

115TH CONGRESS  
1ST SESSION

# H. R. 4010

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2017

Mr. ISSA (for himself, Mr. GOODLATTE, Mr. SMITH of Texas, Mr. SESSIONS, and Mr. FARENTHOLD) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Congressional Sub-  
5 poena Compliance and Enforcement Act of 2017”.

1 **SEC. 2. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.**

2 (a) IN GENERAL.—Chapter 85 of title 28, United  
3 States Code, is amended by inserting after section 1365  
4 the following:

5 **“§ 1365a. Congressional actions against subpoena re-**  
6 **ipients**

7 “(a) CIVIL ACTION.—

8 “(1) SPECIAL RULES.—In any civil action  
9 brought by the United States House of Representa-  
10 tives, the United States Senate, or a committee or  
11 subcommittee thereof, against the recipient of a sub-  
12 poena to secure declaratory, injunctive, or other re-  
13 lief as may be appropriate concerning the failure to  
14 comply with a subpoena issued by a congressional  
15 committee or subcommittee, the following rules shall  
16 apply:

17 “(A) The action shall be filed in a United  
18 States district court of competent jurisdiction.

19 “(B) It shall be the duty of the United  
20 States district courts, the United States courts  
21 of appeal, and the Supreme Court of the United  
22 States to advance on the docket and to expedite  
23 to the greatest possible extent the disposition of  
24 any such action and appeal.

25 “(C) If a three-judge court is expressly re-  
26 quested by the plaintiff in the initial pleading,

1 the action shall be heard by a three-judge court  
2 convened pursuant to section 2284 of title 28,  
3 United States Code, and shall be reviewable  
4 only by appeal directly to the Supreme Court of  
5 the United States. Such appeal shall be taken  
6 by the filing of a notice of appeal within 10  
7 days, and the filing of a jurisdictional statement  
8 within 30 days, of the entry of the final deci-  
9 sion.

10 “(2) MONETARY PENALTIES IN CASES INVOLV-  
11 ING GOVERNMENT AGENCIES.—

12 “(A) The court may impose monetary pen-  
13 alties directly against the head of a government  
14 agency or a component thereof held to have  
15 willfully failed to comply with any part of a con-  
16 gressional subpoena.

17 “(B) No appropriated funds, funds pro-  
18 vided from any accounts in the Treasury, or  
19 funds derived from the collection of fees shall  
20 be used to pay any monetary penalty imposed  
21 by the court pursuant to this section.

22 “(3) WAIVER OF PRIVILEGE.—Any assertion of  
23 a privilege or other ground for noncompliance  
24 (whether statutory, common law, or otherwise) as-  
25 serted by the recipient of a congressional subpoena

1 may be determined to have been waived as to any  
2 particular record withheld from production if the  
3 court finds that the recipient failed in a timely man-  
4 ner to comply with the requirement of section 105  
5 of the Revised Statutes of the United States that it  
6 produce a privilege log with respect to such record.

7 “(4) DEFINITION.—For purposes of this sec-  
8 tion, the term ‘government agency’ means an execu-  
9 tive department listed in section 101 of title 5,  
10 United States Code, an independent establishment,  
11 commission, board, bureau, division, or office in the  
12 executive branch, or other agency of the Federal  
13 Government, including wholly or partly owned Gov-  
14 ernment corporations.”.

15 (b) CLERICAL AMENDMENT.—The table of sections  
16 for chapter 85 of title 28, United States Code, is amended  
17 by inserting after the item relating to section 1365 the  
18 following:

“1365a. Congressional actions against subpoena recipients.”.

19 **SEC. 3. COMPLIANCE WITH CONGRESSIONAL SUBPOENAS.**

20 (a) IN GENERAL.—Chapter seven of title II of the  
21 Revised Statutes of the United States (2 U.S.C. 191 et  
22 seq.) is amended by adding at the end the following:

23 **“SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.**

24 “(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—  
25 Any recipient of any subpoena from a congressional com-

1 mittee or subcommittee shall appear and testify or  
2 produce records in a manner consistent with the subpoena  
3 and this section.

4 “(b) CONGRESSIONAL SUBPOENAS FOR RECORDS.—

5 “(1) IDENTIFICATION OF RECORDS WITH-  
6 HELD.—In the case of a record that is withheld, in  
7 whole or in part, by the subpoena recipient, the sub-  
8 poena recipient shall provide a log containing the  
9 following information concerning such record:

10 “(A) An express assertion and description  
11 of the legal basis asserted for withholding the  
12 record.

13 “(B) The type of record.

14 “(C) The general subject matter.

15 “(D) The date, author, and addressee.

16 “(E) The relationship of the author and  
17 addressee to each other.

18 “(F) The custodian of the record.

19 “(G) Any other descriptive information  
20 that may be produced or disclosed regarding  
21 the record that will enable the congressional  
22 committee or subcommittee issuing the sub-  
23 poena to assess the legal basis asserted for  
24 withholding the record.

1           “(2) MISSING RECORDS.—In the case of any  
2           record responsive to the subpoena submitted under  
3           paragraph (1) that was, but no longer is, in the pos-  
4           session, custody, or control of the subpoena recipi-  
5           ent, the subpoena recipient shall identify the record  
6           (including the date, author, subject, and each recipi-  
7           ent of the record) and explain the circumstances  
8           under which the record ceased to be in the posses-  
9           sion, custody, or control of the subpoena recipient.

10           “(3) ELECTRONIC RECORDS.—Electronic  
11           records shall be produced pursuant to this sub-  
12           section in their native or original file format. Elec-  
13           tronic records shall be delivered on a storage device  
14           (such as compact disk, memory stick, or thumb  
15           drive) and, to the extent feasible, shall be organized,  
16           identified, and indexed electronically and shall in-  
17           clude an index describing the contents of the produc-  
18           tion.

19           “(b) DEFINITIONS.—For purposes of this section the  
20           term ‘record’ includes any books, papers, documents, data,  
21           or other objects requested in a subpoena issued by a con-  
22           gressional committee or subcommittee.”.

23           (b) CLERICAL AMENDMENT.—The table of contents  
24           for chapter 7 of title II of the Revised Statutes of the

1 United States is amended by adding at the end the fol-  
2 lowing:

“Sec. 105. Response to congressional subpoenas.”.

3 **SEC. 4. RULE OF CONSTRUCTION.**

4       Nothing in this Act shall be interpreted to diminish  
5 Congress’ inherent authority or previously established  
6 methods and practices for enforcing compliance with con-  
7 gressional subpoenas, nor shall anything in this Act be in-  
8 terpreted to establish Congress’ acceptance of any privi-  
9 lege or other legal basis for noncompliance with a congres-  
10 sional subpoena.

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