

Congressional Investigations and the Rules of the 116th Congress

April 16, 2019

Election and Political Law, Public Policy

Consistent with our [predictions](#) over the past several months, congressional investigations have flourished in the first few months of the 116th Congress, outpacing the oversight activity of any other Congress in recent memory. The leaders of the new Democratic majority in the House of Representatives have commenced numerous investigations into the activities of President Trump, the campaign, and the administration. Congress has also launched investigations of the private sector on a variety of issues, including drug prices, health care plans, data breaches, and the operations of large banks.

Congressional investigations are notorious for being deeply infused with politics. Although investigations may seem to proceed by familiar legal process—including document productions and witness testimony—there is actually very little due process in congressional investigations. There are no motions to dismiss, protective orders, or limited discovery orders in a congressional investigation. There are, however, some rules, and the rules that exist are significant and important. The rules delineate the process for issuing subpoenas, for example. Although many congressional investigations proceed entirely without a subpoena, the underlying threat of a subpoena is, of course, significantly influential on assessing whether to respond to an investigation voluntarily.

At the start of each new Congress, the House and the committees adopt internal rules that govern their operations, including rules that affect congressional investigations, and the rules are often revised. To assist our clients responding to congressional investigations, this alert summarizes the rules of the Senate, House of Representatives, and key investigative committees related to congressional investigations, particularly the rules related to subpoena authority, depositions, and, where applicable, confidentiality.

I. House of Representatives

A. Committee Subpoena Authority

The Rules of the House of Representatives provide the general authority by which committees may issue subpoenas. Many of the rules of individual committees additionally reference the

House's rule, which appears in Rule XI, Clause 2(m)(3)(A)(i).¹

The House rule first provides that “a subpoena may be authorized and issued . . . only when authorized by the committee or subcommittee, a majority being present.” Importantly, however, the rule next provides that the subpoena authority “may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe.” As described below, many committees take advantage of the second part of this rule to provide authority to the committee's chairman to issue a subpoena, often unilaterally. Finally, the House rule specifies that a subpoena issued by a committee can require “the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.”

B. Committee Deposition Authority

On January 9, 2019, the House adopted the rules package for this Congress. In addition to making various amendments to the standing rules, the rules package included certain separate authorities, including a provision addressing deposition authority.²

The new deposition authority provides that a committee chairman “may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee.” The provision also provides that the chairman must consult with the ranking minority member of the committee. Notably, this authority permits depositions by committee counsel—staff members—in addition to depositions by Members of Congress.

The deposition authority is “subject to regulations issued by the chair of the Committee on Rules,” which were released on January 25, 2019.³ The regulations address requirements concerning consultation with the ranking minority member and written notice to committee members before depositions are taken; permitted attendees; designation of depositions as part of joint investigations between committees; the order and length of questioning; the process of raising and ruling on objections; and transcribing and recording the deposition. Even if an individual committee's rules do not address deposition authority, each committee chairman possesses the deposition authority provided in this generally applicable authority.

C. Committee Confidentiality Authority

The Rules of the House of Representatives include confidentiality provisions regarding committee business meetings. Rule XI, Clause 2(g)(1) states that every meeting “for the transaction of business, including the markup of legislation,” by a standing committee or subcommittee thereof “shall be open to the public.” However, meetings will be closed when the committee or subcommittee “in open session and with a majority present, determines by record vote” that “disclosure of matters to be considered would endanger national security, would

¹ [CLERK OF THE HOUSE OF REPRESENTATIVES, 116TH CONG., RULES OF THE HOUSE OF REPRESENTATIVES \(2019\)](#). (Separate, special rules are provided for the Ethics Committee.)

² [H.R. RES. 6 § 103\(A\), 116TH CONG. \(2019\)](#). The deposition authority is not available to the Chairman of the Rules Committee.

³ [165 CONG. REC. H1216 \(daily ed. Jan. 25, 2019\)](#).

compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House.”⁴

D. Committee on Armed Services

1. Subpoenas

The House Committee on Armed Services rules state that “[a] subpoena may be authorized and issued by the Committee, or any subcommittee with the concurrence of the Chairman and after consultation with the Ranking Minority Member . . . only when authorized by a majority of the members voting, a majority of the Committee or subcommittee being present.”⁵ In addition, “authorized subpoenas shall be signed only by the Chairman, or by any member designated by the Committee.” The rules further state that for the purposes of authorizing a subpoena, a majority of the Committee or subcommittee shall constitute a quorum.

In addition, the rules note that “pursuant to clause 2(m) of rule XI of the Rules of the House of Representatives, compliance with any subpoena issued by the Committee or any subcommittee under subparagraph (a)(2) may be enforced only as authorized or directed by the House of Representatives.”

2. Depositions

There are no special rules addressing depositions, and depositions are therefore controlled by the generally applicable House rules.

3. Confidentiality

The House Committee on Armed Services rules state that hearings and meetings for the transaction of business must be open to the public, except when the majority of those members present at a Committee, subcommittee, panel, or task force in open session determines by record vote that all or part of the remainder of that hearing or meeting on that day shall be in executive session because disclosure of testimony, evidence, or other matters to be considered would endanger the national security, would compromise sensitive law enforcement information, or would violate any law or rule of the House of Representatives. If two or more members of the Committee, subcommittee, panel, or task force are present, they may vote to close a hearing or meeting for the sole purpose of discussing whether testimony or evidence to be received would endanger the national security, would compromise sensitive law enforcement information, or would violate any law or rule of the House of Representatives.

The rules also address the protection of national security and other confidential information. The rules state that the Chairman, with the approval of a majority of the Committee, must establish necessary procedures to prevent the unauthorized disclosure of any national security information bearing a classification of confidential or higher. These procedures must ensure access to this information by any Committee member or any other member, delegate, or resident commissioner of the House of Representatives, staff of the Committee, or staff

⁴ CLERK OF THE HOUSE OF REPRESENTATIVES, 116TH CONG., RULES OF THE HOUSE OF REPRESENTATIVES (2019). (Separate, special rules are provided for the Ethics Committee.)

⁵ H. COMM. ON ARMED SERVS., 116TH CONG., RULES OF PROCEDURE (2019).

designated under rule 9(c) who have the appropriate security clearances and the need to know, who has requested the opportunity to review such material. In addition, the Chairman must, in consultation with the Ranking Member, establish necessary procedures to prevent the unauthorized disclosure of any proprietary information that is received by the Committee.

E. Committee on Education and Labor

1. Subpoenas

The House Committee on Education and Labor rules delegate the power to authorize and issue subpoenas “to the Chair of the full Committee.”⁶ The Ranking Member’s consent is not required. Rather, the rules only require that “the Chair shall notify the Ranking Member prior to issuing any subpoena under such authority” and that “to the extent practicable, the Chair shall consult with the Ranking Member at least 24 hours in advance of a subpoena being issued under such authority, excluding Saturdays, Sundays, and federal holidays.” In addition, “as soon as practicable after issuing any subpoena under such authority, the Chair shall notify in writing all members of the Committee of the issuance of the subpoena.”

2. Depositions

The rules grant deposition authority to the Chair, upon consultation with the Ranking Member, in accordance with H. Res. The Chair, or the majority staff, must consult with the Ranking Member, or minority staff, no less than three business days before any notice or subpoena for a deposition is issued. After such consultation, all members shall receive written notice that a notice or subpoena for a deposition will be issued.

According to the rules, the deposition shall be conducted by one or more members or Committee counsel as designated by the Chair or Ranking Member. A deponent may be accompanied at a deposition by counsel; however, only members and Committee counsel may examine the deponent. No one may be present at a deposition other than members, Committee staff designated by the Chair or Ranking Member, such individuals as may be required to administer the oath or affirmation and transcribe or record the proceedings, the deponent, and the deponent’s counsel.

The rules further provide for the manner and length of questions and objections in a deposition. Unless the majority, minority, and deponent agree otherwise, questions in a deposition will proceed in rounds alternating between the majority and minority, not exceeding 60 minutes per side unless a different length of questioning is otherwise agreed upon. The deponent may object and refuse to answer a question only to preserve a privilege. If the Chair overrules any such objection and thereby orders a deponent to answer, such ruling must be filed with the clerk of the Committee and must be provided to members and the deponent no less than three days before the ruling is enforced at a reconvened deposition. A deponent who refuses to answer a question after being directed to answer by the Chair in writing may be subject to sanction, except that no sanctions may be imposed if the ruling of the Chair is reversed on an appeal by a member of the Committee.

⁶ [H. COMM. ON EDUC. & LABOR, 116TH CONG., RULES OF PROCEDURE \(2019\).](#)

F. Committee on Energy and Commerce

1. Subpoenas

The House Committee on Energy and Commerce rules grant the power to authorize and issue subpoenas to the Chairman of the full Committee.⁷ The Ranking Member's consent is not required. Rather, the rules only require that "the Chairman shall notify the Ranking Minority Member prior to issuing any subpoena under such authority." The rules also state that the Chairman "shall consult with the Ranking Minority Member at least 72 hours in advance of a subpoena being issued under such authority," but only "to the extent practicable." Finally, the rules require that "the Chairman shall report to the members of the Committee on the issuance of a subpoena as soon as practicable but in no event later than one week after issuance of such subpoena."

2. Depositions

There are no special rules addressing depositions, and depositions are therefore controlled by the generally applicable House rules.

3. Confidentiality

The rules state that Committee meetings and hearings "shall be open to the public, including to radio, television, and still photography coverage, consistent with the provisions of Rule XI of the Rules of the House."

G. Committee on Financial Services

1. Subpoenas

The rules delegate the power to authorize and issue subpoenas to the Chair. The rules require that unless there are exigent circumstances, "the Chair will provide written notice to the ranking minority member at least 48 hours in advance of the authorization and issuance of a subpoena, and such notice shall include a full copy of the proposed subpoena, including any proposed document schedule."⁸ Authorized subpoenas must be signed by the Chair or by any member designated by the Committee, and subpoenas may be served by any person designated by the Chair or such member. The rules state that a majority of the members of the Committee shall constitute a quorum for the purposes of authorizing a subpoena, other than a subpoena authorized and issued by the Chair.

2. Depositions

There are no special rules addressing depositions, and depositions are therefore controlled by the generally applicable House rules.

3. Confidentiality

The rules state that the "meetings and hearings of the committee shall be open to the public unless closed in accordance with clause 2(g) of rule XI of the Rules of the House."

⁷ [H. COMM. ON ENERGY & COMMERCE, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

⁸ [H. COMM. ON FIN. SERVS., 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

H. Permanent Select Committee on Intelligence

1. Subpoenas

The House Permanent Select Committee on Intelligence rules state that “all subpoenas shall be authorized by the Chair of the full Committee, upon consultation with the Ranking Minority Member, or by vote of the full Committee.”⁹ A subpoena authorized by the Chair of the full Committee or by the full Committee may be signed by the Chair or by any member of the Committee designated to do so by the full Committee, and a subpoena authorized by the Chair of the full Committee, or by the full Committee, may be served by any person designated to do so by the Chair.

2. Depositions

There are no special rules addressing depositions, and depositions are therefore controlled by the generally applicable House rules.

3. Confidentiality

The House Permanent Select Committee on Intelligence rules state that all meetings or portions thereof for the transaction of business shall be closed to the public if the Committee determines by record vote in open session, with a majority of the Committee present, that disclosure of the matters to be discussed may (1) endanger national security; (2) compromise sensitive law enforcement information; (3) tend to defame, degrade, or incriminate any person; or (4) otherwise violate any law or Rule of the House.

The rules also state that with certain limited exceptions, Committee members and staff shall not discuss or disclose at any time, either during or after their tenure, the classified substance of the work of the Committee, any information received by the Committee in executive session, any classified information received by the Committee from any source, or the substance of any hearing that was closed to the public pursuant to the Committee rules or the Rules of the House. The Chair of the Committee shall supervise and direct Committee staff with respect to the security and nondisclosure of classified information. The rules also provide for the proper procedures by which to handle classified material.

I. Committee on the Judiciary

1. Subpoenas

The House Committee on the Judiciary rules allow subpoenas to be “authorized and issued by the Chairman, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee, following consultation with the Ranking Minority Member.”¹⁰ In addition, the rules also allow subpoenas to be authorized and issued by the Committee or its Subcommittees when authorized by a majority of the Members voting, with a majority of the Committee or Subcommittee present. Authorized subpoenas shall be signed by the Chairman or by any member designated by the Committee.

⁹ [H. PERMANENT SELECT COMM. ON INTELLIGENCE, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

¹⁰ [H. COMM. ON THE JUDICIARY, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

At least two calendar days before issuing any subpoena (excluding Saturdays, Sundays, and legal holidays when the House is not in session), the Chair must consult with the Ranking Member regarding the authorization and issuance of such subpoena and shall provide a full copy of the proposed subpoena, including any proposed document schedule, at that time. This requirement may be waived in the event of an emergency that does not reasonably allow for advance written notice.

2. Depositions

There are no special rules addressing depositions, and depositions are therefore controlled by the generally applicable House rules.

3. Confidentiality

The rules state that meetings for the transaction of business shall be closed to the public if the Committee or Subcommittee determines by majority vote to close the meeting because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade or incriminate any person or otherwise would violate any law or rule of the House.

J. Committee on Oversight and Reform

1. Subpoenas

The House Committee on Oversight and Reform rules state that the Chair “shall . . . Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee.”¹¹

2. Depositions

The House Committee on Oversight and Reform rules state that the “Chair of the Committee, upon consultation with the Ranking Minority Member of the Committee, may order the taking of depositions, under oath and pursuant to notice or subpoena.” The consultation with the Ranking Member must include three calendar days’ notice (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such days), and a copy of a proposed deposition subpoena, if applicable, before any deposition is taken.

In addition, except in exigent circumstances, all members shall receive three calendar days’ written notice (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such days) that a deposition has been scheduled. Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members, Committee staff designated by the Chair of the Committee or the Ranking Minority Member of the Committee, an official reporter, the witness, and the witness’s counsel.

Questioning during depositions shall be conducted by any member or counsel designated by the Chair of the Committee or Ranking Minority Member of the Committee. While other

¹¹ [H. COMM. ON OVERSIGHT & REFORM, 116TH CONG., RULES OF PROCEDURE \(2019\).](#)

Committee staff members designated by the Chair of the Committee or Ranking Minority Member of the Committee may attend, they may not pose questions to the witness.

The rules further provide for the manner and length of questions and objections in a deposition. Questions in the deposition shall be propounded in rounds, alternating between the majority and minority. Unless the members or counsel conducting the deposition agree to a different length of questioning, a single round shall not exceed 60 minutes per side. In each round, the member(s) or counsel designated by the Chair of the Committee shall ask questions first, and the member(s) or counsel designated by the Ranking Minority Member of the Committee shall ask questions second.

Member(s) or Counsel may raise objections “concisely” and in a “non-argumentative and non-suggestive manner.” The witness may refuse to answer a question only to preserve a privilege. If the witness chooses to do so, members or staff may either proceed with the deposition or, either at that time or at a subsequent time, seek a ruling from the Chair. If the Chair overrules the objection during the deposition, the witness shall be ordered to answer. If, following the deposition’s recess, the Chair overrules an objection, such ruling must be filed with the clerk of the Committee and provided to the members and the witness no less than three days before the reconvened deposition. If a member of the Committee appeals in writing the ruling of the Chair, the appeal shall be preserved for Committee consideration. A deponent who refuses to answer a question after being directed by the Chair in writing, or orally during the proceeding as reflected in the record, may be subject to sanction, except that no sanctions may be imposed if the ruling of the Chair is reversed by the Committee on appeal.

K. Committee on Ways and Means

1. Subpoenas

The rules delegate the power to authorize and issue subpoenas “to the Chairman of the full Committee, as provided for under clause 2(m)(3)(A)(i) of Rule XI of the Rules of the House of Representatives.”¹²

2. Depositions

There are no special rules addressing depositions, and depositions are therefore controlled by the generally applicable House rules.

3. Confidentiality

The rules refer to Rule XI of the generally applicable House rules during their discussion of meeting transcription. They note that an official stenographic transcript shall be available for inspection by the public, members of the House, and members of the Committee “except for meetings closed pursuant to clause 2(g)(1) of Rule XI of the Rules of the House.”

¹² [H. COMM. ON WAYS & MEANS, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

II. United States Senate

A. Committee Subpoena Authority

The Standing Rules of the Senate provide the general authority by which committees may issue subpoenas.¹³ Senate Rule XXVI, paragraph 1 authorizes Senate committees and subcommittees to subpoena witnesses and documents. The Senate rule states that “each standing committee, including any subcommittee of any such committee, is authorized . . . to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents.” No additional details regarding the authorization or issuance of subpoenas appear in Rule XXVI.

B. Committee Deposition Authority

Senate committees do not possess independent deposition authority, understood as the power to compel attendance by subpoena at a proceeding to give testimony before staff with no member present. Instead, deposition authority must be granted to each committee by the Senate. If a Senate committee has not been granted deposition authority, witnesses can be subpoenaed to testify only at a hearing, with a quorum of members present, one member being the minimum.

C. Committee Confidentiality Authority

Many of the Senate committee rules mirror the confidentiality rules in Rule 26.5b of the Standing Rules of the Senate.¹⁴

Rule 26.5b states that committee meetings, including hearings, shall be open to the public. However, under certain circumstances, committee members may motion to have closed meetings when the matters to be discussed or the testimony to be taken at such meetings:

1. will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;
2. will relate solely to matters of committee staff personnel or internal staff management or procedure;
3. will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;
4. will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

¹³ [STANDING RULES OF THE SENATE, S. DOC. 113-18 \(2014\)](#).

¹⁴ [STANDING RULES OF THE SENATE, S. DOC. 113-18 \(2014\)](#).

5. will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or (B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or may divulge matters required to be kept confidential under other provisions of law or Government regulations.

D. Senate Special Committee on Aging

1. Subpoenas

According to the Senate Special Committee on Aging rules, investigations may be initiated “upon the approval of the Chairman and the Ranking Minority Member,” and the “Chairman and Ranking Minority Member, acting together, shall authorize a subpoena.”¹⁵

Subpoenas, either for the attendance of witnesses or the production of materials, shall be issued by the Chairman, or by any other Member of the Committee designated by him. Prior to the issuance, the Ranking Minority Member, and any other Member so requesting, shall be notified regarding the identity of the person to whom the subpoena will be issued and the nature of the information sought, and its relationship to the investigation.

The rules emphasize that subpoenas authorized by the Special Committee may be issued over the signature of the Chairman, or any Member of the Special Committee designated by the Chairman, and may be served by any person designated by the Chairman or the Member signing the subpoena.

The rules stipulate that the Committee may authorize the staff, by issuance of commissions, to fill in prepared subpoenas. In addition, the rules explicitly provide that each subcommittee is authorized to conduct investigations, including use of subpoenas.

2. Depositions

The Senate Special Committee on Aging’s organic resolution grants it permanent deposition authority. It states that the Special Committee is “authorized, in its discretion . . . to take depositions and other testimony.”¹⁶

Regarding depositions, the rules state that a witness’s counsel is allowed to be present during testimony to advise such witness of his or her rights. However, in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Chairman may rule that witness must be represented by personal counsel if representation by counsel from the government, corporation, or association creates a conflict of interest.

¹⁵ [S. SPECIAL COMM. ON AGING, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

¹⁶ [S. Res. 4 § 104, 95th Cong. \(1977\)](#) (text not available online).

Notices for the taking of depositions in an investigation authorized by the Committee shall be authorized and issued by the Chairman or by a staff officer designated by him. Unless otherwise specified, the deposition shall be in private. If a witness fails to appear, the Committee may not initiate procedures leading to criminal or civil enforcement proceedings unless the deposition notice was accompanied by a Committee subpoena. The rules further provide for the manner and length of questions and objections in a deposition. The rules also address the recording and filing of depositions.

3. Confidentiality

The Senate Special Committee on Aging rules state that all meetings and hearings shall be open to the public unless closed. To close a meeting or hearing or portion thereof, a motion shall be made and seconded to go into closed discussion of whether the meeting or hearing will concern Committee investigations or matters enumerated in Senate Rule 26.5b. Immediately after the discussion, the meeting or hearing or portion thereof may be closed by a vote in open session of a majority of the Members of the Committee present.

No records of a closed session, material declared confidential by a majority of the Committee, or report of the proceedings of a closed session, shall be made public, in whole or in part or by way of summary, unless specifically authorized by the Chairman and Ranking Minority Member.

E. Senate Committee on Armed Services

1. Subpoenas

The Senate Committee on Armed Services rules stipulate that subpoenas may be issued after consultation with the Ranking Minority Member, by the Chairman or any other member designated by the Chairman, but only when authorized by a majority of the members of the Committee.¹⁷

Regarding the contents of the subpoena, the rules state that the subpoena must briefly state the matter to which the witness is expected to testify or the documents to be produced.

2. Depositions

The Senate Committee on Armed Services rules do not address depositions.

3. Confidentiality

The Senate Committee on Armed Services rules regarding confidentiality mirror Rule 26.5b of the Standing Rules of the Senate. In addition, they state that any confidential testimony or confidential material presented in a closed hearing of the Committee or subcommittee, or any report of the proceedings of such hearing, shall not be made public in whole or in part or by way of summary unless authorized by a majority vote of the Committee or subcommittee.

¹⁷ [S. COMM. ON ARMED SERVS., 116TH CONG., RULES OF PROCEDURE \(2019\).](#)

F. Senate Committee on Banking, Housing, and Urban Affairs

1. Subpoenas

The rules establish that witnesses may be subpoenaed by the Chairman of the Committee or a Subcommittee with the agreement of the Ranking Member of the Committee or Subcommittee or by a majority vote of the Committee or Subcommittee.¹⁸

Regarding counsel, the rules state that any witness subpoenaed to a public or executive hearing may be accompanied by counsel of his or her own choosing who shall be permitted, while the witness is testifying, to advise him or her of his or her legal rights.

2. Depositions

The Senate Committee on Banking, Housing, and Urban Affairs rules do not address depositions.

3. Confidentiality

The rules state that no confidential testimony or confidential material presented during an executive session of the Committee or any Subcommittees, or any report of the proceedings of such executive session, shall be made public either in whole or in part or by way of summary, unless specifically authorized by the Chairman and the Ranking Member or by a majority vote of the Committee or Subcommittee.

G. Senate Committee on Commerce, Science, and Transportation

1. Subpoenas

The rules state that the Chairman may issue subpoenas “with the approval of the ranking minority member of the Committee.”¹⁹ However, the approval of the ranking minority member is not required if the Chairman or a member of the Committee staff designated by the Chairman has not received notification from the ranking minority member or a member of the Committee staff designated by the ranking minority member of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena.

If a subpoena is disapproved by the ranking minority member as provided in this paragraph, the subpoena may be authorized by vote of the Members of the Committee, according to the quorum rules. The quorum rules provide that in general, a “majority of the members, which includes at least 1 minority member, shall constitute a quorum for official action of the Committee.” Although the rules note that “one-third of the entire membership of the Committee” is enough to constitute a quorum for the transaction of committee business, it excepts “authorizing a subpoena” from the one-third rule. The rules also state that when the Committee or Chairman authorizes a subpoena, it shall be issued upon the signature of the Chairman or any other Member of the Committee designated by the Chairman.

¹⁸ [S. COMM. ON BANKING, HOUS.. & URBAN AFFAIRS, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

¹⁹ [S. COMM. ON COMMERCE, SCI., & TRANSP., 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

The rules state that the failure of any witness to secure counsel shall not excuse the witness from complying with a subpoena.

2. Depositions

The rules allow for staff to take depositions from a witness “at the direction of the Chairman, with notification to the ranking minority member of not less than 72 hours.” The ranking minority member, or a member of the Committee staff designated by the ranking minority member, shall be given the opportunity to attend and participate in the taking of any deposition.

In addition, the rules allow for witnesses to be accompanied at a deposition by counsel to advise them of their rights. Counsel retained by any witness and accompanying such witness are permitted to be present during the testimony of the witness to advise the witness of their legal rights.

The rules also establish requirements regarding the recording and filing of depositions. They state that an accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings and depositions. If testimony given by deposition is transcribed, the individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence and the transcriber shall certify that the transcript is a true record of the testimony. The transcript with these certifications shall be filed with the chief clerk of the Committee.

The rules state that the witness or the witness’s counsel may inspect the record of the witness’s testimony under Committee supervision. If a part of a deposition testimony is subsequently quoted or made part of the record in a public session, a copy of it must be provided to that witness at the witness’s expense if so requested.

After inspection, within a time limit set by the Clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors. The witness may also bring to the attention of the Committee errors of fact in the witness’s testimony by submitting a sworn statement about those facts with a request that it be attached to the transcript. The Chairman or a member of the Committee staff designated by the Chairman shall rule on such requests.

3. Confidentiality

The Senate Committee on Commerce, Science, and Transportation rules regarding confidentiality mirror Rule 26.5b of the Standing Rules of the Senate.

H. Senate Committee on Finance

1. Subpoenas

The Senate Committee on Finance rules state that witnesses may be subpoenaed by the Chairman of the Committee with the agreement of the Ranking Minority Member or by a

majority vote of the Committee.²⁰ Subpoenas shall be issued by the Chairman, or by any other member of the Committee designated by him.

2. Depositions

The Senate Committee on Finance rules do not address depositions.

3. Confidentiality

The Senate Committee on Finance rules regarding confidentiality mirror Rule 26.5b of the Standing Rules of the Senate.

The rules add that the record of an executive session of the Committee that is closed to the public pursuant to Rule 26.5b shall not be published or made public in any way except by majority vote of the Committee, and after all members of the Committee have had a “reasonable opportunity to correct their remarks for grammatical errors or to accurately reflect statements made.”

I. Senate Committee on Health, Education, Labor, and Pensions (HELP)

1. Subpoenas

The Senate HELP Committee Rules states that the Committee, or any Subcommittee, may only issue subpoenas, or hold hearings to take sworn testimony or hear subpoenaed witnesses, if such activity has been authorized by majority vote of the Committee.²¹ The Committee may, by a majority vote, delegate the authority to issue subpoenas to the Chairman of the Committee or a Subcommittee, or to any member designated by such Chairman.

Prior to the issuance of each subpoena, the Ranking Minority Member of the Committee or Subcommittee, and any other member so requesting, shall be notified regarding the identity of the person to whom it will be issued and the nature of the information sought and its relationship to the authorized investigative activity. However, this requirement is waived in circumstances where the Chairman of the Committee or Subcommittee, in consultation with the Ranking Minority Member, determines that such notice would unduly impede the investigation.

In addition, the rules mandate that upon the request of any member, the Chairman must call an executive session to discuss investigative activity or the issuance of any subpoena in connection with investigative activity.

2. Depositions

The Senate HELP Committee rules do not address depositions.

²⁰ [S. COMM. ON FIN., 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

²¹ [S. COMM. ON HEALTH, EDUC., LABOR, & PENSIONS, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

3. Confidentiality

The rules state that no confidential testimony taken or confidential material presented in an executive hearing, or any report of the proceedings of such an executive hearing, shall be made public, either in whole or in part or by way of summary, unless authorized by a majority of the members of the Committee or Subcommittee.

J. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations

1. Subpoenas

The rules authorize the Chairman, with the approval of the Ranking Minority Member, to subpoena the attendance of witnesses at a hearing or deposition or the production of memoranda, documents, records, or any other materials.²²

However, the Chairman may subpoena attendance or production without the approval of the Ranking Minority Member if, within 72 hours (excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session) of the Ranking Minority Member's receipt of a letter signed by the Chairman providing notice of the Chairman's intent to issue a subpoena (including an identification of all individuals and items sought to be subpoenaed), the Chairman has not received a letter of disapproval signed by the Ranking Minority Member. If a subpoena is disapproved by the Ranking Minority Member as provided in this subsection, the subpoena may still be authorized by vote of the members of the Committee.

When the Committee or Chairman authorizes subpoenas, subpoenas may be issued upon the signature of the Chairman or any other member of the Committee designated by the Chairman.

The rules note that the failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice. In addition, the Committee may not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

Finally, the rules specify that Subcommittees are allowed to adopt subpoena rules that need not be consistent with the rules of the Committee. However, in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the Chairman and Ranking Minority Member of the Committee (or designated staff officers), by the Subcommittee Chairman (or designated staff officers) immediately upon such authorization. In addition, no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the Chairman and Ranking Minority Member waive the 48-hour waiting period or unless the Subcommittee Chairman certifies in writing to the Chairman and Ranking Minority Member that, in his or her opinion, it is necessary to issue a subpoena immediately.

²² S. COMM. ON HOMELAND SEC. & GOV'T AFFAIRS, PERMANENT SUBCOMM. ON INVESTIGATIONS, 116TH CONG., RULES OF PROCEDURE (2019).

2. Depositions

For the 116th Congress, deposition authority for the Senate Homeland Security and Government Affairs Committee has been authorized through S. Res. 70.²³ The resolution states that “the committee, or any duly authorized subcommittee of the committee, or its chairman, or any other member of the committee or subcommittee designated by the chairman is authorized, in its, his, her, or their discretion . . . to take testimony, either orally or by sworn statement, or, in the case of staff members of the Committee and the Permanent Subcommittee on Investigations, by deposition in accordance with the Committee Rules of Procedure.”

The Committee rules state that “notices for the taking of depositions shall be authorized and issued by the Chairman, with the approval of the Ranking Minority Member of the Committee.”

However, the Chairman may initiate depositions without the approval of the Ranking Minority Member if, within 72 hours (excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session) of the Ranking Minority Member’s receipt of a letter signed by the Chairman providing notice of the Chairman’s intent to issue a deposition notice (including an identification of all individuals sought to be deposed), the Chairman has not received a letter of disapproval of the deposition from the Ranking Minority Member. Even if a deposition notice is disapproved by the Ranking Minority Member as provided in this subsection, the deposition notice may be authorized by a vote of the Members of the Committee.

The rules allow that counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

The rules state that unless otherwise specified, depositions shall be in private. In addition, the Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness’s failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena. Finally, witnesses may be accompanied at a deposition by counsel to advise them of their legal rights.

The rules further provide for the manner and length of questions and objections in a deposition. The rules also address the recording and filing of depositions.

3. Confidentiality

The Senate Committee on Homeland Security & Governmental Affairs rules regarding meeting and hearing confidentiality mirror Rule 26.5b of the Standing Rules of the Senate.

²³ [S. Res. 70 § 12, 116th Cong. \(2019\).](#)

K. Senate Select Committee on Intelligence

1. Subpoenas

The Senate Select Committee on Intelligence rules state that subpoenas that are authorized by the committee may then be issued by the Chairman, the Vice Chairman, or any member of the Committee designated by the Chairman, and may be served by any person designated by the Chairman, Vice Chairman or member issuing the subpoenas.²⁴

The rules mandate that each subpoena must have attached to it a copy of S. Res. 400 of the 94th Congress, and a copy of the Senate Select Committee on Intelligence rules.

The rules also address contempt procedures surrounding subpoenas: the rules state that “no recommendation that a person be cited for contempt of Congress or that a subpoena be otherwise enforced” shall be forwarded to the Senate until the Committee has, upon notice to all its members, met and considered the recommendation, afforded the person an opportunity to address such contempt recommendation or subpoena enforcement proceeding either in writing or in person, and agreed by majority vote of the Committee to forward such recommendation to the Senate.

2. Depositions

The organic resolution of the Senate Select Committee on Intelligence establish that the Select Committee is “authorized in its discretion . . . to take depositions and other testimony.”²⁵ The Select Committee Rules restate this language.

3. Confidentiality

The Senate Select Committee on Intelligence rules regarding confidentiality mirror Rule 26.5b of the Standing Rules of the Senate.

The Senate Select Committee on Intelligence rules also include provisions regarding the protection of information in the possession of the Committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures.

L. Senate Committee on the Judiciary

1. Subpoenas

The Senate Judiciary Committee Rules state that the Chairman may subpoena the attendance of a witness at a hearing or deposition or the production of materials, with the agreement of the Ranking Member or by a vote of the Committee. Any such subpoena shall be issued upon the signature of the Chairman or any other Member of the Committee designated by the Chairman.²⁶

²⁴ [S. SELECT COMM. ON INTELLIGENCE, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

²⁵ [S. Res. 400 § 5, 94th Cong. \(1976\)](#) (text not available online).

²⁶ [S. COMM. ON THE JUDICIARY, 116TH CONG., RULES OF PROCEDURE \(2019\)](#).

2. Depositions

For the 116th Congress, deposition authority for the Judiciary Committee has been authorized through S. Res. 70.²⁷ The resolution states that “for the purposes of carrying out its investigative powers, duties, and functions under the Standing Rules of the Senate and in accordance with Committee Rules of Procedure, the committee is authorized to require by subpoena the attendance of witnesses at depositions of the committee, which may be conducted by designated staff.”

The rules state that any subpoena issued for a deposition that is to be conducted by staff shall be accompanied by a notice of deposition identifying the Majority staff officers designated by the Chairman and the Minority staff officers designated by the Ranking Member to take the deposition, and the Majority and Minority shall be afforded the opportunity to participate on equal terms.

In addition, unless waived by agreement of the Chair and Ranking Member, any deposition shall have at least one Member present for the duration of the deposition. All Members shall be notified of the date, time, and location of any deposition, and any Member of the Committee may attend and participate in the taking of any deposition. Unless otherwise specified, the deposition shall be in private.

3. Confidentiality

No confidentiality provisions are provided in the Senate Judiciary Committee rules.

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²⁷ [S. Res. 70 § 13, 116th Cong. \(2019\).](#)