

115TH CONGRESS
1ST SESSION

H. R. 4010

IN THE SENATE OF THE UNITED STATES

OCTOBER 24, 2017

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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,*

4 SEC. 2. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.

8 **“§ 1365a. Congressional actions against subpoena re-**
9 **cipients**

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

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1 “(3) If a three-judge court is expressly re-
2 requested by the plaintiff in the initial pleading, the
3 action shall be heard by a three-judge court con-
4 vened pursuant to section 2284 of title 28, United
5 States Code, and shall be reviewable only by appeal
6 directly to the Supreme Court of the United States.
7 Such appeal shall be taken by the filing of a notice
8 of appeal within 10 days, and the filing of a jurisdic-
9 tional statement within 30 days, of the entry of the
10 final decision.

11 “(b) MONETARY PENALTIES IN CASES INVOLVING
12 GOVERNMENT AGENCIES.—

13 “(1) The court may impose monetary penalties
14 directly against the head of a Government agency or
15 a component thereof held to have willfully failed to
16 comply with any part of a congressional subpoena.

17 “(2) No appropriated funds, funds provided
18 from any accounts in the Treasury, funds derived
19 from the collection of fees, or other Government
20 funds shall be used to pay any monetary penalty im-
21 posed by the court pursuant to this section.

22 “(c) WAIVER OF PRIVILEGE.—Any assertion of a
23 privilege or other ground for noncompliance (whether stat-
24 utory, common law, or otherwise) asserted by the recipient
25 of a congressional subpoena may be determined to have

1 been waived as to any particular record withheld from pro-
 2 duction if the court finds that the recipient failed in a
 3 timely manner to comply with the requirement of section
 4 105 of the Revised Statutes of the United States that it
 5 produce a privilege log with respect to such record.

6 “(d) DEFINITION.—For purposes of this section, the
 7 term ‘Government agency’ means an executive department
 8 listed in section 101 of title 5, United States Code, an
 9 independent establishment, commission, board, bureau, di-
 10 vision, or office in the executive branch, or other agency
 11 of the Federal Government, including wholly or partly
 12 owned Government corporations.”.

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

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

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

18 (a) IN GENERAL.—Chapter 7 of title II of the Re-
 19 vised Statutes of the United States (2 U.S.C. 191 et seq.)
 20 is amended by adding at the end the following:

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

22 “(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—
 23 Any recipient of any subpoena from a congressional com-
 24 mittee or subcommittee shall appear and testify or

1 produce records in a manner consistent with the subpoena
2 and this section.

3 “(b) CONGRESSIONAL SUBPOENAS FOR RECORDS.—

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

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

12 “(B) The type of record.

13 “(C) The general subject matter.

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

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

17 “(F) The custodian of the record.

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

24 “(2) MISSING RECORDS.—In the case of any
25 record responsive to the subpoena submitted under

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

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

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

21 (b) CLERICAL AMENDMENT.—The table of contents
22 for chapter 7 of title II of the Revised Statutes of the
23 United States is amended by adding at the end the fol-
24 lowing:

“105. Response to congressional subpoenas.”.

1 **SEC. 4. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall be interpreted to diminish
3 Congress' inherent authority or previously established
4 methods and practices for enforcing compliance with con-
5 gressional subpoenas, nor shall anything in this Act be in-
6 terpreted to establish Congress' acceptance of any as-
7 serted privilege or other legal basis for noncompliance with
8 a congressional subpoena.

 Passed the House of Representatives October 23,
2017.

Attest:

KAREN L. HAAS,
Clerk.