

Good Government Now

Dr. William J. Murphy * 610-529-6494 * wmurphy@goodgovernmentnow.org

Proposed Rule on Information Requests and Subpoenas

A proposal to amend the Rules of the House of Representatives with respect to information requests and subpoenas to executive branch officials by adding the following new clause at the end of Rule XI:

7. (a) Whenever any committee or subcommittee makes a written request pursuant to this rule to any department or agency of the Government for the production of such books, records, correspondence, memorandum, papers, and documents as it considers necessary, a senior responsible official shall either comply with that request or file written objections within the timeframe for response set forth in the request. Such a request shall state that it is made pursuant to this rule and shall be authorized by the chair of the committee. The agency or department will produce such documents, records, and information in any electronic or digital file format, including searchable formats, in which they are available to or can be produced by the agency, as may be requested by Congress.

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

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

(d) With respect to any portion of the written request to which timely objection was made, a subpoena to the senior responsible official may be issued, following conclusion of the negotiations referred to in paragraph (b), by—

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

(2) a vote of the committee.

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

(f) If the committee overrules some or all of the objections asserted, it may issue an order of compliance. The senior responsible official shall comply with such order within 10 days unless, prior to such time, the President, personally

and in writing, makes a claim of executive privilege with respect to the records and information at issue.

(g) Upon direction of the committee chair, the House counsel shall bring an action in an appropriate Federal court to enforce the subpoena if—

(1) the senior responsible official has failed to comply with or file objections to the subpoena within the subpoena's timeframe for response; or

(2) if, within the timeframe for response to an order of compliance, the senior responsible official has failed to comply and the President has failed to make a claim of executive privilege.

(h)(1) If a senior responsible official fails to comply with a subpoena issued under this clause, it shall not be in order to consider any appropriation bill that would fund the position or office of the senior responsible official until the chair provides notice under subparagraph 2 that the matter is resolved. A point of order under this subparagraph shall lie notwithstanding the President's assertion of executive privilege.

(2) The chair of any committee described in sub-paragraph (1) shall notify the chair of the Committee on Appropriations of any department or agency that becomes subject to subparagraph (1) and shall also notify the chair of the Committee on Appropriations whenever such matter is resolved.

(i) If the conduct of the senior responsible official so warrants, the committee may make a referral to the Committee on the Judiciary for a preliminary inquiry into impeachment.

(j) If during any stage of the proceedings under this clause, in the judgment of the committee chair the resolution of privilege or other issues would be advanced by a third-party review of the records or information in dispute, the chair may direct the Comptroller General to perform such a review.

(k) Nothing in this clause prohibits the exercise of any other statutory, constitutional or other remedy, including civil enforcement as authorized by the House, with respect to any congressional subpoena or request for information, including in cases where the President makes a claim of executive privilege.

(l) As used in this clause:

(1) The term “senior responsible official” refers to an executive branch official with control or custody over the records or information sought and who is a civil officer subject to removal from office under Article II, section 4, of the Constitution, unless no such civil officer has control or custody over the records or information sought. As circumstances warrant, there may be more than one senior responsible official designated with respect to a written request or subpoena, and different officials may be designated for a written request and the

corresponding subpoena.

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

(3) The “timeframe for response” with respect to any written request, subpoena or order of compliance shall be as stated therein, but shall not be less than 7 days for a written request, 7 days for a subpoena, or 10 days for an order of compliance. Any “timeframe for response” referred to in this clause may be extended by the committee chair for good cause shown.