosenberg, *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry* (Washington, DC: The Constitution Project, 2017); Morton Rosenberg, "Reasserting Congress' Investigative Authority," Policy Study No. 103, R Street Institute, 20 July 2017, available at http://www.rstreet.org/policy-study/reasserting-congress-investigative-authority; and Morton Rosenberg, "Why enacting H.R. 4010, the Congressional Subpoena Compliance and Enforcement Act, is a big mistake," R Street Institute, January 9, 2018, available at http://www.legbranch.com/theblog/2018/1/9/why-enacting-hr-4010-the-congressional-subpoena-compliance-and-enforcement-act-of-2017-is-a-big-mistake. Compare "Congressional Subpoena Compliance and Enforcement Act," House debate, *Congressional Record*, daily edition, vol. 163 (October 23, 2017), pp. H8059-H8061.

[3] House and Senate committees must adopt and publish committee rules in each Congress (House Rule XI, cl. 2(a)(1) and Senate Rule 26, para. 2). In the first months following the convening of a new Congress, committees hold organizational meetings at which they typically adopt rules and a proposed budget and take other actions in preparation for the new Congress. Although committees tend to adopt most or all of the rules that they had adopted in the preceding Congress, they also often adopt incremental changes to these rules. For example, in organizing for the 114th and 115th Congresses, four House committees adopted changes to their rules that delegated power to authorize subpoenas to their chairs, and several House committees changed some restrictions on their chairs' exercise of this authority.

[4] There is not a single compilation or record of House or Senate committees' exercise of their power to subpoena witnesses and documents.

sign a subpoena. Most Senate committees' rules delegate authority to issue subpoenas to the chair, and allow another committee member *designated by the chair* to sign a subpoena.

This report begins with an explanation of how to analyze committees' subpoena rules. The report then first surveys House committees' subpoena rules, followed by a survey of Senate committees' subpoena rules. Both surveys begin with a brief description of chamber rules, followed by a short summary of that chamber's committees' rules that are ancillary to committee subpoena authorization procedures or appear in only one or two committees' rules. The surveys each include a table that compares the chamber's committees' rules on authorizing and issuing subpoenas, with table notes adding further detail.[5]

All committee rules analyzed in this report are rules adopted at the beginning of the 115th Congress. The committees published their rules in the *Congressional Record,* complying with their chamber's rule on publication. All rules were published in the *Record* before March 31, 2017.

Analyzing a Committee's Subpoena Authority

The "Introduction" summarized three components of committees' subpoena authority: authorizing, issuing, and serving a subpoena. Beyond those three components, a number of procedural options are available both to the House and Senate in what subpoena authority the chambers grant their committees and to committees in writing rules on the exercise of that authority. To analyze a committee's authority to authorize subpoenas, the following questions are useful:

- Has the House for a House committee (or subcommittee) or the Senate for a Senate committee (or subcommittee) granted subpoena authority? For standing committees and their subcommittees, the answer is currently in the affirmative; for ad hoc committees and subcommittees, the parent chamber may have withheld subpoena authority.
- Has the House or Senate granted subpoena authority but conditioned it in some way? For example, on occasion in the past, subpoena authority granted a committee could be exercised only by the committee's action, not by action of or delegation to the chair.[6]

In a committee's rules—

- Does a committee require the authorization of an investigation by the committee (or a subcommittee) before subpoenas may be authorized?

[5] There are means besides subpoenas for congressional committees to obtain information, especially from the executive branch, which include the voluntary appearance of witnesses; writing requirements for reports or studies into law; resolutions of inquiry (see CRS Report R40879, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947-2017*, by Christopher M. Davis); and existing provisions of law, such as 5 U.S.C. §2954, which requires an executive agency to submit information requested by the House Committee on Oversight and Government Reform, or by any seven members of the committee, or by the Senate Committee on Homeland Security and Governmental Affairs, or by any five members of the committee (see CRS Report RL34097, *Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure*, by Todd Garvey). Depositions and other oversight techniques, which may include the exercise of a committee's subpoena authority, are discussed in CRS Report RL30240, *Congressional Oversight Manual*, by Alissa M. Dolan et al.

[6] For example, the Senate authorized an investigation by the Judiciary Committee and granted subpoena authority to the committee and its subcommittees (S.Res. 366, 81st Cong.). A witness challenged a subpoena authorized by a subcommittee chair and was vindicated in federal court. See Liveright v. United States, 347 F.2d 473 (D.C. Cir. 1965).

- Do a committee's rules distinguish between hearings and investigations? If so, may subpoenas be authorized for hearings?
- Are the committee's rules silent on authorizing subpoenas or are there one or more rules on authorizing subpoenas?
- If a committee's rules are silent, how has the committee authorized subpoenas in the past? Has the committee authorized each subpoena or delegated authority to the chair or exercised its authority in another way? Is this past practice instructive or precedential?
- If there are one or more rules, who may authorize a subpoena: the committee, the chair, or the chair and ranking minority member together?
- What is the role of the ranking minority member? Must the ranking minority member be notified or consulted, or does the ranking minority member have authority to disapprove the authorization of a subpoena?
- Are there backup procedures available to a committee chair? For example, if the committee's rules give disapproval authority to the ranking minority member, may the chair proceed in the absence of a response from the ranking minority member or may the committee nonetheless authorize a subpoena if the ranking minority member disapproves?
- What constraints are placed on a chair's exercise of subpoena authority delegated to the chair? For example, some House committees allow the chair to authorize a subpoena only after the House has adjourned for three days.
- May a chair authorize a subpoena that the committee has considered or has rejected?
- What time limits appear in a committee's rules? For example, a ranking minority member may have 48 hours to respond to a chair proposing to authorize or to issue a subpoena, or a chair may be required to notify committee members within one week of the issuance of a subpoena.
- What is the quorum for the committee to authorize a subpoena? Must minority members be present? Must a minority member support the authorization?
- What are the committee's rules to suspend or change its rules? For example, is advance notification to all committee members required?
- Who may issue a subpoena: the chair, a member designated by the chair, a member designated by the committee, or a member or members designated by committee rule?
- Who may serve a subpoena?

In committee rules applicable to a committee's subcommittees—

- Has the committee granted subpoena authority to its subcommittees or withheld this authority from them?
- May a committee's subcommittees adopt their own subpoena rules?
- Must either the committee or the subcommittee authorize an investigation before subpoenas may be authorized? Must the committee or the chair or the chair and ranking minority member approve a subcommittee investigation?
- Who may authorize a subpoena: the subcommittee, the chair, or the chair and ranking minority member?

- Who may issue a subpoena: the chair, a member designated by the chair, a member designated by the subcommittee, or a member or members designated by committee rule together?
- What role do committee rules provide for the committee chair and ranking minority member, or the committee, in approving the authorization or issuance of a subcommittee subpoena?
- May a subcommittee chair authorize a subpoena that the subcommittee has considered or has rejected?
- What time limits appear in a committee's rules applicable to a subcommittee chair's exercise of authority, the role of the subcommittee ranking minority member, the approval or notification of the committee chair and ranking minority member, and other procedures?
- What is the quorum for the subcommittee to authorize a subpoena? Must minority members be present? Must a minority member support the authorization?

House Rules on Subpoenas

Rule XI, clause 2(m)(1) and (3) authorizes committees and subcommittees to issue subpoenas for the attendance of witnesses and the production of documents.[7] Clause 2(m)(3) requires authorization by a committee or subcommittee, "a majority being present."[8] Unless otherwise provided in a committee's rules, a quorum of one-third of a committee is required to debate a subpoena, under Rule XI, clause 2(h)(3).

Rule XI, clause 2(m)(3) also allows committees to adopt rules to delegate the authorization and issuance of subpoenas to a committee's chair "under such rules and under such limitations as the committee may prescribe." This same subparagraph requires subpoenas to be signed by the chair or by a member who has been designated by the committee.

Rule XI, clause 2(m)(3)(B) allows a committee or subcommittee to designate a return for documents other than at a meeting or hearing.[9] Clause 2(m)(3)(C) allows enforcement of a subpoena only as authorized or directed by the House.[10]

[7] House Rule XI, cl. 2(k)(5) and (6) allows a committee to receive and dispose of requests to subpoena additional witnesses, as requested by a witness or by others, including committee members.

[8] House Rule XI, clause 2(m)(3)(A)(ii), however, requires a majority of members of a subcommittee of the Ethics Committee to vote to authorize and issue a subpoena.

[9] "Return" in this rule refers to instructions to the individual named on when and where to respond to the subpoena with the documents demanded. This rule allows a committee or subcommittee to issue a subpoena to an individual both to appear and to provide documents, but to deliver the documents at another time than the hearing or meeting at which the individual is directed to appear. It also allows a committee or subcommittee to have a subpoena for documents only to designate a delivery time other than a hearing or meeting.

[10] "An individual who fails or refuses to comply with a House subpoena may be cited for contempt of Congress." Wm. Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2011), p. 449. See *House Practice,* pp. 449-454 for an explanation of how the House enforces a subpoena if an individual fails to comply. See also the CRS reports listed in footnote 2.

Rule X, clause 10(b) makes Rule XI, clause 2(a) applicable to select and joint committees, unless the House has decided otherwise. Applicability of this rule makes the other provisions of Rule XI, clause 2, including subpoena authority, applicable to select and joint committees.[11]

House Committees' Rules on Subpoenas

If a committee meets to consider one or more subpoenas for a witness, witnesses, or documents, it meets in a markup session, and members may offer amendments and motions, make points of order, and engage the relevant procedures and procedural strategy that could also occur in a markup of legislation. When a House committee or subcommittee will consider authorizing a subpoena, the committee's rules on scheduling, notice, open meetings, quorum, and voting apply. Committees' rules also mirror a House rule requiring a majority to be actually present to report (Rule XI, clause 2(h)(1)). The House Office of General Counsel maintains subpoena-related forms to assist committees and may advise committees on subpoenas.

Most committees' rules have also delegated authority to issue subpoenas to their chair, but many committees with such a rule also require the chair to consult or notify the ranking minority member. In many committees, subcommittees may authorize and issue subpoenas subject to specified conditions. Some committees' rules are not explicit on procedures for subcommittees to authorize subpoenas. The principal attributes of committees' subpoena rules are analyzed and displayed in **Table 1**.

Yet other provisions pertaining to subpoenas appear in committee rules but are not included in **Table 1**. Generally, these rules are ancillary to subpoena authorization rules. They are, therefore, described here.

Several committees reference the authority of the House to enforce a subpoena issued by the committee or, if permitted by committee rules, its subcommittees. These committees are the Committees on Appropriations, Armed Services, House Administration, and Transportation and Infrastructure.[12]

The Permanent Select Committee on Intelligence has a rule establishing conditions prior to the referral of a contempt recommendation to the House. "Reasonable" notice of a meeting to consider a contempt recommendation must be given to all committee members. The committee must meet and consider the contempt allegations. The individual who is the subject of the allegations must have an opportunity to respond in writing or in person as to why or why not the individual should be held in contempt. The committee by majority vote must agree to recommend a contempt citation to the House.

The Committee on Ethics has four rules related to subpoenas separate from their authorization and issuance. One rule provides that "things" submitted pursuant to a subpoena by an investigative subcommittee are "deemed to have been taken or produced in executive session." Two rules relate specifically to subpoenas issued by adjudicatory subcommittees. First, a

[11] For an example of the House deciding to alter the applicability of Rule XI, clause 2 to a select committee, see Sec. 4 of H.Res. 567 (113th Cong.), agreed to in the House May 8, 2014. With regard to subpoenas, the resolution provided that the chair would authorize and issue subpoenas. In an earlier Congress, the House specifically withheld subpoena authority from a select committee and made the adoption of committee rules optional. See Sec. 4 of H.Res. 449 (107th Cong.), agreed to in the House June 19, 2002.

[12] "Contempt of Congress—Willful obstruction of the proper functions of Congress. Most frequently, it is a refusal to obey a subpoena to appear and testify before a committee or to produce documents demanded by it." *Congressional Quarterly's American Congressional Dictionary*, p. 66. See also the CRS reports listed in footnote 2, and *House Practice*, pp. 449-454.

subpoena for documents may specify terms of return other than a meeting or hearing of the subcommittee. Second, a subpoena requiring a witness to appear must be served "sufficiently in advance" of the scheduled appearance to allow the witness to prepare and to retain counsel. The fourth rule proscribes committee members and staff from disclosing to a person outside the committee the name of a witness subpoenaed to testify or produce documents. The final rule appears to apply to all subpoenaed witnesses, covering, with exceptions, travel expenses at the per-diem rate established by the House Administration Committee.

The Committee on Transportation and Infrastructure has a similar rule to that of the Committee on Ethics on expenses of subpoenaed witnesses.

The rules of the Committee on Homeland Security allow the chair with the concurrence of the ranking minority member or the committee to include provisions in a subpoena that "prevent" the disclosure of the committee's demand for information "when deemed necessary for the security of information or the progress of an investigation." Such provisions may prohibit witnesses and their counsel from revealing the committee's inquiry. Another rule pertaining to a subpoena for documents allows the committee to specify terms of return other than a regularly scheduled meeting of the committee.

Six committees also have rules on service of subpoenas. Five committees—Budget, Financial Services, House Administration, Natural Resources, and Rules—provide that a subpoena may be served by any person designated by the chair or by the member authorized by the committee to issue subpoenas. The Intelligence Committee's rule allows the chair to designate a person to serve a subpoena.

The Intelligence Committee's rules also specifically require a copy of the committee's rules to be attached to any subpoena.

Explanation of Table 1: Committee Subpoena Requirements, House Committees' Rules, 115th Congress

Table 1 compares House committees' rules in the 115th Congress on whose authority a subpoena may be authorized and issued and on notifying members of a committee that a subpoena has been issued. Committees are listed in alphabetical order in the left column, with the Permanent Select Committee on Intelligence appearing at the end of the table. The first three rows of the headings contain key terms describing committees' rules, as explained immediately below. A check in a box indicates that that committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject. Certain checks and blank boxes are footnoted to offer additional detail on a particular committee's rule or lack of a rule. In some cases, a single table note is used to offer additional detail on a rule or circumstances that affect more than one committee's rules.

The following list explains the headings in **Table 1**:

- Committee/Subcommittee by Majority Vote—a committee or subcommittee may authorize a subpoena by a majority vote.
- Chair—indicates under what conditions a chair has been delegated power to authorize a subpoena:
  - On Own Initiative—a chair may authorize subpoenas, subject to conditions in the committee's rules.
  - Ranking Minority Member—indicates the role of a ranking minority member in allowing the chair to authorize or issue a subpoena:

    - Concurs—the ranking minority member must concur with the chair before a subpoena is authorized or issued.
    - Consulted—the chair must consult or notify the ranking minority member before authorizing or issuing a subpoena.
  - Three Days—a chair may authorize and issue a subpoena only when the House has adjourned for more than three days.
- Authorized To Sign or Issue Subpoena—who is authorized by committee rules to sign or issue a subpoena—the chair, a committee member designated by the chair, or a committee member designated by the committee.
- Notification to Committee (as soon as practicable)—a chair shall notify the committee as soon as practicable that a subpoena has been issued.

Table 1. Committee Subpoena Requirements, House Committees' Rules, 115th Congress

By Committee Decision or by Chair's Authority, Authority to Issue a Subpoena, and Notification to the Committee

Committee	Committee/Subcommittee by Majority Vote	Chair				Authorized To Sign or Issue Subpoena			Notification to Committee (as soon as practicable)
		On Own Initiative	Ranking Minority Member		Three Days	Chair	Member Designated by Chair	Member Designated by Committee	
			Concurs	Is Consulted					
Agriculture	✓[a, b]	✓		✓[c]		✓		✓	
Appropriations	✓[d, e, f]					[f]		✓	
Armed Services	✓[g, h]					✓		✓	
Budget	✓[i, j]					✓	✓		
Education and the Workforce	[b]	✓		✓[k, l]		✓			✓[m]
Energy and Commerce	[b]	✓		✓[n, l]		✓			✓[o]
Ethics	✓[d, p]					[q]			
Financial Services	[b]	✓		[r]		✓		✓	
Foreign Affairs	✓[g]	✓		✓		✓		✓	
Homeland Security	[b]	✓		✓[k, l]		✓			✓[s]
House Administration	✓[e, f, i]					[f]		✓	
Judiciary	✓[g]	✓		✓[t]		✓		✓	
Natural Resources	✓[d]	✓			✓	✓		✓	
Oversight and Government Reform	[b]	✓				✓			

Committee	Committee/Subcommittee by Majority Vote	Chair				Authorized To Sign or Issue Subpoena			Notification to Committee (as soon as practicable)
		On Own Initiative	Ranking Minority Member		Three Days	Chair	Member Designated by Chair	Member Designated by Committee	
			Concurs	Is Consulted					
Rules	✓[g]	✓			✓	✓		✓	
Science, Space, and Technology	[b]	✓				✓			
Small Business	✓[u, b]					✓[v]			
Transportation and Infrastructure	✓[g, w]	✓[x]		✓[x]		✓		✓	✓
Veterans' Affairs	✓[g]								
Ways and Means	[b]	✓				✓			
Intelligence	✓[b]	✓		✓		✓		✓	

Source: Prepared by the Congressional Research Service (CRS) based on a review of House committee rules, 115th Congress.

a. A subcommittee investigation may be initiated only after consultation with the committee chair or a majority of the committee.

b. The committee's rules do not explicitly address subcommittee subpoenas.

c. The chair is directed by committee rule to consult the ranking minority member at least 48 hours in advance of a subpoena being issued under the chair's authority.

d. Subcommittees are also granted subpoena authority.

e. A subpoena may be authorized in the conduct of an investigation or activity authorized by the committee, a majority of the committee present and voting.

f. The power to authorize and issue subpoenas may be delegated to the chair pursuant to such rules and under such limitations as the committee may prescribe.

g. A subpoena may be authorized in the conduct of an investigation or activity authorized by the committee or a subcommittee, a majority of the committee or subcommittee present and voting.

h. Concurrence of the full-committee chair and consultation with the full-committee ranking minority member are required in addition for a subpoena authorized by a subcommittee.

i. Committee has no subcommittees.

j. The committee may prescribe rules and limitations for the chair's authorization of subpoenas.

k. The chair, to the extent practicable, should consult with the ranking minority member at least 24 hours in advance of issuing a subpoena, excluding Saturdays, Sundays, and federal holidays.

l. The chair must also notify the ranking minority member in advance of issuing a subpoena.

m. Notification must be in writing.

n. The chair, to the extent practicable, should consult with the ranking minority member at least 72 hours in advance of issuing.

o. Notification must occur not later than one week after issuance of a subpoena.

p. A majority vote of the *membership* of the committee or a subcommittee is required. Investigative subcommittees, by a majority vote, may authorize a subpoena for witnesses or documents. A respondent must be notified whenever an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first. Unless the full committee otherwise provides, the committee chair and ranking minority member must issue the subpoena upon request of the subcommittee. Adjudicatory subcommittees may authorize and issue subpoenas. A respondent or counsel may also apply to an adjudicatory subcommittee for the issuance of subpoenas for the appearance of witnesses or the production of evidence; criteria are listed for granting and denying a request.

q. The chair and ranking minority member together issue subpoenas in behalf of the committee and investigative subcommittees. The committee rule permitting adjudicatory subcommittees to authorize subpoenas does not indicate who may issue them.

r. The chair should "notify" the ranking minority member in writing at least 48 hours in advance of authorizing and issuing a subpoena. If exigent circumstances prevent 48 hours' notice, the chair must provide notice "as soon as possible."

s. Notification must occur not later than one week after service of a subpoena.

t. The chair is directed by committee rule to consult the ranking minority member on authorizing and issuing a subpoena at least 2 "business days" in advance of a subpoena being issued under the chair's authority, and must provide the ranking minority member with a "full copy" of the subpoena, including "any proposed document schedule." This requirement may be waived if "an emergency does not reasonably allow for advance written notice."

u. The requirement of a majority vote by the full committee may be waived by the ranking minority member.

v. When the House is not in session for more than three legislative days, the chair may issue a subpoena in consultation with the ranking minority member.

w. A subcommittee investigation must be authorized by a majority of the subcommittee.

x. If a specific request for a subpoena has not previously been rejected by the committee or a subcommittee, the committee chair, after consulting the ranking minority member, may authorize and issue the subpoena in the conduct of an investigation or activity.

Senate Rules on Subpoenas

Senate committees and subcommittees are authorized to subpoena witnesses and documents (Rule XXVI, paragraph 1). No additional details specific to authorizing or issuing subpoenas appear in Rule XXVI.[13]

Senate Committees' Rules on Subpoenas

If a committee meets to consider one or more subpoenas for a witness, witnesses, or documents, it meets in a markup session, and Senators may offer amendments and motions, make points of order, and engage the relevant procedures and procedural strategy that could also occur in a markup of legislation. The Senate Office of Legal Counsel may advise committees on subpoenas.

Most Senate committees in their rules have also delegated authority to issue subpoenas to their chair and ranking minority member acting together. Some committees' rules are explicit on procedures for subcommittees to authorize subpoenas.

Other provisions pertaining to subpoenas, but not directly relating to authorizing or issuing them, may appear in committees' rules. The Select Committee on Ethics has a unique rule for withdrawing a subpoena. The committee by a recorded vote of no fewer than four members may withdraw a subpoena that it had authorized or that the chair and vice chair together had authorized. In addition, the chair and vice chair together could withdraw a subpoena that they had authorized.

The Ethics Committee has rules in addition that

- by a recorded vote of no fewer than four members, may prohibit committee members and staff and outside counsel from publicly identifying a subpoenaed witness prior to the day of the witness's appearance, except as authorized by the chair and vice chair acting together;
- allow the respondent in an adjudicatory hearing to "apply to the Committee" for the subpoena of witnesses and documents in the individual's behalf;
- allow a subpoenaed witness to request, subject to the committee's approval, not to be photographed at a hearing or to have the witness's testimony broadcast or reproduced while testifying;
- require a subpoena to be served sufficiently in advance of a scheduled appearance to provide the witness with "a reasonable period of time" to prepare and to obtain counsel; and
- permit service of a subpoena by any person 18 years of age or older designated by the chair or vice chair.

Four other committees have additional rules that pertain to subpoenas, but not specifically to their authorization or issuance. These rules are as follows:

[13] Standing orders creating the Senate's select committees may contain additional details, which are reflected in those committees' rules surveyed in the text and table that follow in this report. See U.S. Congress, Senate Rules and Administration, *Senate Manual*, prepared by Matthew McGowan, 113th Cong., 1st sess., 2014, 113-1 (Washington, DC: GPO, 2014).

A rule of the Foreign Relations Committee deals with the return of a subpoena, or of a request to an agency, for documents. The rule states that the return could be a time and place other than a committee meeting.[14] If the return was incomplete or accompanied by an objection, the rule states that that is good cause for a hearing of the committee on shortened notice. On such a return, the chair or a member designated by the chair could convene a hearing on four hours' notice to members by telephone or email. One member is a quorum for this hearing, which occurs for the sole purpose of "elucidat[ing] further information about the return and to rule on the objection."

The Health, Education, Labor, and Pensions Committee's investigations and subpoena rule has an additional provision that makes information obtained from investigative activity available to committee (or subcommittee) members requesting the information and to staff of committee (or subcommittee) members who have been designated in writing by the members, subject to restrictions contained in Senate rules. A committee member may also request information relevant to an investigation to be "summarized in writing as soon as practicable." Moreover, the committee or a subcommittee chair must call an executive session to discuss investigative activity and the issuance of subpoenas in support of this activity at the request of any member.

A rule of the Small Business and Entrepreneurship Committee specifically authorizes the chair to rule on objections or assertions of privilege in response to subpoenas or on questions raised by a committee member or staff.

The Select Committee on Intelligence has a rule on recommending that an individual "be cited for contempt of Congress or that a subpoena be otherwise enforced." A recommendation could not be forwarded to the Senate unless the committee had met and considered the recommendation, provided the individual an opportunity to oppose the recommendation in person or in writing, and agreed by majority vote to forward the recommendation to the Senate.[15] Another rule of the committee allows the chair, vice chair, or committee member issuing a subpoena to designate any person to serve a subpoena.

Committees' other procedural rules affect scheduling and conducting meetings to authorize a subpoena. These other rules deal with the notice for and agenda of a meeting, the quorum to conduct business, voting, and consideration. Committees' rules also mirror a Senate rule requiring a majority to be physically present, and the concurrence of a majority of the members present, to report (Rule XXVI, paragraph 7).

Explanation of Table 2: Committee Subpoena Requirements, Senate Committees' Rules, 115th Congress

Table 2 compares committees' rules in the 115th Congress on subpoena requirements across the 20 Senate committees. The 16 standing committees with legislative authority are listed in alphabetical order in the left-most column, followed by the 2 additional permanent committees with legislative authority. The two committees without legislative authority appear in the last two

[14] *Return* in this rule refers to instructions to the individual named on when and where to respond to the subpoena with the documents demanded. The rule makes explicit that a subpoena for documents may specify that the documents be delivered at other times or to other places than a committee meeting.

[15] "Contempt of Congress—Willful obstruction of the proper functions of Congress. Most frequently, it is a refusal to obey a subpoena to appear and testify before a committee or to produce documents demanded by it." *Congressional Quarterly's American Congressional Dictionary,* p. 66. For an explanation of contempt and enforcement of a Senate subpoena, see the CRS reports listed in footnote 2, and U.S. Congress, Senate, *Riddick's Senate Procedure: Precedents and Practices*, prepared by Floyd M. Riddick and Alan S. Frumin, 101st Cong., 2nd sess., S.Doc, 101-28 (Washington, DC: GPO, 1992), pp. 687-692.

positions of the table.[16] The first two rows of the heading contain key terms describing the committees' rules, as explained immediately below. A check in a box indicates that a committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject in its rules. Certain checks and blank boxes are footnoted to offer additional detail on a particular committee's rule or lack of rule. In some cases, a single table note is used to give additional detail for a rule or circumstances that affect more than one committee's rules.

The following list explains the headings in **Table 2**:

- Committee—In addition to a committee's name, footnotes appear with committees' names that explain the coverage of subcommittee subpoena authority in the committee's rules.
- Authorization—refers to who has the authority to authorize a subpoena—the chair, the chair with the ranking minority member, or the committee. *RMM* is used as an abbreviation for *ranking minority member*.
- Issued upon Signature of—refers to whose signature is required for the issuance of a subpoena—that of the chair, of a committee member designated by the chair, or of a committee member(s) designated by the committee.

[16] The Select Committee on Ethics has authority to report by recommendation or resolution "additional rules or regulations" that the committee "shall determine to be necessary or desirable to insure proper standards of conduct by Members of the Senate, and by officers or employees of the Senate, in the performance of their duties and the discharge of their responsibilities." S.Res. 338, §2(a)(5), agreed to in the Senate July 24, 1964.

Table 2. Committee Subpoena Requirements, Senate Committees' Rules, 115th Congress

Authorization and Issuance

Committee	Authorization			Issued upon Signature of		
	Chair	Chair with RMM	Committee Majority	Chair	Member Designated by Chair	Members Designated by Committee
Agriculture, Nutrition, & Forestry[a]		✓[b,c,d]	✓	✓	✓	
Appropriations						
Armed Services[e]			✓	✓[f,g]	✓[f]	
Banking, Housing, & Urban Affairs[h]		✓	✓[i]			
Budget[j]			[k]			
Commerce, Science, & Transportation[l]		✓[c,m]	✓	✓	✓	
Energy & Natural Resources[l]	✓[n]	✓	✓	✓		
Environment & Public Works						
Finance[e]		✓	✓	✓	✓	
Foreign Relations[e]			✓[o]	✓		✓
Health, Education, Labor, & Pensions[p]	✓[p]		✓	[q]	[q]	
Homeland Security & Governmental Affairs[r]		✓[d, s]	✓	✓	✓	
Judiciary[t]		✓	✓	✓	✓	
Rules & Administration[j]						
Small Business & Entrepreneurship[u]		✓[v,w]	✓[w]	✓[x]	✓[x]	
Veterans' Affairs[j]		✓[y,d]	✓	✓	✓	
Indian Affairs[j]		✓	✓			
Intelligence[j]			✓	✓[z]	✓[z]	
Aging[aa]		✓		✓[bb]	✓[bb, cc]	
Ethics[j]		✓[dd]	✓[dd]	✓[ee]		

Source: Prepared by CRS based on a review of Senate committees' rules, 115th Congress.

a. The committee chair, with the approval of the committee ranking minority member, may authorize subpoenas for witnesses or documents for subcommittee hearings or, when authorized by the committee, subcommittee investigations.

b. A majority of committee members must vote to approve an investigation by the committee or a subcommittee in which subpoenas will be issued. The committee chair, with the ranking minority member's approval, may also issue subpoenas for other hearings.

c. The chair could, however, issue a subpoena if the chair had not received a notification of disapproval from the ranking minority member within 72 hours, excluding Saturdays and Sundays.

d. A majority vote of the committee overrides disapproval by the ranking minority member.

e. The committee's subcommittee rules do not list subpoena authority among subcommittees' powers.

f. After authorization by a majority of the committee, the chair or a member designated by the chair could issue subpoenas, following consultation with the ranking minority member.

g. A subpoena is to briefly describe the matter on which an individual is to testify or the documents to be produced.

h. Subcommittees, and their chairs and ranking minority members, are given the same authority for subpoenas as the committee and its chair and ranking minority member. A subcommittee may also authorize subpoenas by majority vote.

i. The committee rule specifies a majority vote.

j. The committee has no subcommittees.

k. A committee's rule allows the committee to poll "steps of an investigation, including issuance of subpoenas," but the same rule disallows the committee to report any measure, matter, or recommendation by a vote by poll.

l. Subcommittee powers are not listed.

m. When the chair and ranking minority member do not concur, a majority of the committee may authorize a subpoena. A quorum in this instance must include at least one minority member.

n. The chair on his or her own initiative could issue a subpoena when authorized by a majority of committee members or within the scope of an investigation that was authorized by the chair and ranking minority member together or by a majority of the committee.

o. A subpoena could be authorized at a meeting or by proxies. At the request of a member, a subpoena could be authorized only at a meeting.

p. After the committee has authorized a committee or subcommittee investigation, it may in addition delegate authority to issue subpoenas to the committee or subcommittee chair. With that authority, the chair of the committee or subcommittee, or a member designated by the relevant chair, could issue subpoenas.

q. Prior to the issuance of a subpoena, the ranking minority member of the committee or subcommittee must be notified. Other committee or subcommittee members who requested notification must also be notified. Notification must include the identity of the person subpoenaed, the nature of the information sought, and the relationship of the information to the authorized investigative activity. Notification could be waived if the chair, in consultation with the ranking minority member, determined that notice would "unduly impede the investigation."

r. Subcommittees are authorized by a committee rule to write their own rules, including subpoena rules. Under this committee rule, however, if a subcommittee authorizes a subpoena under its own rules, the subcommittee must notify the committee's chair and ranking minority member (or staff members designated by them) in writing. The subpoena could not be issued for at least 48 hours, excluding Saturdays and Sundays, unless the chair and ranking minority member waived the waiting period or the subcommittee chair certified to the committee chair and ranking minority member that it was necessary to issue the subpoena immediately.

s. The chair could issue a subpoena without the approval of the ranking minority member if the chair had not received a notification of disapproval from the ranking minority member within 72 hours, excluding Saturdays, Sundays, and holidays. The rule excludes these same days only when the Senate is not in session on those days. The rule also explicitly allows staff to deliver and receive notices and responses and permits e-mail to be used.

t. The committee chair and ranking minority member, or the committee by vote, could subpoena the attendance of a witness or the production of documents at a subcommittee hearing.

u. A committee rule states that there are no subcommittees.

v. The chair could issue a subpoena without the approval of the ranking minority member if the chair had not received a notification of disapproval from the ranking minority member within 72 hours, excluding Saturdays, Sundays, and holidays.

w. Committee members could consent to the chair's authorization of subpoenas, and the members' consent could be given without a meeting but must be in writing.

x. A subpoena should be accompanied by a briefly stated purpose of the hearing and the matters on which the individual is to testify. Concerning documents, a subpoena should describe them with as much "particularity as practicable."

y. The chair could issue a subpoena without the approval of the ranking minority member if the chair had not received a notification of disapproval from the ranking minority member within 48 hours, excluding Saturdays, Sundays, and holidays.

z. A subpoena could also be issued by the vice chair. The committee's rule requires a copy of the committee's rules and of S.Res. 400, the standing order, to be attached to any subpoena. (See the standing order in Section 81of the *Senate Manual*. [U.S. Congress, Senate Rules and Administration, *Senate Manual*, prepared by Matthew McGowan, 113th Cong., 1st sess., 2014, 113-1 (Washington, DC: GPO, 2014)].)

aa. Subcommittees, and their chairs and ranking minority members, are given the same authority for subpoenas as the committee and its chair and ranking minority member.

bb. Before issuing a subpoena, the chair is to notify the ranking minority member, and any other member who requested notification, of the identity of the person to be subpoenaed, the nature of the information sought, and the information's relationship to the investigation.

cc. Committee Rule VII, para. 5 states: "The Committee may authorize staff, by issuance of commissions, to fill in prepared subpoenas.... Commissions shall be accompanied by instructions from the Committee regulating their use."

dd. May be authorized "during a preliminary inquiry, adjudicatory review, or other proceeding."

ee. May alternately be signed by the vice chair. A subpoena is to be accompanied by a copy of the committee's rules and a brief statement of the purpose of the committee's proceeding. A subpoena to testify at an adjudicatory hearing must also be accompanied by a copy of the public announcement of the hearing.

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