
Expanded Subpoena Powers in New Congress

TUESDAY, JANUARY 20, 2015

The Republican Leadership in the House has made two changes to House Committee Rules that will enhance the majority's ability to conduct investigations without the assistance or cooperation of the minority. These changes will dramatically increase the leverage of congressional investigators seeking information from companies, financial institutions, individuals and the Executive Branch.

The first change extends unilateral subpoena authority to several new committees—allowing Republican committee chairs to issue subpoenas for documents and witnesses without consulting or obtaining approval from Democratic members of the committee. Under the leadership of then-Chairman Darrell Issa, the House Oversight and Government Reform Committee conducted more investigations than other committees in the 113th Congress, in part due to this sweeping authority.

The House Energy and Commerce Committee voted last week to adopt unilateral subpoena authority for the chairman of the committee, although under the new rule the chairman is required to notify the ranking member before issuing a subpoena, and should consult with the ranking member before issuing the subpoena "to the extent practicable." The House Financial Services Committee also adopted a similar rule, conferring unilateral subpoena authority on the chairman but providing for 48 hours' written notice to the ranking member, except in "exigent circumstances." The Judiciary, Agriculture, and Science, Space and Technology Committees are all expected to consider this expansion of authority in the coming weeks, as they meet to adopt their respective rules for the 114th Congress. In practice, this change will potentially lead to subpoenas being issued more frequently and more rapidly, and may encourage other committees to undertake more wide-reaching investigations.

The second change allows the House Energy and Commerce, Financial Services, Science, Space and Technology, and Ways and Means Committees to extend deposition authority to committee staff, in addition to Members. Until now, the House Oversight and Government Reform Committee was the only committee that provided such authority to staff. This change, which was adopted as part of the House Rules package for the 114th Congress, applies only to the first session of this Congress. If these committees authorize depositions at the staff level, both the majority and minority staff would be permitted to question witnesses. Changes in subpoena rules may also be in the works for the Senate, although traditions of bipartisanship are much deeper in that body.

These rule changes are an outgrowth of Republican frustration regarding perceived non-cooperation from the Administration in response to past queries, and are likely to pose new challenges for companies with government contracts or information that is potentially relevant to inquiries about governmental actions or other topics under congressional review. The significance of this policy shift should not be underestimated. In the short term, Executive Branch agencies such as the Environmental Protection Agency and the Consumer Financial Protection Bureau, which are likely targets of Republican oversight activity, may face new and significant pressure to produce information they have previously been able to withhold. In the long term, if the Democratic Party regains control of the Senate or House, it may keep unilateral authority and use it to focus more scrutiny on financial institutions and other companies.

These changes signal a shift toward more one-party led congressional investigations, and with it a new premium on the ability to work effectively with committee chairs and majority staff. If you have questions about the potential changes, or other questions about the congressional investigations landscape in 2015, please feel free to [contact us](#) at any time.

Authors



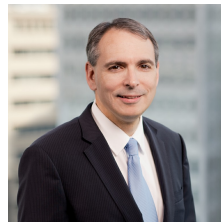
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