

Report to Congress on the Use of  
Administrative Subpoena  
Authorities by Executive Branch  
Agencies and Entities  
Pursuant to Public Law 106-544

U.S. Department of Justice  
Office of Legal Policy

**Report to Congress on the Use of Administrative Subpoena  
Authorities by Executive Branch Agencies and Entities,  
Pursuant to P.L. 106-544, Section 7**

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# Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities, Pursuant to P.L. 106-544, Section 7

## I. EXECUTIVE SUMMARY

Section 7(a) of the Presidential Threat Protection Act of 2000 (Presidential Threat Protection Act), enacted on December 19, 2000, requires the Attorney General, in consultation with the Secretary of the Treasury, to conduct “a study on the use of administrative subpoena power by executive branch agencies or entities” and report the findings of that study “to the Committees on the Judiciary of the Senate and the House of Representatives.”<sup>1</sup> Section 7(b) of the Presidential Threat Protection Act requires the Attorney General and the Secretary of the Treasury to present data regarding the frequency of issuance of administrative subpoenas authorized by 18 U.S.C. §3486.

### A. Summary of Report on Administrative Subpoena Authorities Held by Agencies under Authorities Other Than 18 U.S.C. §3486

As directed in section 7(a) of the Presidential Threat Protection Act, Section II of this report contains: “(1) a description of the sources of administrative subpoena power and scope of such subpoena power within executive agencies; (2) a description of applicable subpoena enforcement mechanisms; (3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests; (4) a description of the standards governing the issuance of administrative subpoenas.” Section IV presents the Attorney General’s recommendations regarding “necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.” 5 U.S.C. §551 note, Pub.L. 106-544, § 7(a), Dec. 19, 2000, 114 Stat. 2719.

*Definitions and Methodologies.* For purposes of this report, “administrative subpoena” authority has been defined to include all powers, regardless of name, that Congress has granted to federal agencies to make an administrative or civil investigatory demand compelling document production or testimony. Civil compulsory process authorities with provision for judicial enforcement are included. Grand jury subpoenas, administrative law judge subpoenas, and investigative authorities requiring judicial approval are not within the scope of the report. Appendices A, B, and C of this report contain the full responses submitted by executive branch entities, as supplemented by legal research.

*Findings.* Congress grants the subpoena power held by executive branch entities, and the

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<sup>1</sup>5 U.S.C. §551 note, Pub.L. 106-544, § 7, 114 Stat. 2719 (2000).

scope and exercise of these authorities are bound by statute. As the single most significant source of administrative subpoena power is granted by the Inspector General Act of 1978, the Inspector General subpoena authority is discussed in a separate, detailed Subsection II.B. The study reveals a complex proliferation of widely varying subpoena powers authorized by Congress. Submissions from executive branch entities and legal research identified approximately 335 existing administrative subpoena authorities held by various executive branch entities under current law.

Some of these subpoena authorities lack clear enforcement mechanisms. All federal executive branch administrative subpoenas are enforced by the courts. Statutes granting administrative subpoena authorities, however, generally fall into three enforcement-type categories: (1) statutes authorizing an agency official to apply directly to an appropriate U.S. district court for enforcement assistance, (2) statutes requiring an agency official to request the Attorney General's aid in applying to a U.S. district court for enforcement assistance, and (3) statutes containing no identified enforcement mechanism.

Agencies are limited in their exercise of administrative subpoena authority by: (1) judicial review of subpoena orders prior to potential judicial enforcement; (2) notice or nondisclosure requirements imposed in an agency's organic statutes; (3) privacy-protective constraints or notice requirements internal to the statute authorizing the subpoena power; (4) generally applicable privacy-protective statutes, prohibiting certain disclosures and requiring notice under certain circumstances; and (5) agency promulgated guidelines limiting or directing subpoena issuance.

Appendices A, B, and C of this report contain an individualized description of particular administrative subpoena authorities held by the various agencies. The appendices contain information related to: (1) sources of administrative subpoena authority and scope of such subpoena authority, (2) applicable subpoena enforcement mechanisms, (3) notification provisions and other provisions related to safeguarding privacy interests, and (4) standards governing issuance of administrative subpoenas. The report itself also briefly discusses each of these four topics. The information provided in the appendices is derived from submissions from individual agencies in response to a survey issued by the Office of Legal Policy of the Department of Justice as well as some independent legal research. Appendix A contains information related to authorities held by federal governmental entities other than the Departments of Justice or Treasury. Appendix B contains information related to authorities held by the Department of Justice. Appendix C contains information related to authorities held by the Department of Treasury. As most entries in the Appendices were submitted by individual agencies, commissions, and other governmental entities, they do not necessarily reflect the view or recommendation of the Attorney General or Secretary of the Treasury.

*Recommendations.* The Department of Justice notes that despite inconsistencies in the formulation of the many authorizing statutes, judicial involvement in enforcement ensures a good degree of fairness—especially where enforcement actions must be initiated and coordinated by the Department of Justice. As administrative subpoena authorities are created by separate statutes, which differ in their purpose and content, and no consistent patterns emerge from a study of these authorities, making any recommendations generally applicable to these various authorities would be neither prudent nor practical. As various agencies referred to suggestions regarding authority-specific changes, the Department of Justice looks forward to working with Congress and other

agencies in the future to evaluate these potential changes.

**B. Summary of Report on Justice Department and Treasury Subpoena Authorities Held Pursuant to 18 U.S.C. §3486**

Section 7(b) of the Presidential Threat Protection Act requires the Attorney General and the Secretary of the Treasury to “report in January of each year to the Committee on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under [18 U.S.C. §3486] and the identity of the agency or component of the Department of Justice or the Department of Treasury issuing the subpoena and imposing the charges.” 5 U.S.C. §551 note, Pub.L. 106-544, § 7, 114 Stat. 2719 (2000). The reporting requirement of section 7(b) terminates in December of 2003, “3 years after the date of the enactment,” which occurred on December 19, 2000. Pub.L. 106-544, §7(b)(2), 114 Stat. 2719 (2000). Section III of this report contains a description of the authorities provided under 18 U.S.C. §3486(a), as well as data regarding the frequency of use during Calendar Year 2001. Frequency data for subpoenas issued under 18 U.S.C. §3486 is also included in tabular form in Table 1 *infra*.

**II. ADMINISTRATIVE SUBPOENA AUTHORITIES HELD BY AGENCIES UNDER AUTHORITIES OTHER THAN 18 U.S.C. §3486**

**A. General Subpoena Authorities Held by the Various Agencies**

**1. Description of the Sources of Administrative Subpoena Power and the Scope of Such Subpoena Authority.**

As administrative agencies are established through statute, a statute must also authorize their issuance of administrative subpoenas.<sup>2</sup> Administrative subpoena authorities allow executive branch agencies to issue a compulsory request for documents or testimony without prior approval from a grand jury, court, or other judicial entity. Without sufficient investigatory powers, including some authority to issue administrative subpoena requests, federal governmental entities would be unable to fulfill their statutorily imposed responsibility to implement regulatory or fiscal policies.<sup>3</sup> Congress has granted some form of administrative subpoena authority to most federal agencies, with many agencies holding several such authorities. The authority most commonly used, the authority provided to all Inspectors General, is discussed in detail in Subsection II.B *infra*. While the Inspector General authority is mainly used in criminal investigations, specific administrative subpoena authorities may be exercised in civil or criminal investigations. While federal authorizing statutes generally grant subpoena authorities directly to a particular agency head, a few statutory authorities authorize the President to exercise a subpoena authority, and the President has generally delegated that authority to a specific agency head through Executive

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<sup>2</sup>See BERNARD SCHWARTZ, ADMINISTRATIVE LAW §3.8, at 125 (3d ed. 1991).

<sup>3</sup>See Graham Hughes, “Administrative Subpoenas and the Grand Jury: Converging Streams of Criminal and Civil Compulsory Process,” 47 VAND. L. REV. 573, 584 (1994).

Order.<sup>4</sup> Most administrative subpoena authorities have been redelegated by the entity head to subordinate officials within the entity. Some statutes granting administrative subpoena authorities, however, limit or forbid delegation of the authority to lower-ranking officials within the agency.<sup>5</sup> In some instances, the decision to issue a subpoena is made unilaterally by an agency official;<sup>6</sup> in other instances, the issuance of a subpoena requires the vote, approval, or resolution of multiple individuals.<sup>7</sup>

The Supreme Court has construed administrative subpoena authorities broadly<sup>8</sup> and has consistently allowed expansion of the scope of administrative investigative authorities, including subpoena authorities, in recognition of the principle that overbearing limitation of these authorities would leave administrative entities unable to execute their respective statutory responsibilities.<sup>9</sup> While an agency's exercise of administrative subpoena authority is not subject to prior judicial approval, a subpoena issuance is subject to judicial review upon a recipient's motion to modify or quash the subpoena or upon an agency's initiation of a judicial enforcement action.

Federal courts subject the exercise of administrative subpoena authority to a

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<sup>4</sup>See, e.g., Exec. Order No. 12,580, Section 2(j), 52 Fed. Reg. 2923 (Jan. 29, 1987) (delegating to heads of Executive departments and agencies the authority originally delegated by Congress to the Executive in Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9604(e)).

<sup>5</sup>The Consumer Product Safety Commission, for instance, may delegate any of its functions *except* the subpoena power of 15 U.S.C. §2076(b)(3), *see* §2076(b)(9), to any officer or employee of the Commission.

<sup>6</sup>See, e.g., Appendix A, Department of Energy (DOE) authority under the Federal Energy Administration Act of 1974. A DOE official "may sign, issue, and serve subpoenas of persons and documents." 10 C.F.R. §§ 205.8(a), 205.8(b).

<sup>7</sup>See, e.g., 11 C.F.R. § 111.12 (requiring that Federal Election Commission members authorize the Chairman or Vice Chairman of the Commission to issue specific subpoenas, whether subpoenas *duces tecum* or those requiring); 16 C.F.R. § 2.7(d) (stating that Federal Trade Commission or one of its members may issue a subpoena upon a resolution by the Commission).

<sup>8</sup>See the following cases for the proposition that the government need only show that the subpoena was issued for a lawfully authorized purpose and sought information relevant to the agency's inquiry: *United States v. LaSalle Nat'l Bank*, 437 U.S. 298, 313 (1978); *United States v. Powell*, 379 U.S. 48, 57 (1964); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 209 (1946).

<sup>9</sup>See *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950). *See also* the following cases, demonstrating the lower federal courts' favorable treatment of a federal agency's investigative authorities prior to the Supreme Court decisions listed above: *Fleming v. Montgomery Ward & Co.*, 114 F.2d 384, 388 (7th Cir.) (rejecting probable cause requirement for investigations by Wage and Hour Division of Department of Labor), *cert. denied*, 311 U.S. 690 (1940); *Bartlett Frazier Co. v. Hyde*, 65 F.2d 350, 351-52 (7th Cir.) (holding that disclosures sought by the Department of Agriculture under its investigatory powers were reasonably necessary for protection of public and therefore not violative of the Fourth Amendment), *cert. denied*, 290 U.S. 654 (1933); *United States v. First Nat'l Bank*, 295 F. 142, 143 (S.D. Ala. 1924) (holding that the privacy protections of the Fourth Amendment were not applicable where a third-party recordkeeper sought to invoke such protections in an effort to bar production of information relating to legitimate IRS investigation), *aff'd per curiam*, 267 U.S. 576 (1925).

reasonableness analysis, not the more stringent Fourth Amendment “probable cause” analysis applied in situations involving search and seizure and issuance of a warrant. In United States v. Powell,<sup>10</sup> the Court articulated the deferential standard for judicial review of administrative enforcement actions in a four-factor evaluation of “good faith” issuance, requiring that: (1) the investigation is conducted pursuant to a legitimate purpose, (2) the information requested under the subpoena is relevant to that purpose, (3) the agency does not already have the information it is seeking with the subpoena, and (4) the agency has followed the necessary administrative steps in issuing the subpoena.<sup>11</sup> The federal courts have construed the Powell factors broadly, allowing greater flexibility for government action.

While federal agencies are dependent upon the courts to enforce administrative subpoena requests, U.S. district courts must enforce an agency’s subpoena authority unless the evidence sought by the subpoena is “plainly incompetent or irrelevant to any lawful purpose of the [requesting official] in the discharge” of his or her statutory duties.<sup>12</sup> The Supreme Court noted in Oklahoma Press Publishing Company v. Walling<sup>13</sup> that “[t]he very purpose of the subpoena . . . is to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if . . . the facts thus discovered should justify doing so.”<sup>14</sup> In other words, a federal court may not condition enforcement of an agency’s subpoena upon a showing of probable cause because the agency may be using the very subpoena at question to make an initial determination as to whether such probable cause does, in fact, exist. The Supreme Court has stated in United States v. Morton Salt<sup>15</sup> that, in evaluating the appropriateness of an administrative subpoena request, a court must simply determine that “the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.”<sup>16</sup> The courts are generally deferential to the agency’s determination that the information sought is “reasonably

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<sup>10</sup> While *Powell* involved an IRS subpoena, a subsequent case clarified that the analysis applied in *Powell* is relevant to all administrative subpoena authorities. See *Securities and Exchange Com’n. v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 741-42 (1984).

<sup>11</sup> 379 U.S. 48 (1964). Some courts have excluded the last two *Powell* factors, holding that later decisions of the Supreme Court sometimes exclude such requirements and that adhering strictly to all four factors may unacceptably restrict agency action. See, e.g., *United States v. Bell*, 564 F.2d 953, 959 (Temp. Emer. Ct. App. 1977) (stating that the last two requirements are too restrictive); *United States v. Security State Bank & Trust*, 473 F.2d 638, 641 (5th Cir. 1973) (stating that the governmental entity needs only the two primary requirements). Other courts, however, have applied less deferential scrutiny in analyzing whether an agency has used its subpoena authority appropriately. See, e.g., *Sunshine Gas Co. v. United States Department of Energy*, 524 F.Supp. 834, 838 (N.D. Tex. 1981) (stating that “the agency’s order should only be affirmed if a rational basis exists, but such must be supplied by the agency, not the court”).

<sup>12</sup> *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943).

<sup>13</sup> 327 U.S. 186 (1946).

<sup>14</sup> *Id.* at 201.

<sup>15</sup> 338 U.S. 632, 51 (1950).

<sup>16</sup> *Id.* at 651.



relevant,” noting that a court must “defer to the agency’s appraisal of relevancy in connection with an investigative subpoena as long as it is not ‘obviously wrong.’”<sup>17</sup>

The Supreme Court has declined to establish universally applicable standards of reasonableness for evaluating the scope of administrative subpoena issuance, leaving room for lower courts to tailor their analysis to the unique circumstances of a particular investigation. The Court has provided some guidance, however, stating that lower courts should require at minimum that an agency’s “specification of the documents to be produced [is] adequate, but not excessive, for the purposes of the relevant inquiry” and that the agency use “particularity in ‘describing the place to be searched, and the persons or things to be seized.’”<sup>18</sup>

In addition to challenges based on the Fourth Amendment, the Supreme Court has recognized several potential grounds for challenge or modification of an administrative subpoena authority in certain instances. These grounds include, but are not limited to, the: (1) privilege against self incrimination, (2) free exercise of religion, (3) freedom of association, (4) attorney-client privilege.<sup>19</sup>

## 2. Description of Applicable Subpoena Enforcement Mechanisms.

Congress has consistently required that agencies and departments seek enforcement of administrative subpoenas through a federal district court. Federal courts have generally recognized that “[b]ifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power.”<sup>20</sup>

Statutes granting administrative subpoena authorities generally fall into three enforcement-related categories: (1) statutes authorizing an agency official to apply directly to an appropriate

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<sup>17</sup>United States v. Hunton & Williams, 952 F. Supp. 843, 854 (3d Cir. 1995). The Third Circuit in this instance noted that the “reasonableness” inquiry in such cases does not correspond with, and is more deferential than, the Administrative Procedures Act “arbitrary and capricious” standard of review for agency action. *Id.*

<sup>18</sup>Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 208 (1946).

<sup>19</sup>See Graham Hughes, “Administrative Subpoenas and the Grand Jury: Converging Streams of Civil and Criminal Compulsory Process,” 47 VAND. L. REV. 573, 589 (1994).

<sup>20</sup>United States v. Security State Bank and Trust, 473 F.2d 638, 641 (5th Cir. 1973). The Supreme Court, however, has not specifically issued a ruling as to whether the constraints of due process preclude federal agencies from possessing the power to enforce their own subpoenas. Federal courts have generally held that due process does preclude federal agencies from enforcing such subpoenas, however. See *Shasta Minerals & Chem. Co. v. SEC*, 328 F.2d 285, 286 (10<sup>th</sup> Cir. 1964). The Court has stated in *Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 484 (1894), that “the power to impose fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted, under the law of the land, by a competent judicial tribunal having jurisdiction in the premises,” *Id.* at 484; however, as Congress has not tested the outer limits of *Interstate Commerce Commission v. Brimson* by conferring direct administrative subpoena enforcement authority on a federal agency, the Court has not had occasion to specifically address the constitutionality of a conferral of such enforcement authority.

U.S. district court for enforcement assistance,<sup>21</sup> (2) statutes requiring an agency official to request the Attorney General's aid in applying to a U.S. district court for enforcement assistance,<sup>22</sup> and (3) statutes containing no stated enforcement mechanism.<sup>23</sup> Where an agency requests the assistance of the Attorney General through a United States Attorney's office to seek enforcement of an administrative subpoena in federal district court, the United States Attorney's office plays a role that is more than ministerial, exercising discretion in determining whether to seek enforcement by a court. In evaluating such requests, the United States Attorney's office evaluates the subpoena issued by the agency to determine whether the scope of the request is in keeping with the agency's statutory authority and the agency has followed proper procedures in issuing the subpoena.<sup>24</sup> In short, the United States Attorney's office evaluates the subpoena request to determine whether the requirements of Powell and Oklahoma Press (good faith and reasonableness) have been satisfied.

When a federal court acts in regard to an agency's enforcement petition, whether presented by the agency directly or through a United States Attorney, "the district court's role is not that of a mere rubber stamp, but of an independent reviewing authority called upon to insure the integrity of the proceeding."<sup>25</sup> Federal courts have noted that "[t]he system of judicial enforcement is designed to provide a meaningful day in court for one resisting an administrative

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<sup>21</sup> Consider, for instance, the Secretary of Labor, who is authorized to petition directly for enforcement of an ERISA Title I subpoena. *See, e.g., Dole v. Milonas*, 889 F.2d 885, 888 (9<sup>th</sup> Cir. 1989) (noting that the FTC Act provisions codified at 15 U.S.C. § 49 are incorporated into ERISA at 29 U.S.C. § 1134(c), thereby authorizing the Secretary of Labor to petition for enforcement of an ERISA Title I subpoena in district court). The Federal Election Commission is similarly authorized under 2 U.S.C. §437d(b) to petition a district court directly for enforcement of certain administrative subpoenas (authorizing the Federal Election Commission to petition the appropriate U.S. district court to issue an order requiring compliance with subpoena request authorized by 2 U.S.C. §437d(a)(1)-(4) and to punish any failure to obey such order).

<sup>22</sup>*See, e.g., U.S. Department of Agriculture, "Procedures Related to Administrative Hearings under the Program Fraud Civil Remedies Act of 1986" (PFCRA)*, 7 C.F.R. §§ 1.304, 1.319, 1.322, 1.323, 1.328 (authorized by 31 U.S.C. §3804(a)).

<sup>23</sup> *See, e.g., Foreign Shipping Practices Act*, 46 App. 46 U.S.C. 1710a (authority to make information requests, but no enforcement authority, judicial or otherwise, is mentioned in the statute); *See also* Federal Maritime Commission's related submission and recommendation in Appendix A.

<sup>24</sup>*See UNITED STATES ATTORNEYS MANUAL (USAM)*, 4-6.210 C. This section of the USAM states that "[m]ost routine subpoena enforcement actions are handled by the USAOs and are authorized by the Director in charge of Area 1." The USAM goes on to state that:

[a] Branch attorney will review the referral and proposed pleadings, and then prepare a memorandum from the assistant director to the director, recommending whether the suit should be filed. If the subpoena enforcement action is approved by the director, the Branch attorney will write the agency and the United States Attorney, stating whether the suit has been authorized or not, and if so, that it is delegated to the United States Attorney. In cases in which suit is authorized, a referral acknowledgment form will also be sent to the United States Attorney, as well as a copy of papers received from the agency.

*Id.*

<sup>25</sup>*Wearly v. FTC*, 616 F.2d 662, 665 (3<sup>rd</sup> Cir. 1980).

subpoena,"<sup>26</sup> and that "the court has the power to condition enforcement upon observance of safeguards to the respondent's valid interests."<sup>27</sup> The burden of proof imposed on a challenger to an administrative subpoena is steep, however. A challenge based on an agency's failure to satisfy one of the four factors establishing "good faith" under Powell,<sup>28</sup> for instance, will only be successful upon a showing of "institutionalized bad faith," not mere bad faith on the part of a particular individual issuing the subpoena.<sup>29</sup> A district court's order requiring compliance with an administrative subpoena or refusing to quash a subpoena request is immediately appealable, however, as such an order is generally treated as a final judgment under 28 U.S.C. §1291.<sup>30</sup>

Most statutes authorizing administrative subpoena enforcement in federal district court authorize the court to impose contempt sanctions upon a recipient who continues to refuse to comply even after a court order of compliance. Certain statutes authorizing enforcement by a federal district court also provide for specific penalty ranges or limitations for findings of criminal or civil contempt of court based on noncompliance with a court order to comply with an administrative subpoena request. In some instances, these penalties are particularly stringent.<sup>31</sup> Statutes prescribing specific penalties for noncompliance with an administrative subpoena and subsequent court order occasionally provide more severe penalties for "willful contempt," as compared to mere "contempt."<sup>32</sup> Other statutes authorizing district court enforcement action,

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<sup>26</sup>United States v. Security State Bank and Trust, 473 F.2d 638, 642 (5th Cir. 1973).

<sup>27</sup>*Wearly*, 616 F.2d at 665.

<sup>28</sup>United States v. Powell, 379 U.S. 48, 58 (1964). Federal courts have further expounded on the concept of agency "bad faith," stating that "bad faith" may be found in "circumstances involving the harassment of the recipient of a subpoena" or a "conscious attempt by the agency to pressure the recipient to settle a collateral dispute." United States v. Markwood, 48 F.3d 969, 978 (6th Cir. 1995).

<sup>29</sup>United States v. LaSalle Nat'l Bank, 437 U.S. 298, 316 (1978).

<sup>30</sup>*Cobbledick v. United States*, 309 U.S. 323, 330 (1940) (recognizing the immediate reviewable nature of a district court enforcement order). In contrast, grand jury enforcement orders are not appealable immediately as this would stall further court proceedings. No further proceedings in the court are necessary, however, after a court orders compliance with an administrative subpoena. *Id.* at 329-30.

<sup>31</sup>*See* 42 U.S.C. §9604(e) (authorizing the court to assess civil penalties of up to \$25,000 for each day of continued noncompliance with subpoena issued under CERCLA authority); 15 U.S.C. §50 (FTC statute, incorporated by reference into several other agencies' subpoena authorities (*See, e.g.*, 33 U.S.C. §944, Department of Labor authority) authorizing punishment for noncompliance by "a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment").

<sup>32</sup>*See, e.g.*, Department of Energy authority granted in 15 U.S.C. §772(e), with subsection (i), incorporating by reference §797(a), (b)(1) and (2) (including violation of subpoena requirement among list of various other violations and prescribing disparate civil penalties based on "willful" or non-willful failure to comply); Department of Interior, 43 U.S.C. §§102-106 (stating that willful refusal to comply with subpoena request in public lands cases may be punished as a misdemeanor); Federal Deposit Insurance Corporation, Federal Deposit Insurance Act (FDI Act), 12 U.S.C. §1818(n) (stating that any person who willfully fails or refuses to comply with an FDIC subpoena may be subject to contempt proceedings in federal district court and "shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a

either at the request of the agency itself or through petition of the Attorney General, contain no specific contempt penalty provisions.<sup>33</sup> Under such statutes, the U.S. district courts are free to apply penalties for civil and criminal contempt otherwise available at law where a party refuses to comply with a court's order that the party submit to an agency's subpoena request.<sup>34</sup> In still other instances, it is unclear whether a particular statutory subpoena authority is accompanied by a particular statutory penalty or penalty limitation to be imposed for contempt based on failure to comply with a court's order for compliance. The Department of Interior, for instance, holds a specific subpoena authority under Section 1724 of the Royalty Simplification and Fairness Act (RSFA) but has not yet had occasion to litigate the question as to whether a civil penalty prescribed for a violation of the Federal Oil and Gas Management Act (FOGRMA), a statute amended by the RSFA, is also applicable as a penalty for contempt of court in failing to comply with the court's order to submit to an RSFA subpoena.<sup>35</sup>

Proceedings in U.S. district court brought to compel compliance with an administrative subpoena are summary proceedings. In general, the agency issuing a subpoena requests the court's assistance in enforcing the agency's previous subpoena order, or requests the Attorney

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term of not more than one year or both"); Internal Revenue Service authority granted in 26 U.S.C. §6420(e)(2), 6421(g)(2), 6427(j)(2), 7602, 7603, and 7604(b) (stating that a person failing to comply with a subpoena request under these sections shall "upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution," 26 U.S.C. §7210).

<sup>33</sup> See 26 U.S.C. §7604 (authorizing the Secretary to request a hearing in front of a U.S. district court judge or Commissioner for contempt proceedings based on noncompliance with an I.R.S. request for information). This statute provides that the judge or commissioner shall, "upon such hearing. . . have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience." *Id.*

<sup>34</sup> Contempt may be either civil or criminal in nature. A federal court is authorized under 18 U.S.C. §401 to initiate a prosecution for contempt. See *id.* (stating that "[a] court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as-- . . . (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command" ). Under current law, a person found guilty of criminal contempt may be subject to a fine not to exceed the sum of \$1,000, imprisonment not exceeding a term of six months, or both. 18 U.S.C. §402. In proceedings for criminal contempt where the penalty authorized by statute makes this contempt something more than a petty offense, the defendant is entitled to the right to a trial by jury under Article III, Section 2, and under the Sixth Amendment of the Constitution. See *Propriety of Imprisonment under 18 U.S.C. §401(3) for Contempt of Court Order Requiring Compliance with Statute not Authorizing Imprisonment for its Violation*, 41 A.L.R. FED. 900 (2000). In addition, federal courts have also held that a defendant is entitled to the assistance of counsel in any proceeding for criminal contempt. See *Holt v Virginia*, 381 U.S.C. 131 (1965).

<sup>35</sup>Section 1724 of the RSFA authorizes certain officials in the U.S. Department of Interior to issue administrative subpoenas. 30 U.S.C. §1724(d)(2)(B). In a separate provision, RSFA amends the FOGRMA. FOGRMA provides its own compulsory authorities and authorizes enforcement of those authorities. 30 U.S.C. §1717. The Department of Interior noted in its submission to the Office of Legal Policy at the Department of Justice that the issue as to whether the FOGRMA enforcement provisions apply to situations of noncompliance with RSFA subpoenas has not been litigated. See Appendix A, U.S. Department of Interior entry.

General's intervention in petitioning the appropriate district court for enforcement assistance.<sup>36</sup> The district court generally issues an order to the subpoena recipient to show cause for nonenforcement of the subpoena. If the recipient does not present sufficient reason that the subpoena should not be enforced, including a showing of noncompliance with the Powell "good faith" factors, "abuse of the court's process," or the "unreasonableness" of the agency's request, the court will issue an order of compliance. While a subpoena recipient may be entitled to some opportunity for discovery and an evidentiary hearing prior to judicial enforcement of an administrative subpoena, this entitlement is not absolute<sup>37</sup> and is dependent upon the recipient's presentation of a certain "threshold showing" of facts supporting the need for such hearing.<sup>38</sup> The level of this threshold showing varies among the federal courts.<sup>39</sup> Should a hearing be provided, the subpoena recipient may present a successful challenge by showing by a preponderance of the evidence that the administrative agency did not act in "good faith" in issuing the subpoena, was otherwise unreasonable in its subpoena request, or "abused the processes of the court" in seeking enforcement.<sup>40</sup>

While the federal courts have generally been somewhat deferential to federal agencies in enforcing administrative subpoenas, case law notes that the courts do not merely "rubber stamp" an agency's use of subpoena authority.<sup>41</sup> Several courts have noted that "[t]he system of judicial enforcement is designed to provide a meaningful day in court for one resisting an administrative subpoena,"<sup>42</sup> and that "[i]n the discharge of that duty, the court has the power to condition enforcement upon observance of safeguards to the respondent's valid interests."<sup>43</sup> As the Supreme Court noted in 1946 in Oklahoma Press Publishing Company v. Walling, however, the responsibility of the federal courts in administrative subpoena enforcement proceedings is to remain "fully alive to the dual necessity of safeguarding adequately the public and the private interest" involved in such situations.<sup>44</sup> Therefore, the lower federal courts have been instructed to balance the public's interest in law enforcement, order, and basic fairness with the personal or

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<sup>36</sup>See Therese Maynard, "SEC v. Jerry T. O'Brien, Inc.: Has the Supreme Court Overruled United States v. Powell?," 18 LOY. L.A. L. REV. 643, n. 112 (1985) (providing a description of the enforcement process).

<sup>37</sup>See United States v. Kis, 658 F.2d 526, 539 n. 39 (7<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 1018 (1982) (involving I.R.S. subpoena authority).

<sup>38</sup>*See id.*

<sup>39</sup>*See id.*

<sup>40</sup>*See id.* at 540.

<sup>41</sup>Wearly v. FTC, 616 F.2d 662, 665 (3<sup>d</sup> Cir. 1980).

<sup>42</sup>United States v. Security State Bank and Trust, 473 F.2d 638, 642 (5<sup>th</sup> Cir. 1973).

<sup>43</sup>*Id.*

<sup>44</sup>Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 202 (1946).

corporate interest in absolute privacy.<sup>45</sup>

As federal agencies are not currently authorized under statute to enforce administrative subpoena compliance directly, certain agencies have recognized that they are capable of taking action separate and apart from a U.S. district court's enforcement action in an indirect effort to encourage compliance. The Federal Maritime Commission, for instance, states that, in addition to requesting the Attorney General's assistance in seeking judicial enforcement, the Commission may: (1) suspend a common carrier's tariff or use of a tariff for failure to supply information, 46 App. U.S.C. §1712(b)(2), (2) impose a penalty of up to \$50,000 per shipment for carriers subsequently operating under a suspended tariff, 46 App. U.S.C. §1712(b)(3), and (3) request that the Secretary of the Treasury refuse clearance to carriers in noncompliance with a subpoena request, 46 App. U.S.C. §1712(b)(4). Shipping Act of 1984, 46 U.S.C. §13(b)(2)-(4).<sup>46</sup>

3. Description of Any Notification Provisions and Any Other Provisions Relating to Safeguarding Privacy Interests.

The privacy interests of administrative subpoena recipients are protected to some degree by the maintenance of enforcement authority in the judiciary and the statutory ability of recipients to motion a court to quash or modify a subpoena request.<sup>47</sup> See discussion of judicial review in enforcement proceedings in subsection II.A.3.a *infra* and section II.A.2 *supra*. In addition, agencies and departments are limited in exercising their administrative subpoena authorities by (1) nondisclosure requirements imposed in an agency's organic statutes, (2) privacy-protective constraints internal to the statute authorizing the subpoena power, (3) generally applicable privacy-protective statutes, and (4) agency-promulgated guidelines limiting or directing subpoena issuance. See discussion of various statutory/regulatory privacy-protective provisions in subsection II.A.3.b *infra*. Subsection II.A.3.c *infra* discusses privacy-protective guidelines and directives established internally in agencies holding administrative subpoena authorities.

- a. Privacy-protective impact of maintaining administrative subpoena enforcement authority in judiciary.

While the privacy interests of an individual or entity are protected by maintaining administrative subpoena enforcement authority in the federal courts, the courts have consistently held that the issuance of an administrative subpoena without a showing of probable cause does not violate the Fourth Amendment.<sup>48</sup> The federal courts have recognized that a showing of

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<sup>45</sup>*Id.* at 203.

<sup>46</sup> Each of these actions meant to peripherally encourage compliance with a subpoena request are, however, subject to the disapproval of the President for "reasons of the national defense or the foreign policy of the United States." See 46 App. U.S.C. §1712(b)(7).

<sup>47</sup> See *United States v. Security State Bank and Trust*, 473 F.2d 638, 641 (5th Cir. 1973) (stating that "[b]ifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power").

<sup>48</sup> See *Donovan v. Lone Steer, Inc.*, 464 U.S. 408 (1984).

probable cause is unnecessary in issuing and enforcing an administrative subpoena as the exercise of such authority is significantly less intrusive than a search and seizure carried out under a warrant.<sup>49</sup> After all, statutes authorizing administrative subpoenas are generally enforceable through judicial process,<sup>50</sup> and the subject of the subpoena is not subject to the possible physical invasion that a search and seizure may impose. In addition, as the Supreme Court has recognized, the issuance of an administrative subpoena may not be subjected to a probable cause requirement as the administrative subpoena is often issued for the very purpose of determining whether such probable cause exists.<sup>51</sup>

In place of a probable cause requirement, the federal courts in enforcement proceedings have imposed basic requirements as to the scope, necessity, and authority to issue an administrative subpoena in addition to evaluating the reasonableness of an administrative subpoena request. A recipient of an administrative subpoena may challenge the issuance or enforcement of an administrative subpoena in court by presenting sufficient evidence that the agency has not acted in accordance with the basic standards of reasonableness as articulated in Oklahoma Press Publishing Co. v. Walling,<sup>52</sup> has not issued an administrative subpoena in “good faith” demonstrated by a failure to satisfy factors articulated in United States v. Powell,<sup>53</sup> or has abused the judicial process in petitioning a court for enforcement.<sup>54</sup> While a judicial challenge on these grounds is only available to the subpoena recipient either (1) through a petition to quash a subpoena or (2) in the course of challenging an administrative subpoena enforcement order, an agency must consider the strictures of each of these possible grounds for nonenforcement before issuing an administrative subpoena. While the courts are deferential in evaluating an agency’s issuance of an administrative subpoena, a court does not merely “rubber stamp” an agency’s exercise of issuance authority.

In Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946), the Supreme Court discussed the necessity of balancing the importance of the public interest in the information being requested with the importance of the interest in personal or organizational privacy. See 327 U.S. 186, 202 (1946). The Court noted in Oklahoma Press that a court should evaluate a challenge to

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<sup>49</sup> *In re* Subpoena Duces Tecum, 228 F.3d 341, 348 (4<sup>th</sup> Cir. 2000).

<sup>50</sup> *See* Appendices A, B, C *infra*. *See also* *In re* Subpoena Duces Tecum, 228 F.3d at 348; *United States v. Bell*, 564 F.2d 953, 959 (Temp. Emer. Ct. App. 1977) (stating that “[b]ifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power”).

<sup>51</sup> *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 201 (1946).

<sup>52</sup> *See id.* at 202.

<sup>53</sup> *See* 379 U.S. 48, 57-58 (1964).

<sup>54</sup> *See also* *Securities and Exchange Comm’n v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 124 at n. 9 (3d Cir. 1981) (stating that “[b]ad faith” connotes a conscious decision by an agency to pursue a groundless allegation without hope of proving that allegation” while “abusing the court’s process” connotes vigorous pursuance “of a charge because of the influence of a powerful third party without consciously and objectively evaluating the charge”).

an administrative subpoena by considering whether: (1) the investigation is for a lawfully authorized purpose, (2) the subpoena authority at issue is within the power of Congress to command, and (3) the “documents sought are relevant to the inquiry.”<sup>55</sup> The Court also noted that an administrative subpoena request must be “reasonable” in nature. The Court declined to strictly define the applicable reasonableness inquiry, however, stating that the inquiry in such situations cannot be “reduced to formula; for relevancy, adequacy or excess in the breadth of subpoena are matters variable in relation to the nature, purposes, and scope of the inquiry.”<sup>56</sup> The Court noted that reasonableness requires, in summary, “specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry,” including “particularity in ‘describing the place to be searched, and the persons or things to be seized.’”<sup>57</sup>

- b. Statutorily imposed privacy limitations or notice provisions.
  - (i) Nondisclosure requirements imposed in an agency’s organic statutes.

The organic statutes of certain agencies contain internal provisions restricting the disclosure of particular information regularly accessed by the agency. The Federal Trade Commission Act, for instance, contains strict nondisclosure requirements, protecting confidential financial or commercial information.<sup>58</sup> A full description of the privacy-related provisions contained in the organic statutes of the federal agencies is beyond the scope of this report.

- (ii) Internal statutory constraints in the subpoena-authorizing statute.

Certain of the statutes authorizing exercise of administrative subpoena authority contain internal privacy limitations.<sup>59</sup> Other authorizing statutes contain internal notification requirements.<sup>60</sup> Many of these internal statutory constraints are referenced in the attached

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<sup>55</sup>*Oklahoma Press Publishing Co.*, 327 U.S. at 209.

<sup>56</sup>*Id.* at 208.

<sup>57</sup>*Id.*

<sup>58</sup>Consider, for example, strict confidentiality protections provided under the FTC Act §6(f), 15 U.S.C. §46 (protecting confidential financial or commercial information), 15 U.S.C. § 57b-2, FTC Act §21 (protecting information obtained pursuant to compulsory process or in lieu thereof).

<sup>59</sup>*See, e.g.*, EPA’s authority under the Safe Drinking Water Act (SDWA), P.L. 93-523 §1445(b)(1) (SDWA §1445(d) forbids the public disclosure of information obtained under §1445 administrative subpoena authority if the information would “divulge trade secrets or secret processes.”); Section 15 of the Occupational Safety and Health Act of 1970, 29 U.S.C. §661(b), Pub.L. 91-596, 29 CFR §2200.57 (providing that the Occupational Safety and Health Commission may issue orders, where appropriate, to protect the confidentiality of trade secrets).

<sup>60</sup>*See, e.g.*, 7 U.S.C. §2(h)(5)(C)(i) (providing administrative subpoena authority to the Commodity Futures Trading Commission and requiring that the recipient of a subpoena must “promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner reasonable under the circumstances, or as specified by the CFTC”).



Appendices. A full description of each of these internal statutory constraints is beyond the scope of this report.

(iii) Generally applicable privacy or notice statutes.

Many privacy-protective statutory schemes have been enacted to protect specific categories of information, personal or organizational. These statutes are applicable, in certain circumstances, to information collected in response to administrative subpoena authorities. Subsections II.A.3.b.(aa) through II.A.3.b.(ll) *infra* provide a brief description of several of these privacy-protective provisions and their potential relation to administrative subpoena requests.

(aa) Privacy Act, 5 U.S.C. §552a.

The Privacy Act regulates to some degree the sharing of information among federal agencies and the disclosure of information to third parties. See 5 U.S.C. § 552a. The Act was intended, among other things, to safeguard an individual's privacy by preventing the misuse of federal records.

Subject to some exceptions, including an exception for records released as part of an authorized civil or criminal law enforcement investigation, federal agencies are required to obtain an individual's consent before releasing protected records to another federal agency or other third party.<sup>61</sup> 5 U.S.C. §552a(b). Records protected by the Act include, but are not limited to, those containing specific reference to an individual's "education, financial transactions, medical history, and criminal or employment history" and that contain the individual's "name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." 5 U.S.C. §552a(a)(4).

Agencies may share information protected by the Act if they do so through a "routine use," an information sharing relationship disclosed through advance notice in the Federal Register and to Congress and the Office of Management and Budget (OMB). By requiring the agencies to provide Congress and OMB with advance notice of such information sharing, Congress and OMB are able to evaluate "the probable or potential effect of such proposal[s] on the privacy or other rights of individuals." 5 U.S.C. section 552a(r).

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<sup>61</sup>Subsection (b) sets forth twelve circumstances under which records concerning an individual can be disclosed without the individual's prior written consent. The law enforcement exception states that

[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be to another agency . . . for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

5 U.S.C. §552a(b)(7).

(bb) Freedom of Information Act, 5 U.S.C. §552.

The Freedom of Information Act (FOIA) generally requires the disclosure of certain government information to the public at the request of an individual or entity. FOIA, however, contains a number of exceptions, allowing governmental entities to withhold information obtained in response to an administrative subpoena under certain circumstances. Particular types of information exempted from FOIA's general disclosure requirements include, but are not limited to: (1) "trade secrets and commercial or financial information obtained from a person and privileged or confidential," (2) "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;" and, (3) to a certain extent, "records or information compiled for law enforcement purposes."<sup>62</sup> In addition, agency regulations sometimes contain provisions allowing parties to petition for confidential treatment of information provided at the request of an agency in carrying out its statutory responsibilities.<sup>63</sup>

(cc) Right to Financial Privacy Act (RFPA), 12 U.S.C. §3401 et seq. (customer financial records)

The legislative history of the Right to Financial Privacy Act (RFPA) denotes that it was intended to balance the privacy interests of customers of financial institutions with the public's interest in effective and legitimate law enforcement investigations.<sup>64</sup> 12 U.S.C. §3402. RFPA limits both the access/disclosure and the interagency transfer of a customer's personal financial information.

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<sup>62</sup>Law enforcement records exempted from the disclosure requirements of FOIA include records or information that:

(A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

5 U.S.C. §552(b)(7).

<sup>63</sup> Consider, for example, 17 C.F.R. Part 145 (2002) (providing guidelines as to the process an individual must follow in requesting that the Commodity Futures Trading Commission keep information submitted by the individual confidential, notwithstanding the general principles of disclosure promoted under FOIA).

<sup>64</sup>See H.R. REP. NO. 95-1383, at 33, *reprinted in* 1978 U.S.C.C.A.N. 9273, 9305. See also the discussion regarding the legislative history surrounding RFPA in *U.S. on Behalf of Agency for Int'l. Development v. First Nat'l Bank of Maryland*, 866 F.Supp. 884 (D.Md. 1994).

RFPA prohibits any agency or department from obtaining (or any private "financial institution" as defined in 12 U.S.C. § 3401(1) from disclosing) the financial records of a financial institution's "customer" as defined in 12 U.S.C. § 3401(5) without prior customer consent, except where access is authorized by one of the express exceptions to the Act or is accomplished through one of the five access mechanisms mandated by the Act, including "administrative subpoena or summons." See 12 U.S.C. § 3412 (regarding restrictions on interagency transfer of protected information). Under 12 U.S.C. §3405, a government authority may obtain financial records protected by RFPA pursuant to an administrative subpoena only if: (1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and (2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with a notice stating with reasonable specificity the nature of the law enforcement inquiry. See 12 U.S.C. §3405. The statute provides specific language for the agency to use in the notice it provides to the customer.<sup>65</sup> A financial institution is forbidden under RFPA from releasing the financial records of a customer "until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions" of the Act, including the notice provision. 12 U.S.C. § 3403(b). Pursuant to 12 U.S.C. §3409, however, a governmental entity may under certain enumerated circumstances seek a court order allowing delayed notification to the customer.<sup>66</sup>

Federal agencies may be subject to civil penalties for violation of RFPA requirements,<sup>67</sup> and federal agents or employees are subject to disciplinary action for willful or intentional violation of the Act,<sup>68</sup> thus providing incentive to protect the privacy of consumer financial records requested by an agency under its subpoena authority.<sup>69</sup>

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<sup>65</sup>An agency issuing an administrative subpoena to a financial institution must also notify the customer whose records it seeks. See 12 U.S.C. § 3405(2). RFPA notice to the consumer must include: (1) a copy of the subpoena, including a description of the information being requested; (2) the purpose of the subpoena, (3) the customer's right to file a motion to quash the subpoena. *Id.* Together with this notice, the customer must also be provided blank customer challenge motion and sworn statement forms. *Id.*

<sup>66</sup> A presiding judge or magistrate judge may so order if: (1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records, (2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry, and (3) there is reason to believe that such notice will result in: (a) endangering the life or physical safety of any person, (b) flight from prosecution, (c) destruction of or tampering with evidence, (d) intimidation of potential witnesses, or (e) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances previously listed. See 12 U.S.C. §3409.

<sup>67</sup>12 U.S.C. §3417(a).

<sup>68</sup>12 U.S.C. §3417(b).

<sup>69</sup>The Act provides for customer challenges (motion to quash, application to enjoin) to government access to financial records (see 12 U.S.C. §3410) and also provides for injunctive relief to enforce compliance with any of its provisions (see 12 U.S.C. §§ 3416, 3418). The Act provides for the assessment of money damages against any agency or department or private financial institution obtaining or disclosing financial records in violation of the Act's provisions, at a statutory minimum amount of \$100 regardless of the volume of records involved. See 12

The customer receiving notice of an administrative subpoena request has ten days after the receipt of that notice, or fourteen days after the notice was mailed to the consumer, to provide consent or to challenge the government access to their records in U.S. district court. 12 U.S.C. §3410(a). In bringing an RFPRA challenge to a subpoena, however, the customer bears the initial burden of proof.<sup>70</sup> In order for a customer to challenge a subpoena, he or she may make a procedural argument that the proper notice was not provided as required by the act or a substantive argument that either the information sought by the agency was not “reasonably described”<sup>71</sup> or the agency did not have “reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.”<sup>72</sup> Lower federal courts have generally accorded agencies wide latitude in imposing administrative subpoenas, however, and the two bases for substantive challenge under RFPRA rarely prove fruitful for challengers in court.<sup>73</sup> Administrative subpoenas issued in relation to inquiries not related to law enforcement inquiries are subject to the general requirement of RFPRA that customer consent must be gained prior to receipt/disclosure of the subpoenaed information protected by the Act.

(dd) Trade Secrets Act, 18 U.S.C. §1905

While 18 U.S.C. § 1905, a provision of the Trade Secrets Act, does not place restrictions on information requests, it is intended to prevent a federal employee from publicly divulging particular information derived from “examination or investigation.” The provision states in full that:

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner

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U.S.C. § 3417(a)(1). Beyond this statutory minimum, both actual damages sustained by the customer as the result of a disclosure, as well as discretionary punitive damages where a violation is found to have been “willful or intentional,” are allowed, together with costs and reasonable attorney fees. *See* 12 U.S.C. § 3417(a)(2),(3),(4). *See also* 12 U.S.C. § 3410(a) (discussing time limitations on a party’s ability to seek injunction of intended government access).

<sup>70</sup>The governmental entity bears the initial burden in a challenge presented during an enforcement action. The government’s initial burden in enforcement actions, however, is light, only requiring “a prima facie recital of jurisdiction and statement of the basis for enforcement.” John W. Bagby, “Administrative Investigations: Preserving a Reasonable Balance Between Agency Powers and Target Rights,” 23 AM. BUS. L. J. 319, 324 (1985).

<sup>71</sup>12 U.S.C. § 3402.

<sup>72</sup> 12 U.S.C. §§ 3405(1).

<sup>73</sup> *See, e.g.,* United States v. Wilson, 571 F. Supp. 1417 (S.D.N.Y. 1983) (rejecting the challenge under RFPRA that records subpoenaed were not “reasonably described”); Pennington v. Donovan, 574 F. Supp. 708 (S.D. Tex. 1983) (rejecting a challenge under RFPRA that the agency did not believe that the record subpoenaed were “relevant to a legitimate law enforcement inquiry”).

or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

Id.

The language of the statute clearly requires federal employees to protect certain personal and business information obtained under an issued administrative subpoena from public disclosure, and the consequences for a statutory violation—including fine, imprisonment, or both—are stringent. Id.

(ee) Limitations in Regard to Substance Abuse and Mental Health Information—42 U.S.C. §290dd-2, regulations at 42 C.F.R. Part 2

The disclosure of medical records of substance abuse patients obtained through administrative subpoena compliance is strictly limited by operation of 42 U.S.C. §290dd-2, which prohibits the disclosure of such medical records unless disclosure is specifically permitted by the statute, or by the implementing regulations, which may be found at 42 C.F.R. Part 2. Section 290dd-2 of Title 42 of the United States Code requires that “records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall . . . be confidential and be disclosed only for the purposes and under the circumstances expressly authorized” by the statute. The statute authorizes disclosure in a limited number of circumstances. Prohibitions on disclosure under the statute continue to apply to a patient’s records, regardless of “whether or when the individual ceases to be a patient. 42 U.S.C. §290dd-2(d).

An agency or department may disclose such information with the consent of the person who is the subject of the records. 42 U.S.C. §290dd-2(b)(1). Even with patient consent, however, the information may only be disclosed to (1) medical personnel to meet a “bona fide medical emergency,” (2) “qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner,” or (3) “if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor,

including the need to avert a substantial risk of death or serious bodily harm.”<sup>74</sup> The information disclosed under the statute may not be used to initiate or substantiate criminal charges against a patient or to conduct any investigation of the patient.

In criminal investigations, a special court order must be obtained before the holder of the substance abuse patient medical records may produce such records, even in response to compulsory process, whether a search warrant, grand jury subpoena, or a health care fraud administrative subpoena.

A person violating these provisions is subject to fine under Title 18 of the United States Code. See 42 U.S.C. §290dd-2(f). The Secretary of Health and Human Services has promulgated extensive regulations related to 42 U.S.C. §290dd-2 at 42 C.F.R. Part 2.

- (ff) HHS Medical Privacy Regulations authorized under the Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Accountability and Portability Act (1996) required Congress to enact privacy standards in relation to patients’ health information by August 21, 1999. 42 U.S.C. §1320d-2 note (2000), Pub. L. 104-191, §264(a)-(b), 110 Stat. 2033. HIPAA also authorized the Secretary of Health and Human Services to promulgate rules if Congress failed to meet its statutory deadline. 42 U.S.C. §1320d-2 note (2000), Pub. L. 104-191, §§264. As Congress failed to meet its statutory deadline, the Secretary of Health and Human Services (HHS) promulgated a regulation, which is scheduled to take effect on April 14, 2003.<sup>75</sup>

Under this regulation, no disclosure of patient health information may be made by health care providers or other covered entities or their associates unless the patient authorizes it, the disclosure is required by law, or the disclosure is specifically permitted by the rule. A disclosure is considered "required by law" when the disclosure "complies with and is limited to the relevant requirements of such law."<sup>76</sup> This broad provision is limited by the caveat in §164.512(a)(2) that "[a] covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law." The requirements imposed in those sections relate to disclosures arising from adult abuse and neglect or domestic violence (§164.512(c)), disclosures in judicial or administrative proceedings (§164.512(e)), or disclosures for law enforcement purposes (§164.512(f)).

To qualify as a disclosure for law enforcement purposes, the subject of the protected health information must be the target or subject of the investigation and the activity or investigation may not relate to: (a) the receipt of health care; (b) a claim for public benefits related to health; or (c) qualification for or receipt of public benefits or services where the subject’s health is integral to the

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<sup>74</sup>The statute further states that “[i]n assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.” 42 U.S.C. §290dd-2(b)(2)(C).

<sup>75</sup> 45 C.F.R. Parts 160, 164.

<sup>76</sup> 45 C.F.R. § 164.512(a)(1).

claim for benefits or services.<sup>77</sup> In such cases, a covered entity may disclose protected health information to law enforcement pursuant to an administrative request only when the material sought is (1) relevant and material to a law enforcement inquiry, (2) the request is limited in scope in light of the purpose for which it is sought, *and* (3) de-identified information could not be used by law enforcement for the same purpose.<sup>78</sup> However, law enforcement may still acquire records from covered entities without meeting these three requirements through the use of a court order, a subpoena issued by a judicial officer, or a grand jury subpoena.<sup>79</sup>

The regulation recognizes that there may be occasions when law enforcement organizations perform health oversight activities, thereby increasing the need for access to protected health information. Examples of this are occasions when the Department of Justice, Federal Bureau of Investigations, or the Department of Health and Human Services, Office of Inspector General, investigate allegations of fraud against the Medicare program or other government and private health care plans.<sup>80</sup> These oversight activities, which are granted much broader access to protected health information under the regulation, include audits, investigations, inspections, civil, criminal, or administrative proceedings or actions, and other activities necessary for oversight of: the nation's health care system; government benefit programs for which health information is relevant to beneficiary eligibility; government regulatory programs for which health information is necessary for determining compliance with program standards; and entities subject to civil rights laws for which health information is necessary for determining compliance.<sup>81</sup> In such oversight activities, the covered entity is permitted to make a disclosure to an authorized oversight agency without the patient's consent.

Entities subject to the requirements of the final rule include: (1) health care providers, (2) health plans, (3) health clearinghouses<sup>82</sup> and (4) business associates of these entities who assist with their performance, including lawyers and consultants.<sup>83</sup>

(gg) Electronic Communications Privacy Act (ECPA), 18 U.S.C. §2701 et seq.  
(stored electronic communications and customer records)

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<sup>77</sup> 45 C.F.R. § 164.512(d)(2).

<sup>78</sup> 45 C.F.R. § 164.512(f)(1)(ii)(C).

<sup>79</sup> 45 C.F.R. § 164.512(f)(1)(ii)(a), (B).

<sup>80</sup> An oversight agency is defined in the regulation to include an agency authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant." 45 C.F.R. § 164.501.

<sup>81</sup> 45 C.F.R. § 164.512(d)(1).

<sup>82</sup> 45 C.F.R. § 165.534. Most of these entities must comply with the privacy standards by April 14, 2003. Small health plans, however, need not comply until April 14, 2004. *Id.*

<sup>83</sup> 45 C.F.R. § 160.103.

The provisions of the Electronic Communications Privacy Act (ECPA) limit the disclosure of certain “wire or electronic communications” pertaining to a subscriber to or customers of a “provider of electronic communication service or remote computing service.” 18 U.S.C. §2703. The Act limits a service provider’s ability to disclose the contents of electronic communications that have been in electronic storage for less than 180 days or in a remote computing service, unless sought under a valid warrant. *Id.* Communications that have been in electronic storage for more than 180 days or in a remote computing service, however, may be released to a governmental entity when the entity seeks the communications under a valid warrant without prior notice to the customer or subscriber or with prior notice to the customer or subscriber by use of “an administrative subpoena authorized by a Federal or State statute.” *Id.*

Section 2703 of the ECPA requires that a governmental agency give prior notice to the service’s subscriber or customer if the agency issues a subpoena seeking disclosure of communications covered by the Act. Section 2705 allows the agency or governmental entity to delay notification of a subpoena to the subscriber/customer in some circumstances for ninety days upon written certification by a supervisory official that timely notice may have an “adverse result.” Under the language of the statute, such “adverse result[s]” may include: “(a) endangering the life or physical safety of an individual, (b) flight from prosecution, (c) destruction of or tampering with evidence, (d) intimidation of potential witnesses; or (e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.” 18 U.S.C. §2705. In addition, the ECPA authorizes an agency to seek a court order prohibiting an electronic service provider from notifying a user of the existence or compliance with an administrative subpoena. A court is required to issue such an order “for such period as the court deems appropriate” if there is reason to believe that notification will cause any of the five “adverse results” listed above. 18 U.S.C. §2705(b).

(hh) Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681 *et seq.* (consumer reports).

The Fair Credit Reporting Act generally limits permissible disclosures of consumer reports by consumer reporting agencies. While consumer reporting agencies are authorized to disclose consumer reports in response to grand jury subpoena requests or court order, consumer reporting agencies may not disclose such reports in response to administrative subpoena requests. Consumer reporting agencies are, however, authorized to disclose such information to the Federal Bureau of Investigation or other governmental agencies for counterterrorism purposes when “presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or analysis.” 15 U.S.C. §1681u. A consumer reporting agency may only “disclose the name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee in a position not lower than Deputy.” 15 U.S.C. §1681u(b). The Director, or the Director’s designee, may only certify such a request if he or she has “determined in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” 15 U.S.C. §1681u(b). Consumer reporting agencies and their agents are prohibited from disclosing to third parties any information that would alert them to the fact that the FBI had requested such information. 15 U.S.C. §1681u(d).



(ii) Protection of Cable Subscriber Privacy, 47 U.S.C. §551.

The Cable Act requires prior subscriber consent for any disclosure of personally identifiable information from a cable provider except in the instance of a court order for production of the information. Exercise of administrative subpoena authority is not sufficient to justify the release of certain personally-identifiable information from a cable provider, including the “(i) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or (ii) the nature of any transaction made by the subscriber over the cable system of the cable operator.” 47 U.S.C. §551(c)(2)(C)(i)-(ii).

(jj) 26 U.S.C. §6103 (tax return information).

Disclosure of tax return information accessed through administrative subpoenas is limited by 26 U.S.C. §6103. Section 6103(b)(2) defines tax return information to include, among other things, a “taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments.” Section 6103(p)(4) requires an agency receiving tax return information to establish and maintain adequate procedures to safeguard the confidentiality of information disclosed. Disclosing non-taxpayer information in a manner prohibited by 26 U.S.C. §6103 is currently a felony, punishable by five years imprisonment, a fine of five thousand dollars, and dismissal from employment. 26 U.S.C. 7213.

(kk) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g(b)(2)(B).

FERPA generally prohibits the dispersal of federal funds to student educational agencies or institutions that have a policy or practice of permitting the release of a student’s educational records or personally identifiable information contained therein to any individual, agency or organization without the written consent of the student’s parents. 20 U.S.C. §1232g(b)(1). Entities responding to subpoena requests, however, are exempt from the general prohibition. 20 U.S.C. §1232g(b)(1)(J)(ii). The agency issuing the subpoena may, upon showing good cause, order the disclosing educational entity not to disclose the “the existence or contents of the subpoena” or “any information furnished in response to the subpoena” to the student or her parents. Where “good cause” is not shown, entities disclosing information in response to a subpoena are required to give notice of the subpoena to parents and the student prior to the compliance date. 20 U.S.C. §1232g(b)(2)(B). Government agencies accessing “records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs” are required to protect the information “in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.” 20 U.S.C. §1232g(b)(3). In addition, 20 U.S.C. §1232g(b)(2)(B) and (4)(B) require that the information submitted in response to a subpoena request be transferred to third parties only upon the condition that the third party will not permit access to any other party without the consent of the parents or the student.

Federal courts have held that FERPA does not provide a private right of action against an entity seeking educational records, however, as the statute only authorizes the Secretary of Education or an administrative head of an education agency to take appropriate actions to enforce the provisions of FERPA.<sup>84</sup> 20 U.S.C. §1232(g)(f). In addition, at least one federal court has held that FERPA prohibits the disclosure but not the act of accessing such records.<sup>85</sup>

(II) Wrongful Disclosure of Video Tape Rental or Sale Records, 18 U.S.C. §2710

Video tape service providers are prohibited from disclosing “personally identifiable information,” except in certain circumstances including the issuance of a law enforcement warrant, grand jury subpoena, or court order. 18 U.S.C. §2710(b)(2)(C). Permissible disclosure in other circumstances, including, presumably, in response to an administrative subpoena request, is limited to include only the names and addresses of subscribers. Disclosure of such names and addresses may only be provided if : “(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and (ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material. . . .” 18 U.S.C. §2710(b)(2)(D).

c. Intra-agency Regulations, Guidelines, and Directives

See Appendices A, B, and C for references to intra-agency regulations, guidelines and directives related to administrative subpoena issuance. Brief descriptions of such regulations and guidelines are included in the appendices where provided by the agency holding the subpoena authority.

4. Description of the Standards Governing the Issuance of Administrative Subpoenas

In addition to being governed by statutory issuance standards, agencies issuing administrative subpoenas are also governed by internal agency regulations and guidelines. Most agencies holding statutory administrative subpoena authorities have a structured system of issuance in place, requiring pre-approval from various agency officials as to the legality of issuance based on scope, necessity, and other considerations.<sup>86</sup> See Appendices A, B, and C (column entitled “standards governing the issuance of administrative subpoena authorities”) for further description of internal agency standards governing the issuance of administrative subpoenas under specific authorities.

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<sup>84</sup>See *Tarka v. Cunningham*, 917 F.2d 890, 891 (5th Cir.1990); *Fay v. South Colonie Cent. Sch. Dist.*, 802 F.2d 21, 33 (2d Cir.1986); *Girardier v. Webster College*, 563 F.2d 1267, 1276-77 (8th Cir.1977); *Girardier v. Webster College*, 563 F.2d 1267, 1277 (8th Cir.1977); *Smith v. Duquesne Univ.*, 612 F.Supp. 72, 79-80 (W.D.Pa.1985) (applying *Cort v. Ash*), *aff'd*, 787 F.2d 583 (3d Cir.1986).

<sup>85</sup>See *Storek v. Suffolk County Department of Social Services*, 12 F.Supp.2d. 392, 402 (S.D. NY 2000) (rejecting Section 1983 action brought against county department of social services).

<sup>86</sup> See, e.g., Appendix B, describing guidelines for FBI issuance of administrative subpoenas authorized under 21 U.S.C. §876, Comprehensive Drug Abuse Prevention and Control Act of 1970, commonly called the “Controlled Substances Act,” Pub. L. No. 91-513, Title II, 84 Stat. 1242, 1236 (1970).

## **B. Administrative Subpoena Authority Held By Inspectors General of the Various Agencies**

On October 12, 1978, Congress enacted the Inspector General Act (IGA), 5 U.S.C.App. 3, creating an Office of Inspector General (OIG) within several federal agencies. The Inspector General Act has since been amended multiple times to create an Office of Inspector General within most federal agencies and other entities. The Offices of Inspector General are authorized to conduct audits and investigations “to conduct and supervise audits and investigate relative to the programs and operations of the establishments listed in section 11(2).”<sup>87</sup> Inspectors General are authorized not only to conduct investigations within their respective agencies but also to investigate situations of potential fraud involving recipients of federal funding. Inspectors General are intended to function independent of the agency head. They are appointed by the President, subject to the advice and consent of the Senate, and removable only by the President.<sup>88</sup> The Inspector General Act requires that Inspectors General be appointed “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.”<sup>89</sup>

In order to fulfill their investigative responsibilities, Inspectors General are authorized to exercise certain administrative subpoena authority. 5 U.S.C. app. 3 §6(a)(4).

### **1. Description of the Source of Inspector General Administrative Subpoena Power and the Scope of Such Subpoena Authority.**

Federal courts have generally stated that Inspectors General hold broad investigative authority<sup>90</sup> to carry out their responsibilities of promoting efficiency and preventing fraud, waste, abuse, and mismanagement in federal government programs. See Inspector General Act of 1978, § 1, 5 U.S.C. app. 3. Inspectors General are authorized to exercise administrative subpoena authority to obtain information required for administrative, civil and criminal investigation.<sup>91</sup> See 5 U.S.C.A.

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<sup>87</sup>5 U.S.C. App. 3 §§ 2 (1), 4(a)(1).

<sup>88</sup>*See, id.* at § 3 (a). The Inspectors General in certain “federal entities” are appointed by the head of the agency. *See, id.* at § 8G(c).

<sup>89</sup>*Id.* at § 3(a).

<sup>90</sup>*See* Burlington Northern R.R. Co. v. Office of Inspector General, 983 F.2d 631, 641 (5th Cir. 1993) (citing Kurt W. Muellenberg & Harvey J. Volzer, “Inspector General Act of 1978,” 53 Temp. L. Q. 473 (1985), for the proposition that “the Inspector General Act of 1978 gives Inspectors General broad--not limited--investigatory and subpoena powers”); *See also* United States v. Westinghouse Elec. Corp., 788 F.2d 164, 165 (3d Cir. 1986) (stating that “Congress gave the Inspector General broad subpoena power”).

<sup>91</sup>Federal courts have upheld this principle in various circumstances. *See, e.g.,* United States v. Art Metal-U.S.A., Inc., 484 F.Supp. 884, 886-87 (D.N.J. 1980); *See also* U.S. v. Aero-Mayflower Transit Co., 646 F.Supp. 1467, 1471 (D.D.C. 1986) (stating that “such agency communication with prosecutors is precisely the kind of cooperation that an efficient government should encourage”).

app. 3 § 6.<sup>92</sup> The Inspector General Act authorizes coordination between the Inspector General and other agencies. See 5 U.S.C. app. 3 §4(a)(4)(A), (B). An Inspector General is required by statute to report to the Attorney General any discovery of grounds to believe that a violation of federal law has occurred. 5 U.S.C. app. 3 § 4(d). Inspector General administrative subpoena authority has been upheld by federal courts even in situations where the Inspector General is cooperating with divisions of the Justice Department exercising criminal prosecutorial authority where there are reasonable grounds to believe a violation of federal criminal law has occurred.<sup>93</sup> Federal courts have also held that an Inspector General is authorized to continue using civil subpoena authority for civil and administrative investigative purposes even where he or she has referred a case to the Department of Justice for prosecution.<sup>94</sup>

The Inspector General Act of 1978 authorizes “each Inspector General” to “require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by [the Act].” 5 U.S.C. app. 3 §6(a)(4). The Inspector General Act solely authorizes subpoena *duces tecum*, or documentary requests. In addition, the statute requires that “procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies.” 5 U.S.C. app. 3 §6(a)(4).

## 2. Description of Applicable Subpoena Enforcement Mechanisms for Subpoenas under the Inspector General Act.<sup>95</sup>

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<sup>92</sup>While the administrative subpoena authority held by Inspectors General is generally not limited by senior officials in a parent agency, certain agency heads are authorized to intervene in the exercise of the authority where issues of national security or other sensitive interests are involved. *See* 5 U.S.C. App. 3 §8(b) (Secretary of Defense), 5 U.S.C. App. 3 §8D(a)(1)(Secretary of Treasury), 5 U.S.C. App. 3 §8E(a)(1) (Attorney General).

<sup>93</sup>*See* 5 U.S.C. §4(d); *United States v. Aero Mayflower Transit Co.*, 831 F.2d 1142, 1144-46 (D.C. Cir. 1987). The Court in this case upheld the use of the administrative subpoena authority even where the Inspector General of the Department of Defense was in cooperation with the FBI and the Antitrust Division of the Department of Justice. The court stated that “so long as the Inspector General’s subpoenas seek information relevant to the discharge of his duties, the exact degree of Justice Department guidance or influence seems manifestly immaterial.” *Id.* at 1146. In addition, Rule 6e does not preclude United States Attorneys from conducting joint investigations with an Inspector General or from using in a grand jury investigation information obtained by an IG investigation by the Department of Justice, even if the IG serves as a source of information for the Justice Department investigation. *See* 72 A.P.R. FLA. B.J. 34, 37 (1988). *See also* *United States v. Educational Dev. Network Corp.*, 884 F.2d 737, 738-40, 741-43 (3d Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990). 5 U.S.C. §6(a)(4) requires that “procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from federal agencies,” however.

<sup>94</sup>*See* *United States v. Art Metal-U.S.A., Inc.*, 484 F.Supp. 884, 886 (D.N.J. 1980).

<sup>95</sup>Since the U.S. Supreme Court’s decision in *Interstate Commerce Commission v. Brimson*, 154 U.S. 447 (1894), federal courts have generally held that, as a matter of due process, federal agencies cannot be given the power to enforce their subpoenas. *See* *Shasta Minerals & Chem. Co. v. SEC*, 328 F.2d 285, 286 (10th Cir. 1964). The U.S. Supreme Court has not made a specific ruling on this issue. *See* 1 KENNETH CULP DAVIS & RICHARD J. PIERCE, *ADMINISTRATIVE LAW TREATISE* § 4.2, at 143 (1994) (noting that “[i]t is hard to know whether the broad holding [in *Brimson*] remains good law because Congress has not tested it”).

Inspectors General may seek the enforcement of a subpoena “by order of any appropriate United States district court.” 5 U.S.C. app. 3 §6(a)(4). Inspector General subpoena enforcement proceedings are prosecuted by the Department of Justice, at the request of the relevant Inspector General, as part of the Department’s responsibility to conduct litigation in which the U.S. is interested. See 28 U.S.C. §§516-19. The Inspector General Act does not provide any specific sanctions for failure to comply with an Inspector General’s subpoena, so federal district courts are free to exercise discretion in applying general contempt sanctions for noncompliance with a court order enforcing an Inspector General subpoena. Federal courts have enforced Inspector General administrative subpoenas where 1) the subpoena is within the statutory authority of the agency; 2) the information sought is reasonably relevant to the inquiry;<sup>96</sup> and 3) the demand is not unreasonably broad or burdensome.<sup>97</sup> In addition, federal courts have held that an Inspector General administrative subpoena is unenforceable if it is issued in “bad faith”<sup>98</sup> or if the petition for enforcement constitutes an abuse of the court’s process.

3. Description of Any Notification Provisions and Any Other Provisions Relating to Safeguarding Privacy Interests.

The Inspector General Act contains no internal privacy protections directed specifically at the subpoena authority provided in the Act. The Inspector General Act itself, however, does forbid an Inspector General to disclose an employee’s identity “after receipt of a complaint or information from an employee” except in circumstances where the “Inspector General determines such disclosure is unavoidable during the course of the investigation.” 5 U.S.C. app. 3 §7(b).<sup>99</sup>

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<sup>96</sup> *See* United States v. Powell, 379 U.S. 48, 57-58 (1964); United States v. Morton Salt Co., 338 U.S. 632, 652 (1950).

<sup>97</sup> *See* Pickel v. United States, 746 F.2d 176, 185 (3d Cir.1984); SEC v. Wheeling Pittsburgh Steel Corp., 648 F.2d 118, 125 (3d Cir.1981) (en banc).

<sup>98</sup> SEC v. ESM Gov't Sec., Inc. 645 F.2d 310, 317 (5th Cir. 1981). The court in this case established a three prong test to determine whether an administrative subpoena was issued in bad faith: (1) whether the agency intentionally or knowingly misled the subject of the subpoena; (2) whether the subject was actually misled; and (3) whether the subpoena was the result of improper access to the party's records. *Id.* at 317-18.

<sup>99</sup> *See also* Pub. L. No. 104-134, Section 509, (h)-(i) (protecting certain information obtained by the Office of the Inspector General at the Legal Services Corporation from further disclosure):

(h) Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient shall be made available to any auditor or monitor of the recipient, including any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation, except for reports or records subject to the attorney-client privilege.

(i) The Legal Services Corporation shall not disclose any name or document referred to in subsection (h), except to--

(1) a Federal, State, or local law enforcement official; or

(2) an official of an appropriate bar association for the purpose of enabling the official to conduct an investigation of a rule of professional conduct.

Inspector General subpoena authority is also subject to the same general statutory privacy-protective requirements applicable to other agency subpoena authorities. These privacy-protective statutes are listed and described *supra* in section II.A.3, which discusses agency subpoena authorities other than the authority provided under the Inspector General Act. Agency guidelines implementing these privacy-protective statutes are generally applicable to the Inspector General subpoena authority as well as other subpoena authorities exercised by an agency.<sup>100</sup> The Right to Financial Privacy Act of 1978 (RFPA), for instance, subjects an agency to certain notification requirements when issuing a subpoena subject to the RFPA. 12 U.S.C. §§ 3405.<sup>101</sup> RFPA also limits an agency's subpoena authority, including the authority held by Inspectors General, by allowing a government authority to access financial records only in situations where there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.<sup>102</sup> Individual agencies have promulgated Inspector General policies specifically to comply with the requirements of the RFPA<sup>103</sup> and other privacy-protective statutes.

#### 4. Description of the Standards Governing the Issuance of Administrative Subpoenas.

Federal courts have held that the enforceability of an Inspector General administrative subpoena authority is subject to many of the limitations imposed on other administrative subpoena authorities, including the requirements that such a subpoena: (1) be issued for a lawful purpose within the statutory authority of the Inspector General Act, (2) be reasonably relevant to that purpose, and (3) not be unduly burdensome.<sup>104</sup> Inspectors General must carefully comply with these requirements in order to ensure that a subpoena will be enforceable by a federal district court. In addition to these generally applicable requirements, the Offices of Inspector General in specific agencies have established and published specific intra-agency policies governing requests for and issuance of

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*Id.*

<sup>100</sup> See, e.g., Appendix A for information regarding the Inspectors General at U.S. Department of Agriculture (Inspector General Directive, IG-8551 (C2-C5)) and Department of Energy (Inspector General Directive, IG-916, dated, June 24, 1986.).

<sup>101</sup> The Right to Financial Privacy Act (RFPA) requires Inspectors General to provide, as notice, a copy of an RFPA subpoena to a customer whose records are being requested. See 12 U.S.C. § 3405. The RFPA prohibits a financial institution from releasing financial records without certification of compliance with the requirements of RFPA. See 12 U.S.C. § 3403(b).

<sup>102</sup> *Id.* at § 3405. A copy of the subpoena must be served on the customer, and the customer must be given the opportunity to move to quash the subpoena. *Id.* Under the RFPA, subsequent to 1986 amendment, a financial institution or an officer or employee thereof is not precluded from notifying a government authority that they possess information that may be relevant to a violation of any statute or regulation. *Id.* at § 3403(c).

<sup>103</sup> See, e.g., Appendix A for information regarding Inspectors General at the U.S. Department of Agriculture (Inspector General Directive, IG-8551 (C2-C5)) and Department of Energy (Inspector General Directive, IG-916, June 24, 1986).

<sup>104</sup> See *Burlington Northern RR v. Office of Inspector General, R.R. Retirement Board*, 983 F.2d 631, 637 (5<sup>th</sup> Cir. 1993) (applying the principles articulated in *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), etc., to a situation involving an administrative subpoena issued by an Inspector General).

### III. JUSTICE DEPARTMENT AND TREASURY SUBPOENA AUTHORITIES PURSUANT TO 18 U.S.C. §3486

#### A. Administrative Subpoena in Investigations Relating to “Any Act or Activity Involving a Federal Health Care Offense”

Administrative subpoenas have proved an effective resource in the investigation and prosecution of federal health care offenses. In enacting HIPAA in 1996, Congress targeted health care fraud as a major factor in the exploding cost of federal health care programs, and created a carefully balanced array of new criminal statutes, administrative sanctions, investigative tools and a fraud and abuse control program to be jointly promulgated by the Secretary of HHS and the Attorney General. The administrative subpoena authority for the Attorney General as enacted in 18 U.S.C. §3486 was a key element to this coordinated approach. Health care fraud administrative subpoenas facilitate a more efficient and expeditious coordinated approach to the investigation of federal criminal health care fraud offenses. First, unlike grand jury subpoenas, the evidence produced in a criminal investigation in response to such a subpoena can be shared with attorneys in the Civil Division of the Department of Justice. This enables the government to pursue parallel criminal and civil relief simultaneously and to resolve these matters in a coordinated and timely fashion. The early global resolution of all pending civil and criminal exposure is considered of great importance by many targets of health care fraud investigations who find a benefit in a relatively swift resolution which permits them to put the episode behind them and begin with a fresh start. Also, the sharing of information allowed with the use of administrative subpoenas eliminates the need of the government to otherwise serve two sets of subpoenas, one criminal and one civil, in each health care fraud investigation, and similarly avoids cost and expense which would otherwise be imposed if two sets of the same documents had to be produced. Finally, the civil investigation does not have to be suspended pending resolution of the criminal case when information can be shared as the investigation proceeds.

#### 1. Source and Scope of Subpoena Authority under 18 U.S.C. §3486(a).

As Congress estimated in 1997 that the costs of fraud and abuse in healthcare amounted to “as much as 10 percent of total health care costs,” the legislative history of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) suggests that Congress granted subpoena authority to the Attorney General in investigations of healthcare fraud and abuse in order to facilitate enforcement of federal statutes and thereby to improve the “availability and affordability of health insurance in the United States.” See H.R.Rep. No. 104-496, at 1, 66-67, reprinted in 1996 U.S.C.A.N. at 1869. Section 248 of HIPAA authorizes the Attorney General to issue subpoenas requesting production of certain documents and testimony in investigations relating to “any act or activity involving a federal health care offense.” See 18 U.S.C. §3486(a)(1)(A)(i)(I). Specifically, the Attorney General is authorized to compel production of: (1) “any records or other things relevant to the investigation and (2) testimony by the custodian of the things required to be produced

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<sup>105</sup>See, e.g., FDIC OIG Policy 110.6 (May 1999).

concerning the production and authenticity of those things.” 18 U.S.C. §3486(a)(1)(B)(i)-(ii).

In evaluating the scope of an administrative subpoena issued under 18 U.S.C. §3486(a)(1)(A)(i)(I), the federal courts apply the principle formulated by the Supreme Court in Oklahoma Press, generally applicable to executive branch administrative subpoenas, that an administrative subpoena must be “reasonably relevant” to an agency’s investigation at issue.<sup>106</sup> The permissible scope of an administrative subpoena is, however, “variable in relation to the nature, purposes and scope of the inquiry.”<sup>107</sup> In order to satisfy the general reasonableness standard, the agency issuing the subpoena, in this instance the Attorney General, must satisfy the court, in accordance with the Powell<sup>108</sup> factors, that: (1) “the investigation will be conducted pursuant to a legitimate purpose,” (2) “the inquiry may be relevant to the purpose,” (3) “that the information sought is not already within the [agency’s] possession,” and (4) “the administrative steps required by the Code have been followed[.]”<sup>109</sup> As noted in section II.A.2 *supra*, however, the courts have varied in their application of the last two factors, with some courts suggesting that the Supreme Court has obviated the requirement of considering these latter factors in decisions subsequent to Powell.<sup>110</sup>

## 2. Applicable Subpoena Enforcement Mechanisms

In cases of refusal to comply with a subpoena, the Attorney General is authorized to seek the aid of a United States district court where the investigation is occurring or where the subpoenaed person resides. 18 U.S.C. §3486(c). Failure to obey a federal court’s order to comply with a subpoena issued by the Attorney General under 18 U.S.C. §3486(a) may be punished as contempt of court. 18 U.S.C. §3486(c). A district court’s order requiring compliance with an administrative subpoena is generally treated as a final judgment under 28 U.S.C. §1291, and, therefore, is immediately appealable.<sup>111</sup>

## 3. Notification Provisions and Other Provisions Related to Safeguarding Privacy Interests

Subpoenas issued under §3486 in the course of investigations of Federal health care offenses are subject to all other limitations placed on the production of evidence pursuant to compulsory process. See Section II.A.3 *supra* for a description of privacy-protective statutes applicable to

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<sup>106</sup>*In re* Administrative Subpoena John Doe, 253 F.3d 256 (6th Cir. 2001).

<sup>107</sup>*Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 209 (1946).

<sup>108</sup>*United States v. Powell*, 379 U.S. 48 (1964).

<sup>109</sup>*Id.* (evaluating §3486(a) health care offense subpoena authority and referring to standards established in *United States v. Powell*, 379 U.S. 48, 57-58 (1964)).

<sup>110</sup>*See, e.g.*, *United States v. Bell*, 564 F.2d 953, 959 (Temp. Emer. Ct. App. 1977) (last two requirements too restrictive); *United States v. Security State Bank & Trust*, 473 F.2d 638, 641 (5th Cir. 1973) (governmental entity need only the two primary requirements).

<sup>111</sup>*See Cobblestick v. United States*, 309 U.S. 323, 330 (1940) (recognizing the immediate reviewable nature of a district court enforcement order).



administrative subpoena authorities in appropriate circumstances.

In addition to extrinsic statutory limitations, 18 U.S.C. §3486 contains several internal, privacy-protective limitations. At any time before the return date specified for subpoenaed information, for instance, the person or entity subpoenaed may petition for an order modifying or quashing the summons or modifying any court nondisclosure order acquired by the government. See 18 U.S.C. §3486(a)(5). Federal courts have determined that the authority granted under 18 U.S.C. §3486(a) is “reasonable” and therefore sufficiently protective of Fourth Amendment interests, as the statute requires that: (1) subpoenaed items must be “described” in the subpoena, (2) the recipient of a subpoena is ensured “a reasonable period of time within which to comply, and (3) the subpoena “may not require production more than 500 miles from the place of service.”<sup>112</sup> See 18 U.S.C. § 3486(a)(2), (3).

While section 3486 contains no requirement that patients be notified of impending subpoena of their health records, the subsequent use and disclosure of information gathered through compliance with such a subpoena is limited under the statute. Section 3486, for instance, protects information obtained under an administrative subpoena from disclosure “to any person for use in, any administrative, civil or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health.” 18 U.S.C. §3486(e)(1). This prohibition on disclosure may only be overcome through a court order issued after the court has determined that “good cause” has been shown by the party seeking the disclosure. 18 U.S.C. §3486(e)(1). In determining whether “good cause” exists, the court must “weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.” 18 U.S.C. §3486(e)(2).

While the statute does not generally prohibit a governmental entity from notifying a person or entity of the disclosure of records under section 3486, a district court in which the subpoena is or will be served may issue an ex parte order prohibiting a person or entity from disclosing to any other person or entity (except in the course of obtaining legal advice from an attorney) the existence of a subpoena served under this section for ninety days. Such an order may only be issued upon a finding by the court that disclosure may result in: a) endangerment to the life or physical safety of any person, b) flight to avoid prosecution, c) destruction of or tampering with evidence, or d) intimidation of potential witnesses. See 18 U.S.C. §3486(a)(6)(A)-(B). This ex parte order of nondisclosure may be extended for additional periods of up to ninety days only upon a showing that the conditions recounted above still exist. See 18 U.S.C. §3486(a)(6)(C). If no case or proceeding arises from the production of the records or other things, pursuant to a §3486 subpoena, within a reasonable time, the person producing the records or things to the agency may make a written demand that the agency return the records to that person, except where the materials provided were only copies, not originals. See 18 U.S.C. §3486(a)(8).

In addition, the privacy interests of the recipient of a §3486 subpoena, as with the privacy interests of recipients of all other currently authorized administrative subpoenas, are protected in

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<sup>112</sup>*In re Subpoena Duces Tecum*, 228 F.3d 341, 349 (4<sup>th</sup> Cir. 2000).

that enforcement of the subpoena may only be accomplished by a federal court, thus removing final action from the issuer of the subpoena and providing an independent safeguard. In evaluating subpoenas issued under 18 U.S.C. §3486, federal courts have evaluated Fourth Amendment concerns in a manner similar to all other current administrative subpoena authorities in that they are subject to a general reasonableness standard, not a probable cause standard.<sup>113</sup> Federal courts have held that in order to satisfy the general reasonableness standard, the agency issuing the subpoena, in this instance the Attorney General, must satisfy the court that: (1) “the investigation will be conducted pursuant to a legitimate purpose,” (2) “the inquiry may be relevant to the purpose,” (3) “that the information sought is not already within the Commissioner's possession,” and (4) “the administrative steps required by the Code have been followed[.]”<sup>114</sup> The impact and application of this standard is discussed in Section II.A.2 *supra*.

#### 4. Standards Governing the Issuance of Administrative Subpoenas

The Attorney General signed Order 2468-2001 on June 28, 2001, delegating his authority under 18 U.S.C. §3486 to issue administrative subpoenas to all United States Attorneys and the Assistant Attorney General of the Criminal Division.<sup>115</sup> The order also authorizes redelegation of authority from United States Attorneys to Assistant United States Attorneys as the particular United States Attorneys deem appropriate. As the Attorney General has not delegated his authority to issue administrative subpoenas related to healthcare offenses under section 3486(a) to the Director of the Federal Bureau of Investigation (FBI), the FBI relies on a district's United States Attorney to issue a subpoena on its behalf.

Attorney General guidelines related to investigations, applicable to administrative subpoena issuance, are contained in Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (March 21, 1989). Regulations internal to the FBI that are relevant to administrative subpoena are found in the Manual of Investigative Operations and Guidelines (MIOG), Part II, 10-8.2(1), “Access to Transactional Information: Telephone Toll Records, Subscriber Listing Information.”

#### 5. Frequency of use and usefulness of administrative subpoena authority pursuant to §3486(a)(1)(A)(i)(I).

During calendar year 2001, United States Attorneys offices issued a total of 2,102 administrative subpoenas in investigations related to health care offenses pursuant to 18 U.S.C. §3486. The Assistant Attorney General for the Criminal Division is also authorized to issue subpoenas

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<sup>113</sup>See, e.g., *In re Administrative Subpoena John Doe*, 253 F.3d 256, 263-4 (6th Cir. 2001) (evaluating §3486(a) health care offense subpoena authority and referring to standards established in *United States v. Powell*, 379 U.S. 48, 57-58 (1964)).

<sup>114</sup>*Id.* (evaluating §3486(a) health care offense subpoena authority and referring to standards established in *United States v. Powell*, 379 U.S. 48, 57-58 (1964)).

<sup>115</sup>Order 2486-2001 superceded an earlier order dated April 23, 1997 and issued by former Attorney General Janet Reno. See *United States Attorney's Manual*, 9-44.200. The new delegation order ratified all outstanding administrative subpoenas and any actions taken pursuant to the previous delegation order.

under this authority but issued no such subpoenas during calendar year 2001.

Section 3486 subpoenas have been used to obtain bank/financial institution records, medical records, cost reports, and other documentation typically requested in those investigations. In addition, the use of an administrative subpoena provides a mechanism for information sharing between the FBI, HHS, and other law enforcement agencies as well as the Civil Division of the Department of Justice. Therefore, documents and records obtained under the administrative subpoena can be utilized both in a civil investigation and a criminal investigation stemming from the same fraudulent scheme. Should the statutory authority provided in 18 U.S.C. §3486 be revoked, the use of a grand jury subpoena to obtain the same documents would decrease the opportunity to share information because of the protective provisions of Fed. R. Crim. P. 6(e). Loss of this information sharing capacity would hamper the efforts of the Attorney General to fulfill Congress' intent in providing the authority in HIPAA—to facilitate enforcement of federal statutes related to health care fraud and abuse and thereby improve the "availability and affordability of health insurance in the United States." See H.R.Rep. No. 104-496, at 1, 66-67, reprinted in 1996 U.S.C.C.A.N. at 1869. A grand jury subpoena remains an option in such investigations, however, and is sometimes utilized when confidentiality is important to the development of the case.

Section 3486 authority has been used in notable health care fraud investigations conducted by the FBI to obtain records and documents in major U.S. cities from various entities, such as hospitals, nursing homes and individual practitioners, including medical records, billing records, and cost reports. Through subpoenaed documents, evidence has been found of fraudulent claims and false statements such as "upcoding," which is billing for a higher level of service than that actually provided; double billing for the same visit; billing for services not rendered; and providing unnecessary services.

The incriminating information obtained via an administrative subpoena in these investigations could have been obtained by grand jury subpoena. However, because an administrative subpoena can be obtained more quickly and its use avoids the Fed. R. Crim. P. 6(e) secrecy problems, it is a more flexible investigative tool in health care fraud cases. For example, information obtained by administrative subpoena in such investigations may be used not only for criminal prosecution purposes, but also for negotiating a civil settlement.

As Congress recognized in authorizing subpoena authority for investigations relating to health care fraud and abuse in 18 U.S.C. 3486(a), the Attorney General's ability to combat such fraud and abuse without this subpoena authority would be hampered.

**B. Administrative Subpoena for Investigations Relating to Child Exploitation and Abuse Investigations, 18 U.S.C. 3486(a)(1)(A)(i)(II), (a)(1)(C)**

The use of administrative subpoenas, in lieu of grand jury subpoenas, has enhanced the ability of the FBI to identify online child exploitation offenses in an expeditious manner. Section 3486 created a speedy mechanism to identify electronic communication services or remote computing services. A timely method was needed because the information is extremely perishable. Many private and commercial online service providers maintain records on Internet usage for brief periods of time, sometimes two days or less. Although an investigative agency can obtain grand jury subpoenas from the Attorney's Office in exigent circumstances on an expedited basis, more commonly, the agency's acquisition of grand

even weeks. As a result, the Internet service provider is often no longer able to provide the needed information. authority to the United States Attorneys, the Assistant Attorney General for the Criminal Division, and the FBI has investigative process necessary to obtaining information that identifies subjects and victimized children. In addition, investigative information can be particularly important in cases involving the abuse and exploitation of children. Such is broader when the information is obtained by administrative subpoena, as opposed to by grand jury subpoena, in violation of disclosure of grand jury information under Rule 6 of the Federal Rules of Criminal Procedure.

1. Source and Scope of Subpoena Authority under 18 U.S.C. §3486(a).

The Attorney General or the Attorney General's designee is authorized under 18 U.S.C. §3486(a) to issue administrative subpoenas for a limited category of information in criminal investigations involving pornography, sex abuse and transportation for illegal sexual activity offenses, where the victim was under eighteen years of age. The underlying investigation must relate to an act or activity involving a violation of 18 U.S.C. §§1201, 2241(c), 2242, 2260, 2421, 2422, or 2423, when the victim was a minor who had not attained the age of eighteen years. Section 3486(a) information that a governmental entity may request from a provider of electronic communications service or remote computing service provider receiving a subpoena under section 3486 can be required to disclose only the subscriber or customer's: (1) long distance telephone toll billing records; (2) telephone number or other subscriber identity; (3) length of service; (4) customer or subscriber utilized, which may be relevant to an authorized law enforcement inquiry. 18 U.S.C. §3486(a)(1)(C)(ii). Administrative subpoenas to obtain testimony is limited to requiring a custodian of records to give testimony concerning authentication of such records. 18 U.S.C. §3486(a)(1)(C)(ii). Administrative subpoenas issued under section 3486 require production as soon as possible after service of the subpoena, but not less than twenty-four hours after such issuance. 18 U.S.C. §3486(a)(9).

2. Applicable Subpoena Enforcement Mechanisms

The Attorney General has no authority to enforce an administrative subpoena issued under 18 U.S.C. §3486(a). The Attorney General is permitted to invoke the aid of any court of the United States within the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or compliance with the subpoena. 18 U.S.C. §3486(c). Failure to comply with a court order may be punished by the court as contempt. 18 U.S.C. § 3486(c).

3. Notification Provisions and Other Provisions Related to Safeguarding Privacy Interests

Title 18 U.S.C. 2703(c)(2) provides that a governmental entity receiving records from a provider of electronic communications service pursuant to an administrative subpoena requesting the name, address, local and long distance telephone number or other subscriber number or identity, and length and type of service does not have to provide such information. In addition, 18 U.S.C. §3486(a)(6) allows an entity issuing a subpoena under 3486 authority to obtain an ex parte order preventing the disclosure of the existence of the summons for 90 days if the court finds that: there is reason to believe that disclosure may result in: (1) endangerment to the life or physical safety of any person; (2) flight to avoid prosecution; (3) destruction of or tampering with evidence; or (4) intimidation of potential witnesses. This ex parte order is renewable for additional 90 day period based on a finding that the reasons listed above continue to exist. 18 U.S.C. §3486(a)(6)(B) and (C).

A governmental entity issuing a subpoena request under this section related to child exploitation and abuse investigations is subject to the limitations placed on the production of

evidence pursuant to compulsory process, including, but not limited to: (1) 5 U.S.C. §552a (Privacy Act) (disallowing disclosure without the prior written consent of the person to whom the record pertains, unless permitted by one of twelve exceptions), with regulations found at 28 C.F.R. Part 16, Subpart D; (2) 5 U.S.C. §552(b) (Freedom of Information Act exemptions), Regulations at 28 C.F.R. Part 16, Subpart A; (3) 42 U.S.C. §2000aa-11(a), “Guidelines for Federal officers and employees,” (relevant when documents are in the possession of third parties, Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”)); (4) 20 U.S.C. §1232g(b), Family Educational Rights and Privacy Act of 1974 (FERPA) (the Buckley Amendment). Regulations are found at 34 C.F.R. Part 99. See Subsection II.A.3 *infra* for a further discussion of extrinsic privacy-protective statutes and regulations.

#### 4. Standards Governing the Issuance of Administrative Subpoenas

The Attorney General has delegated the administrative subpoena power to all United States Attorneys, the Assistant Attorney General in charge of the Criminal Division, and the Director of the Federal Bureau of Investigation. See Attorney General Order No. 2421-2001, April 5, 2001. The Attorney General’s order also authorized redelegation to Assistant U.S. Attorneys, Criminal Division trial attorneys, and FBI Special Agents in Charge (SACs), Assistant Special Agents in Charge (ASACs) and Senior Supervisory Resident Agents(SSRA). Pursuant to the Attorney General’s order, the Director of the FBI redelegated his authority to all SACs, ASACs and SSRAs on April 31, 2001.

Other intra-agency guidelines relevant to the issuance of administrative subpoenas under 18 U.S.C. 3486(a) include: (1) Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigation (March 21, 1989); (2) Internal FBI regulations found in the Manual of Investigative Operations and Guidelines (MIOG), Part II, 10-8,2(1); (3) “Access to Transactional Information: Telephone Toll Records, Subscriber Listing Information;” MIOG, Part I, 7-20; and (4) “Administrative Subpoenas in Child Abuse and Child Sexual Exploitation Cases” (publication of section 7-20 is pending revision reflecting amendments to 18 U.S.C. §3486(a) by Pub. L. No. 106-544).

#### 5. Frequency of Use and Usefulness of Administrative Subpoena Authority Pursuant to §3486(a)(1)(A)(i)(I)

During calendar year 2001, the United States Attorneys offices issued seventy-one administrative subpoenas and the FBI issued 1,802 administrative subpoenas under this authority. The Assistant Attorney General in charge of the Criminal Division issued no such subpoenas.

The use of an administrative subpoena is an important tool for the investigation of child pornography/child sexual exploitation investigations. In cases where children are at “high risk” and/or may be in imminent danger, the execution of an administrative subpoena allows immediate requests to be made to the appropriate entity. Furthermore, unlike grand jury material which is protected under Fed. R. Crim. P. 6(e), information gleaned from the service of an administrative subpoena can be shared with other law enforcement entities without delay. Delay could literally mean the difference between life and death for a threatened child. In contrast, the disclosure

limitations placed on investigators using grand jury subpoenas may not allow investigators to share information necessary to the location and apprehension of violent child sexual predators.

The Innocent Images National Initiative is based on a multi-agency, multi-disciplinary approach to investigations. The majority of the investigations concerning child pornography/sex exploitation of children are managed jointly with the assistance of state and local authorities. Without the FBI's ability to issue administrative subpoenas to service providers to obtain information, such as the name, address, local and long distance telephone toll billing records, telephone numbers, and the length and types of services of a particular subscriber or customer, investigations of child abuse/sex exploitation offenses would be significantly hindered and would not be completed as quickly or as successfully.

**C. Secret Service Presidential Threat Protection Authority to Issue Subpoenas where there is an “Imminent” Threat to Secret Service Protectee, 18 U.S.C. §3486 (a)(1)(A)(ii)**

1. Source and Scope of Subpoena Authority under 18 U.S.C. §3486(a)

Section 3486 (a)(1)(A)(ii) authorizes the Secretary of Treasury to issue an administrative subpoena if the Director of the Secret Service determines that a threat against a Secret Service protectee is “imminent.” Such an administrative subpoena may compel: (1) the production of any records or other things relevant to the investigation; and (2) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things. 18 U.S.C. §3486(a)(1)(B). Administrative subpoenas issued under section 3486 may require production as soon as possible after service of the subpoena, but not less than twenty-four hours after such issuance. 18 U.S.C. §3486(a)(10).

2. Applicable Subpoena Enforcement Mechanisms

Subsection (10)(c) authorizes the Attorney General to seek enforcement by requesting an order from the appropriate United States district court requiring a subpoenaed person or entity to appear. Failure to appear may result in a contempt order. 18 U.S.C. §3486 (a)(10)(c). A federal court petitioned to order compliance with an administrative subpoena issued under 18 U.S.C. §3486 (a)(1)(A)(ii) must review the subpoena under the same criterion applicable to all other administrative subpoenas issued by federal agencies in other circumstances.<sup>116</sup>

3. Notification Provisions and Other Provisions Related to Safeguarding Privacy Interests

Subsection (a)(5) permits the recipient of an administrative subpoena to seek to modify the scope of the administrative demand, or modify any a court nondisclosure order acquired by

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<sup>116</sup>These factors include the factors articulated in *United States v. Powell*, 379 U.S. 48, 57-58 (1964). In addition, the court must determine that the subpoena was not issued in “bad faith” or otherwise constituted an “abuse of the court’s process.” *Id.*

the government. 18 U.S.C. §3486 (a)(5). Subpoenas issued under §3486 in the course of investigating an imminent threat against a Secret Service protectee are subject to all other limitations placed on the production of evidence pursuant to compulsory process. See Section II.A.3 *infra* for a further discussion of privacy-protective statutes and regulations applicable to the exercise of administrative subpoena authorities.

In evaluating the scope of an administrative subpoena issued under 18 U.S.C. §3486(a), the federal courts apply the principle formulated by the Supreme Court in Oklahoma Press, generally applicable to executive branch administrative subpoenas, that an administrative subpoena must be “reasonably relevant” to an agency’s investigation at issue.<sup>117</sup> The permissible scope of an administrative subpoena is, however, “variable in relation to the nature, purposes and scope of the inquiry.”<sup>118</sup> In order to satisfy the general reasonableness standard, the agency issuing the subpoena, in this instance the department issuing the subpoena, in this instance the Secretary of the Treasury, must satisfy the court that: (1) “the investigation will be conducted pursuant to a legitimate purpose,” (2) “the inquiry may be relevant to the purpose,” (3) “that the information sought is not already within the Commissioner’s possession,” and (4) “the administrative steps required by the Code have been followed[.]”<sup>119</sup> While the specific “imminent threat” subpoena authority provided under 18 U.S.C. §3486 (a)(1)(A)(ii) has not been exercised by the Department of Treasury, and therefore has not been addressed directly in federal court, the general standard recounted above would presumably apply to an exercise of this authority.

#### 4. Standards Governing the Issuance of Administrative Subpoenas

In order to request issuance of a subpoena by the Secretary of the Treasury under 18 U.S.C. §3486(a)(1)(A)(ii), the Director of the Secret Service must determine that a threat against a Secret Service protectee is “imminent.” The Director of the Secret Service may issue an administrative subpoena under this authority in “an investigation of an imminent threat constituting an offense under 18 U.S.C. § 871 or 879 or an imminent threat against a person protected by the Secret Service under 18 U.S.C. § 3056 (5) or (6).” See Treasury Directive 15-58, November 15, 2001. Upon issuing a subpoena under 18 U.S.C. §3486(a)(1)(A)(ii), the Director of the Secret Service must notify the Attorney General of such issuance. Where a finding of “imminence” is not appropriate, the Secret Service does not seek an administrative subpoena but proceeds, instead, through the process of procuring a grand jury subpoena through a local United States Attorney’s office.

Treasury Directive 15-58 authorizes the Director of the Secret Service to redelegate this authority “in writing, in whole or in part, to the Assistant Director, Office of Protective Research, who may in turn redelegate in writing, in whole or in part, to the Senior Intelligence

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<sup>117</sup>*In re* Administrative Subpoena John Doe, 253 F.3d 256 (6th Cir. 2001).

<sup>118</sup>*Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 209 (1946).

<sup>119</sup>*In re* Administrative Subpoena John Doe, 253 F.3d 256, 263 (6th Cir. 2001) (evaluating §3486(a) health care offense subpoena authority and referring to standards established in *United States v. Powell*, 379 U.S. 48, 57-58 (1964)).

Officer/Special Agent in Charge, Intelligence Division.” Id.

5. Frequency of use and usefulness of administrative subpoena authority pursuant to 18 U.S.C. §3486(a)(1)(A)(ii)

During calendar year 2001, the United States Secret Service (USSS) issued no administrative subpoenas under 18 U.S.C. §3486(a)(1)(A)(ii). On November 15, 2001, the Secretary of Treasury issued Treasury Directive 15-58, properly delegating the authority for issuance of administrative subpoenas to the USSS. While delegation is now complete, the USSS intends to use the authority only sparingly, in accordance with USSS understanding of Congress’ intent upon granting such authority. The authority granted in 18 U.S.C. §3486(a)(1)(A)(ii) is essential to the Secret Service’s protective function, providing expedited investigation procedures in particularly threatening and dangerous situations, particularly where an individual is en route to exercise threats made against the President.

IV. RECOMMENDATIONS REGARDING NECESSARY STEPS TO ENSURE THAT ADMINISTRATIVE SUBPOENAS ARE USED AND ENFORCED CONSISTENTLY AND FAIRLY BY EXECUTIVE BRANCH AGENCIES

The Department of Justice notes that despite inconsistencies in the formulation of the many authorizing statutes, judicial involvement in enforcement ensures a good degree of fairness—especially where enforcement actions must be initiated and coordinated by the Department of Justice. As administrative subpoena authorities are created by separate statutes differing in purpose and content, and no significant or consistent patterns emerge from a study of these authorities, making any recommendations generally applicable to these various authorities would be neither prudent nor practicable. As various agencies participating in the study referred to suggestions regarding authority-specific changes, the Department of Justice looks forward to working with Congress and other agencies in the future to evaluate these potential changes.

**Table 1**

**Frequency Report, 18 U.S.C. §3486 Administrative Subpoenas**

Authority	Issuing Entity	Number of Subpoenas Issued During Calendar Year 2001
18 U.S.C. §3486(a)(1)(A)(I)(1) (Federal Healthcare Offenses)	Attorney General Authority Delegated to United States Attorneys	2,102



18 U.S.C. §3486(a)(1)(A)(I)(1) (Federal Healthcare Offenses)	Attorney General Authority Delegated to Assistant Attorney General for the Criminal Division, United States Department of Justice	0
18 U.S.C. §3486(a)(1)(A)(i)(II) (Federal Offense involving the Sexual Exploitation or Abuse of Children)	Attorney General Authority Delegated to Director, FBI	1,802
18 U.S.C. §3486(a)(1)(A)(i)(II) (Federal Offense involving the Sexual Exploitation or Abuse of Children)	Attorney General Authority Delegated to United States Attorneys	71
18 U.S.C. §3486(a)(1)(A)(i)(II) (Federal Offense involving the Sexual Exploitation or Abuse of Children)	Attorney General Authority Delegated to the Assistant Attorney General of the Criminal Division	0
18 U.S.C. §3486(a)(1)(A)(ii) (Imminent Threat against Secret Service Protectee)	Secretary of the Treasury Authority Delegated to Director of the Secret Service	0



## Appendices A, B, and C

# Accompanying Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

# Appendix A1:

Administrative Subpoena Authorities Held by Agencies  
Other Than the Departments of Justice and Treasury

Accompanying a  
Report to Congress on the  
Use of Administrative Subpoena Authorities  
by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

## Appendix A

### **Administrative Subpoena Authorities Held by Agencies Other Than the Departments of Justice and Treasury** **P.L. 106-544, Section 7(a), Executive Branch Study on Administrative Subpoena Authority,** **Scope and Protections**

† Denotes supplemental entry derived from independent research, not submitted by the relevant agency or department

\* Denotes Administrative Law Judge authority (For purposes of this report, “administrative subpoena” authority has been defined to include all powers, regardless of name, that Congress has granted to federal agencies to make an administrative or civil investigatory demand compelling document production or testimony. Civil compulsory process authorities with provision for judicial enforcement are included. Grand jury subpoenas, administrative law judge subpoenas, and investigative authorities requiring judicial approval are not within the scope of the report; however, descriptions of administrative law judge subpoenas submitted by individual agencies and entities have been included as submitted.)

<i>Name of Submitting Agency or Entity</i>	<i>Source and Common Name of Authority (Including Act Name, P.L. and U.S.C. &amp; CFR cites)</i>	<i>Scope of Authority Description</i>	<i>Enforcement Mechanism Description</i>	<i>Notification Req. and Privacy Protections</i>	<i>Issuance Standards and Qualifiers or Procedures</i>
<b>Appalachian Regional Commission</b>					
<b>Appalachian Regional Commission</b>	IG Act & Amend. P.L. 95-452 P.L. 100-504 5 U.S.C. Appendix 3, Section 4	Administrative subpoena for documentary evidence.	Courts by showing: 1. IG authority 2. Relevant to inquiry 3. Not to indefinite	Privacy Act of 1978 12 U.S.S. Sections 3406-3422	Obtain information from non-government agencies.
<b>Broadcasting Board of Governors</b>	Holds no administrative subpoena authority.				
<b>Chemical Safety</b>					

<p><b>and Hazard Investigation Board (CSB)</b></p>					
<p><b>Chemical Safety and Hazard Investigation Board (CSB)</b></p>	<p>Clean Air Act Amendments of 1990; 42 U.S.C. 7412(r)(6)(L)(i); P.L. 101-549</p>	<p>Authority to require by subpoena attendance and testimony of witnesses and production of evidence as required by the Board to carry out its duties authorized by 42 U.S.C. 7412(r)(6)(C) (investigation of accidental chemical releases, issuance of safety recommendations, and establishment of reporting regulations).</p>	<p>Enforcement proceeding in Federal district court.</p>	<p>Applicable privacy exemptions of the Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974, 5 U.S.C. 552a.</p>	<p>Issuance standard: "reasonableness," as determined by the standards set forth in <u>Oklahoma Press Publ'g Co. v. Walling</u>, 327 U.S. 186 (1946).  Procedures: subpoenas must be issued in accordance with procedures established by an internal Board order.</p>
<p><b>Chemical Safety and Hazard Investigation Board (CSB)</b></p>	<p>Clean Air Act Amendments of 1990; 42 U.S.C. 7412(r)(6)(L)(i); P.L. 101-549</p>	<p>Authority to require by order that any person engaged in the production, processing, handling or storage of extremely hazardous substances submit written reports or responses to questions as required by the Board to</p>	<p>Enforcement proceeding in Federal district court</p>	<p>Applicable privacy exemptions of the Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974, 5 U.S.C. 552a.</p>	<p>Standards and procedures not explicitly provided.</p>

		carry out its duties authorized by 42 U.S.C. 7412(r)(6)(C).			
<b>Chemical Safety and Hazard Investigation Board (CSB)</b>	Clean Air Act Amendments of 1990 42 U.S.C. 7607(a)(1)	<p>The CSB’s enabling statute, 42 U.S.C. 7412(r)(6)(M), also authorizes the Board to use the subpoena authority provided to the Administrator of the EPA by 42 U.S.C. 7607(a)(1)</p> <p>The authority is to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.</p> <p>This subpoena authority is an essential tool in conducting investigations, allowing the Board to obtain the cooperation of, and gather critical information from, witnesses and companies who are often reluctant and at times obstructionist. This authority has been used or cited in several investigations.</p> <p>The authority is to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.</p>	Enforcement proceeding in Federal district court	Applicable privacy exemption of the Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974, 5 U.S.C. 552a.	<p>Issuance standard: “reasonableness,” as determined by the standards set forth in <u>Oklahoma Press Publ’g Co. v. Walling</u>, 327 U.S. 186 (1946).</p> <p>Procedures: subpoenas must be issued in accordance with procedures established by an internal Board order.</p>

<p><b>Commodity Futures Trading Commission</b></p>					
<p><b>Commodity Futures Trading Commission</b></p>	<p>Commodity Exchange Act (“CEA”), Pub. L. No. 93-463, as amended, § 6(c), 7 U.S.C. § 15 (2000); CFTC Rules Relating to Investigations, Part 11, 17 C.F.R. Part 11 (2001).</p>	<p>“For the purpose of securing effective enforcement of [the provisions of the CEA and] for the purpose of any investigation or proceeding under [the CEA] . . . any member of the Commission or any Administrative Law Judge or other officer designated by the Commission . . . may . . . subpoena witnesses, compel their attendance . . . and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.” 7 U.S.C. § 15.</p>	<p>Enforcement action in federal district court. Section 6(c) of the CEA, 7 U.S.C. § 15.</p>	<ol style="list-style-type: none"> <li>1. Privacy Act of 1974, 5 U.S.C. § 552a.</li> <li>2. Records Maintained on Individuals, 17 C.F.R. Part 146 (CFTC’s regulations implementing the Privacy Act).</li> <li>3. Right to Financial Privacy Act, 12 U.S.C. § 3401 <i>et seq.</i></li> <li>4. Electronic Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. § 2701 <i>et seq.</i></li> <li>5. All information and documents obtained during the course of an investigation and all investigative proceedings shall be treated as non-public by the CFTC and its staff except to the extent that (1) the Commission directs or authorizes the public disclosure of the investigation; (2) the information or documents are made a matter of public record during the course of an adjudicatory proceeding; or (3) disclosure is required by</li> </ol>	<ol style="list-style-type: none"> <li>1. The CFTC’s Division of Enforcement (“DOE”) requests that the CFTC issue an “Order of Investigation” delegating its subpoena authority to specifically identified DOE staff members.</li> <li>2. An order of the CFTC authorizing one or more members of the CFTC or of its staff to issue subpoenas in the course of a particular investigation shall include (1) a general description of the scope of the investigation; (2) the authority under which the investigation is being conducted; and (3) a designation of the members of the CFTC or its staff authorized by the CFTC to issue subpoenas. 17 C.F.R. § 11.4.</li> <li>3. DOE Enforcement Procedure No. 6, regarding DOE’s application of the Privacy Act, is a non-statutory procedure.</li> <li>4. DOE also has prepared Compliance manuals to provide guidance and procedures for its staff</li> </ol>

				<p>the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the rules adopted by the CFTC thereunder, 17 C.F.R. Part 145. Procedures by which persons submitting information to the CFTC during the course of an investigation may specifically seek confidential treatment of information for purposes of FOIA disclosure are set forth in 17 C.F.R. § 145.9. A request for confidential treatment of information for purposes of FOIA shall not, however, prevent disclosure for law enforcement purposes or when disclosure is otherwise found appropriate in the public interest and permitted by law. 17 C.F.R. § 11.3.</p>	<p>with respect to both the RFPA and the ECPA.</p>
<p><b>Commodity Futures Trading Commission</b></p>	<p>Commodity Exchange Act (“CEA”), Pub. L. No. 93-463, as amended, § 6(c), 7 U.S.C. § 15 (2000); Part 10 Rules of Practice, 17 C.F.R. Part 10 (2001).</p>	<p>“For the purpose of securing effective enforcement of [the provisions of the CEA and] for the purpose of any investigation or proceeding under the CEA . . . any member of the Commission or any Administrative Law Judge or other officer designated by the Commission . . . may . . . subpoena witnesses, compel their attendance . .</p>	<p>Enforcement action in federal district court. 7 U.S.C. § 15. <i>See also</i> 17 C.F.R. § 10.68(f) (enforcement proceedings).</p>	<ol style="list-style-type: none"> <li>1. Privacy Act of 1974, 5 U.S.C. § 552a.</li> <li>2. Records Maintained on Individuals, 17 C.F.R. Part 146 (CFTC’s regulations implementing the Privacy Act).</li> <li>3. Right to Financial Privacy Act, 12 U.S.C. § 3401 <i>et seq.</i></li> <li>4. Electronic</li> </ol>	<ol style="list-style-type: none"> <li>1. The Part 10 Rules of Practice govern adjudicatory proceedings before the CFTC under the CEA. <i>See</i> 17 C.F.R. § 10.1.</li> <li>2. Administrative law judges and judgment officers preside over adjudicatory proceedings. Presiding officers are authorized to issue administrative subpoenas.</li> </ol>



		<p>. and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.” 7 U.S.C. § 15.</p>		<p>Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. § 2701 <i>et seq.</i></p> <p>5. If a person has requested confidential treatment of information submitted by him or her, either pursuant to rules adopted by the CFTC under FOIA or under Part 11 of the CFTC’s rules, the Division of Enforcement shall notify him or her, if possible, that the information is to be disclosed to parties to the proceeding and he or she may apply to the Administrative Law Judge for an order protecting the information from disclosure, consideration of which shall be governed by 17 C.F.R. § 10.68(c)(2). 17 C.F.R. § 10.42(b)(7).</p>	<p><i>See</i> 17 C.F.R. § 10.8.</p> <p>3. In enforcement proceedings, a subpoena ad testificandum shall be issued upon a showing by the requesting party of the general relevance of the testimony being sought. 17 C.F.R. § 10.68.</p> <p>4. The administrative law judge considering any application for a subpoena duces tecum shall issue the subpoena if he is satisfied the application complies with 17 C.F.R. § 10.68 and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. No detailed or burdensome showing shall be required as a condition to the issuance of any subpoena. 17 C.F.R. § 10.68.</p>
<p><b>Commodity Futures Trading Commission</b></p>	<p>Commodity Exchange Act (“CEA”), Pub. L. No. 93-463, as amended, § 6(c), 7 U.S.C. § 15 (2000); Part 12 Rules Relating to Reparation Proceedings, 17 C.F.R. Part 12 (2001).</p>	<p>“For the purpose of securing effective enforcement of [the provisions of the CEA and] for the purpose of any investigation or proceeding under [the CEA] . . . any member of the Commission or any Administrative Law Judge or other officer designated by the Commission . . . may . . . subpoena witnesses, compel their attendance . .</p>	<p>Enforcement action in federal district court. Section 6(c) of the CEA, 7 U.S.C. § 15. <i>See also</i> 17 C.F.R. § 12.313(f) (reparations proceedings).</p>	<p>1. Privacy Act of 1974, 5 U.S.C. § 552a; Records Maintained on Individuals, 17 C.F.R. Part 146 (CFTC’s regulations implementing the Privacy Act).</p> <p>2. Right to Financial Privacy Act, 12 U.S.C. § 3401 <i>et seq.</i></p> <p>3. Electronic</p>	<p>1. The Part 12 Rules Relating to Reparation Proceedings are the rules of practice applicable to reparations applications filed pursuant to Section 14 of the CEA, 7 U.S.C. § 18. <i>See</i> 17 C.F.R. Part 12.</p> <p>2. Administrative law judges and judgment officers preside over reparations proceedings</p>

		<p>. and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.” 7 U.S.C. § 15.</p>		<p>Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. § 2701 <i>et seq.</i></p> <p>4. If any party or person against whom an order to produce has been directed acting in good faith has reason to believe that any documents or other tangible thing ordered to be produced contains a trade secret, or commercially sensitive or other confidential information, the party or person may, in lieu of serving any such document, file and serve a written request for confidential treatment of such documents. 17 C.F.R. § 12.34. 1</p>	<p>and are authorized to issue administrative subpoenas. 17 C.F.R. §§ 12.34, 12.36, 12.101, 12.201, 12.209, 12.304, 12.313.</p> <p>3. In reparations proceedings, an administrative law judge considering any application for a subpoena “shall issue the subpoena if he is satisfied the application complies with this rule and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. In the event the Administrative Law Judge determines that a requested subpoena is unreasonable, oppressive, excessive in scope or unduly burdensome, he may refuse to issue the subpoena, or may issue it only upon such conditions as he determines fairness requires.” 17 C.F.R. § 12.313(a).</p>
<p><b>Commodity Futures Trading Commission</b></p>	<p>Commodity Exchange Act (“CEA”), Pub. L. No. 93-463, as amended, §§ 6(c) and 12(f), 7 U.S.C. § 15, 16(f) (2000).</p>	<p>“[F]or the purpose of . . . any action taken under section 16(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission . . . may . . . subpoena</p>	<p>Enforcement action in federal district court. Section 6(c) of the CEA, 7 U.S.C. § 15.</p>	<p>1. Privacy Act of 1974, 5 U.S.C. § 552a; Records Maintained on Individuals, 17 C.F.R. Part 146 (CFTC’s regulations implementing the Privacy Act).</p> <p>2. Right to Financial</p>	<p>1. Section 6(c) of the CEA authorizes the CFTC to issue administrative subpoenas “for the purpose of any action taken under section 12(f).” 7 U.S.C. § 15.</p> <p>2. Section 12(f) of the</p>

		<p>witnesses, compel their attendance . . . and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.” 7 U.S.C. § 15.</p>		<p>Privacy Act, 12 U.S.C. § 3401 <i>et seq.</i></p> <p>3. Electronic Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. § 2701 <i>et seq.</i></p>	<p>CEA authorizes the CFTC, in its discretion and “[o]n request from a foreign futures authority” to provide assistance in accordance with this section if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The CFTC may conduct such investigation as the CFTC deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. 7 U.S.C. § 16(f).</p> <p>3. In deciding whether to provide assistance to a foreign futures authority, the CFTC shall consider whether “(A) the requesting authority has agreed to provide reciprocal assistance to the [CFTC] in futures and options matters; and (B)</p>
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					compliance with the request would prejudice the public interest of the United States.” 7 U.S.C. § 16(f)(2).
<b>Commodity Futures Trading Commission</b>	Inspector General Act of 1978, as amended, Pub. L. 95-452, 5 U.S.C. app 3, § 6(a)(4) (2000).	Production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence (regardless of medium) necessary for the performance of the functions assigned under the Inspector General Act (essentially a subpoena duces tecum).	In case of refusal to obey, enforcement is obtained by order of any appropriate U.S. district court.	<ol style="list-style-type: none"> <li>1. Privacy Act of 1974, 5 U.S.C. § 552a.</li> <li>2. Records Maintained on Individuals, 17 C.F.R. Part 146 (CFTC’s regulations implementing the Privacy Act).</li> <li>3. Right to Financial Privacy Act (“RFPA”), 12 U.S.C. §§ 3401 <i>et seq.</i> Notification requirements of ten days from the date of service or fourteen days from the date of mailing of notice apply when records at a financial institution are sought of customers covered by the RFPA. Customers have a right to challenge in an appropriate U.S. district court during the notice period.</li> <li>4. Electronic Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. § 2701 <i>et seq.</i></li> </ol>	There are not specific issuance standards, qualifiers or procedures in connection with the issuance of administrative subpoenas by the Inspector General.
<b>Commodity Futures Trading Commission</b>	Commodity Exchange Act (“CEA”), Pub. L. No. 93-463, as amended, § 2(h), 7 U.S.C. § 2(h) (2000).	The CFTC, or persons by or on behalf of the CFTC, are authorized to issue administrative subpoenas to any foreign person who the CFTC believes is	If the CFTC has reason to believe that a person has not timely complied with a subpoena issued by or on behalf of the CFTC pursuant to 7	The recipient of a subpoena must “promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner	This administrative subpoena authority was recently provided in the Commodity Futures Modernization Act of 2000, Pub. L. No. 106-

		conducting or has conducted transactions in reliance on the exemption set forth in 7 U.S.C. § 2(h)(3) (2000) on or through the electronic trading facility relating to the transactions. 7 U.S.C. § 2(h)(5)(C)(i).	U.S.C. § 2(h)(5)(C)(i), and the CFTC has in writing directed that a facility relying on the exemption set forth in 7 U.S.C. § 2(h)(3) deny or limit further transactions by the person, the facility shall deny that person further trading access to the facility or, as applicable, limit that person's access to the facility for liquidation trading only. 7 U.S.C. § 2(h)(5)(C)(ii).	reasonable under the circumstances, or as specified by the CFTC.” 7 U.S.C. § 2(h)(5)(C)(i).	554, App. E, § 106, 114 Stat. 2763A-379 (Dec. 21, 2000) (codified at 7 U.S.C. § 2(h)). The CFTC has not yet issued standards, qualifiers or procedures concerning this authority.
<b>Consumer Product Safety Commission</b>					
<b>Consumer Product Safety Commission</b>	Consumer Product Safety Act, 15 U.S.C. §§2076(b)(1), (3) and (4), P.L. 92-573 (1973); 16 C.F.R. §§1118.4, .8, and .9.	“Any person”  “To carry out a specific regulatory or enforcement function of the Commission”  “Documentary evidence relating to the execution of [the Commission’s] duties”	Commission may seek subpoena enforcement in federal court.		The Commission may delegate any of its functions EXCEPT the subpoena power of 15 U.S.C. §2076(b)(3) [see §2076(b)(9)] to any officer or employee of the Commission.
<b>Corporation for National and Community Service</b>					
<b>Corporation for National and Community Service</b>	The Inspector General Act of 1978, Pub. L. 95-452, 5 U.S.C. App §§ 3-8.	Section 6(a)(4) of the Inspector General Act authorizes an Office of Inspector General “to	With respect to subpoenas under the Inspector General Act, if the person does not	With respect to the Inspector General Act, a person is permitted ten days from receipt, or	An Inspector General subpoena must be 1) issued for a lawful purpose within the

		require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act.” 5 U.S.C. § 5 U.S.C. App § 6(a)(4).	respond to the subpoena, or file a motion to quash it, OIG requests the U.S. Department of Justice to file a Petition for Enforcement of Subpoena in the appropriate Federal district court.	fourteen days from the mailing of the notice of subpoena, to comply with the demand, or file a motion to quash it, in the appropriate Federal district court.	statutory authority of the Inspector General’s Act, 2) reasonably relevant to that purpose, and 3) not unduly burdensome. <u>See Burlington Northern R.R. Co. v. Office of Inspector General, R.R. Retirement Board</u> , 983 F. 2d 631, 637 (5 <sup>th</sup> Cir. 1993).
<b>Corporation for National and Community Service</b>	The Right to Financial Privacy Act of 1978, Pub. L. 95-630, 12 U.S.C. §§ 3401-3433.	Section 3405 of the Right to Financial Privacy Act states that a “government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpoena or summons otherwise authorized by law.” 12 U.S.C. § 3405.	With respect to the Right to Financial Privacy Act, if the data subject of the records fails to respond, or files a motion to quash, then the responsible financial institution must deliver that person's financial records to OIG after OIG presents a Certificate of Compliance with the Right to Financial Privacy Act to the appropriate records custodian.	With respect to the Right to Financial Privacy Act, a person is permitted ten days from receipt, or fourteen days from the mailing of the notice of subpoena, to file a motion to quash it in the appropriate Federal district court. A Privacy Act Notice is included with the subpoena, pursuant to subsection (e)(3) of the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3).	An Inspector General subpoena must be 1) issued for a lawful purpose within the statutory authority of the Inspector General’s Act, 2) reasonably relevant to that purpose, and 3) not unduly burdensome. <u>See Burlington Northern R.R. Co. v. Office of Inspector General, R.R. Retirement Board</u> , 983 F. 2d 631, 637 (5 <sup>th</sup> Cir. 1993).
<b>Court Services and Offender Supervision Agency</b>	Holds no administrative subpoena authority.				

<b>Defense Nuclear Facilities Safety Board</b>					
<b>Defense Nuclear Facilities Safety Board</b>	42 U.S.C. §2286b(a), National Defense Authorization Act, Fiscal Year 1989, P.L. No. 100-456. Sept. 29, 1988.	Compel testimony of witnesses at hearings.	Federal court in the district of the hearing or the district where the person resides or transacts business.	Personal service	Subpoenas may be issued only by the Chairman of the Board or by a Board member designated by the Chairman.
<b>Department of Defense</b>	Holds no administrative subpoena authority, excluding Inspector General authority.  (Subpoena authority is available in court martial proceedings, however).				
<b>Defense Contract Audit Agency</b> (under the Authority, Direction, and Control of the Undersecretary of Defense—Comptroller)†	10 U.S.C. §2313(b) DCAA subpoena authority.--(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (a).  Subsection (a): “(a) Agency authority.--(1) The head of an agency, acting through an authorized representative, is	(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.  10 U.S.C. §2313(b)(2).	(3) The authority provided by paragraph (1) may not be redelegated.  10 U.S.C. §2313(b)(3).		

	<p>authorized to inspect the plant and audit the records of--</p> <p>(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and</p> <p>(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).</p> <p>(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to--</p> <p>(A) the proposal for the contract or subcontract;</p>				
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	<p>(B) the discussions conducted on the proposal;</p> <p>(C) pricing of the contract or subcontract;</p> <p>or</p> <p>(D) performance of the contract or subcontract.”</p> <p>10 U.S.C. §2313(b).</p>				
<b>Department of the Air Force</b>	Holds no administrative subpoena authority.				
<b>Department of the Army</b>	Holds no administrative subpoena authority.				
<b>Department of Agriculture</b>					
<b>US Department of Agriculture*</b>  USDA/OGC Food and Nutrition Division	Section 14(a)(7) of the Food Stamp Act of 1977, 7 U.S.C. 2023(a)(7), regulations set forth under 7 C.F.R. § 283.13	The Administrative Law Judge (ALJ) presiding over Food Stamp Program Quality Control Claim Appeals has subpoena authority as provided to him by section 13(c) and (d) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499m(c) and (d)).	In case of disobedience to a subpoena, the Secretary or any of her examiners may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of accounts, records, and memoranda. Any district court of the United States within the jurisdiction of which any hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an	When the ALJ issues a subpoena under the Food Stamp Act, the party who requested the subpoena shall serve all other parties with a copy of the subpoena, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.	Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

			order requiring the person to appear before the Secretary or her examiner or to produce accounts, records, and memoranda if so ordered, or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.		
<b>US Department of Agriculture</b>  OGC General Law Division	Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 C.F.R. § 1.144, authorized by 5 U.S.C. 301	These regulations give an ALJ, appointed under 5 U.S.C. 3105, the authority to issue subpoenas as authorized by the statute under which a formal adjudicatory proceeding is conducted.	Enforcement authority, if any, is provided for by the specific statutes under which the subpoena is issued.	Notification requirements and privacy protections, if any, are provided for by the specific statutes under which the subpoena is issued.	Issuance standards, if any, are provided for by the specific statutes under which the subpoena is issued.
<b>US Department of Agriculture</b>  OGC General Law Division	Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act (PFCRA) of 1986, 7 C.F.R. §§ 1.304, 1.319, 1.322, 1.323, 1.328, authorized by 31 U.S.C. 3804(a).	7 C.F.R. § 1.304, authorizes an investigating official, who is investigating an individual's liability under 7 C.F.R. § 1.303 (dealing with false statements, etc.), to issue a subpoena.  7 C.F.R. §§ 1.319, 1.322, 1.323, 1.328 authorizes an ALJ conducting a hearing under the PFCRA to issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or hearings	An ALJ may sanction a person, including any party or representative for failing to comply with a lawful subpoena. Sanctions include: drawing an inference in favor of the requesting party with regard to the information sought; in the case of requests for admission, deem admitted each item as to which an admission is requested; prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the	When an ALJ issues a subpoena under the PFCRA, the party who requested the subpoena must serve all other parties with notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.	A subpoena issued under 7 C.F.R. § 1.304 must notify the person to whom it is addressed of the authority under which it is issued and shall identify the information, documents, reports, answers, records, accounts, papers, or data sought. The investigating official may designate a person to act on his behalf to receive the documents or other materials sought by a subpoena issued.  For a subpoena to be issued by an ALJ, the party requesting the subpoena must submit a

			information sought; strike any part of the pleadings or other submissions of the party failing to comply with such requests; or request the Attorney General petition an appropriate district court for an order to enforce a subpoena.		written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown.
<b>US Department of Agriculture*</b>  OGC General Law Division	Rules of Procedure for the USDA Board of Contract Appeals, 7 C.F.R. §§ 24.3, Pt. 24, Subpt. B, App., authorized by 5 U.S.C. 304.	An Administrative Law Judge hearing an appeal pursuant to the Contract Disputes Act (CDA) of 1978 (41 U.S.C. 601-613), may issue a subpoena requiring testimony at a deposition, testimony at a hearing, and production of books and papers.  For non-CDA appeals the Chair of the Board has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.	In the case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of the United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board. A failure to obey such an order is punishable by a contempt order.		In issuing the subpoena to a requesting party, the ALJ shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness or otherwise leave it blank.
<b>US Department of Agriculture</b>  OGC General Law Division	Rules of Procedure governing the National Appeals Division (NAD), 7 U.S.C. 6997, 7 C.F.R. § 11.8, authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994.	The Director of NAD and Hearing Officers have the authority to issue subpoenas compelling the attendance of witnesses and production of evidence.	If a person refuses to obey a subpoena, the Director, acting through the Office of the General Counsel of the USDA and the Department of Justice, may apply to the United States District Court in the jurisdiction where the person resides to have the subpoena enforced.		A Hearing Officer must obtain the concurrence of the Director prior to issuing a subpoena. A subpoena shall be issued for documents only if the Director or Hearing Officer determine that the appellant or the agency has established that production of documentary evidence is

					necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division. A subpoena shall be issued for appearance of a witness only if the Director or Hearing Officer determines that the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>Animal and Plant Health Inspection Service (APHIS)</p> <p>The Horse Protection Act, 15 U.S.C. 1821-1831, (Section 6(d)(1) (15 U.S.C. 1825))</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents relating to any matter under investigation or the subject of a proceedings.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>

<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>APHIS</p> <p>The Animal Welfare Act, 7 U.S.C. 2131-2159, (Section 16(c), 7 U.S.C. 2146(c)).</p>	<p>Incorporates Section 9 of the Federal Trade Commission Act (15 U.S.C. 48) which authorizes the Secretary to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation or at any designated place of hearing.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During in vestigation s or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>Grain Inspection packers and Stockyards Administration (GIPSA)</p> <p>The United States Grain Standards Act, 7 U.S.C. 71-<u>et seq.</u>, (Section 17, 7 U.S.C. 87f.)</p>	<p>The Administrator may require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation or at any designated place of hearing.</p>	<p>The Administrator may invoke the aid of the U.S. District Courts, the District Court Of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of other territories and possessions of the United States to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During in vestigation s or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>Agricultural Marketing Service (AMS)</p> <p>Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601-670, 7 U.S.C. 610(h).</p>	<p>This section adopts sections 48, 49 and 50 of Title 15 (Federal Trade Commission Act) which may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of the subpoena is required.</p>	<p>During in vestigation s or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p>	<p>AMS Commodity Promotion, Research and Information Act of 1996,</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce</p>	<p>Service of a subpoena is required.</p>	<p>During in vestigation s or administrative proceedings.</p>

OGC Marketing Division	7 U.S.C. 7411-7425, 7 U.S.C. 7420.	documents relating to any matter under investigation or the subject of a proceeding.	subpoenas.		
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Cotton Research and Promotion Act, 7 U.S.C. 2101-2118, 7 U.S.C. 2115.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Dairy Production Stabilization Act of 1983, 7 U.S.C. 4501-4513, 7 U.S.C. 4511.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Fluid Milk Promotion Act of 1990, 7 U.S.C. 6401-6417, 7 U.S.C. 6412.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Federal Seed Act, 7 U.S.C. 1551-1611, 7 U.S.C. 1603.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding. The Secretary may also require access to office and warehouse premises.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.

<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Egg Products Inspection Act, 21 U.S.C. 1031-1056, 21 U.S.C. 1051.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Egg Research and Consumer Information Act, 7 U.S.C. 2701-2718, 7 U.S.C.2717.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Floral Research and Consumer Information Act 7 U.S.C. 4301-4319, 7 U.S.C. 4317.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, 7 U.S.C. 6801-6814, 7 U.S.C. 6809.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Honey Research, Promotion and Consumer Information Act, 7 U.S.C. 4601-4612, 7 U.S.C. 4610a.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>

<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Lime Research, Promotion and Consumer Information Act of 1990, 7 U.S.C. 6201-6212, 7 U.S.C. 6208.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Mushroom Promotion, Research and Consumer Information Act of 1990, 7 U.S.C. 6101-6112, 7 U.S.C. 6108.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS National Kiwifruit Research, Promotion and Information Act, 7 U.S.C. 7461-7473, 7 U.S.C. 7469.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC Marketing Division</p>	<p>AMS Pecan Promotion and Research Act of 1990, 7 U.S.C. 6001-6013, 7 U.S.C. 6010.</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>
<p><b>US Department of Agriculture</b></p> <p>OGC</p>	<p>AMS Popcorn Promotion, Research and Consumer Information Act,</p>	<p>The Secretary may require by subpoena the attendance and testimony of witnesses and the production of</p>	<p>The Secretary may invoke the aid of the appropriate U.S. District Court to enforce</p>	<p>Service of a subpoena is required.</p>	<p>During investigations or administrative proceedings.</p>



Marketing Division	7 U.S.C. 7481-7491, 7 U.S.C. 7488.	documents relating to any matter under investigation or the subject of a proceeding.	subpoenas.		
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Potato Research and Promotion Act, 7 U.S.C. 2612-2627, 7 U.S.C. 2622.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Watermelon Research and Promotion Act, 7 U.S.C. 4901-4916, 7 U.S.C. 4911.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Beef Research and Information Act, 7 U.S.C. 2901-2911, 7 U.S.C. 2902.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Canola and Rapeseed Research, Promotion and Consumer Information Act, 7 U.S.C. 7441-7452, 7 U.S.C. 7449.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>	AMS Pork Promotion, Research and Consumer	The Secretary may require by subpoena the attendance and testimony of witnesses	The Secretary may invoke the aid of the appropriate U.S. District	Service of a subpoena is required.	During investigations or administrative proceedings.

OGC Marketing Division	Information Act of 1985, 7 U.S.C. 4801-4819, 7 U.S.C. 4816.	and the production of documents relating to any matter under investigation or the subject of a proceeding.	Court to enforce subpoenas.		
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Sheep Promotion, Research and Information Act of 1994, 7 U.S.C. 7101-7111, 7 U.S.C. 7108.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Soybean Promotion, Research and Consumer Information Act, 7 U.S.C. 6301-6311, 7 U.S.C. 6308.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Wheat and Wheat Foods Research Nutrition and Education Act, 7 U.S.C. 3401-3417, 7 U.S.C. 3412.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.
<b>US Department of Agriculture</b>  OGC Marketing Division	AMS Tobacco Inspection Act, 7 U.S.C. 511-511q, 7 U.S.C. 511n.	The Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation or the subject of a proceeding.	The Secretary may invoke the aid of the appropriate U.S. District Court to enforce subpoenas.	Service of a subpoena is required.	During investigations or administrative proceedings.

<p><b>US Department of Agriculture</b></p> <p>OGC Pollution Control</p>	<p>Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604(e), as delegated by Section 2(j) of Executive Order No. 12580 (52 Fed. Reg. 2923, Jan. 29, 1987).</p> <p>In Executive Order 12580, the President delegated to the Secretary of Agriculture the authority under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604(e), to make an administrative investigatory demand compelling the production of documents and information relating to releases and threatened releases of hazardous substances on lands within USDA jurisdiction, custody and control.</p>	<p>Authority to require any person to furnish information or documents relating to: (a) the identification, nature, and quantity of hazardous substances generated, treated, stored, or disposed of at a site; (b) the nature or extent of a release or threatened release of hazardous substances at a site; or (c) information relating to the ability of a responsible party to pay for or to perform a cleanup. This authority may be exercised only for purposes of determining the need for response action, or choosing or taking any response action under CERCLA.</p>	<p>With respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility under USDA jurisdiction, custody, or control, the Secretary may issue, with the concurrence of the Attorney General, an administrative order directing compliance with the request. USDA may ask the Attorney General to file a civil action to compel compliance with a request or order issued under Section 104(e). The Court may assess civil penalties of up to \$25,000 for each day of continued noncompliance.</p>	<p>A CERCLA Section 104(e) information request may be issued upon reasonable notice. USDA's Section 104(e) information request require recipients to respond within 30 days, or adequately justify the need for additional time to respond. An administrative compliance order under Section 104(e)(5)(A), may be issued "after such notice and opportunity for consultation as is reasonably appropriate under the circumstances."</p> <p>Any records, reports, or information obtained from any person under Section 104(e) are available to the public, except upon a showing that the information is protected from disclosure under the Trade Secrets Act, 18 U.S.C. § 1905. In the event that USDA receives a Freedom of Information Act request for information which has been designated as business confidential, USDA will handle the request in accordance with the procedures in 40 C.F.R. Part 2 and 7 C.F.R. § 1.11. Information provided to USDA by an individual in response to a CERCLA Section 104(e)</p>	<p>USDA standards and policy for the issuance of CERCLA Section 104(e) information requests is contained in the USDA Potentially Responsible Party (PRP) Search Guide (June 2001). The Search Guide provides that CERCLA Section 104(e) information requests should be tailored to site specific needs and to the particular recipient of the request. USDA CERCLA Section 104(e) information request letters should be prepared with the assistance of the Office of the General Counsel (OGC). OGC should also be consulted in reviewing responses to CERCLA Section 104(e) requests and in the preparation of any follow-up Section 104(e) requests.</p> <p>The USDA PRP Search Guide states that, as a general rule, requests for financial information should not be included in the initial request letter. A request for financial information is normally only appropriate once the potential liability of a party has been established. A PRP should be asked that if the PRP believes she, he, or it has an inability to pay its share of the cleanup costs,</p>
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				information request may also be protected from public disclosure under the Privacy Act, 5 U.S.C. § 552a.	the PRP should contact the agency. The agency should then send appropriate financial questions to the PRP for purposes of making the ability to pay determination. Financial information necessary to determine a PRP's financial ability to perform cleanup work may also be requested, when appropriate.
<p><b>US Department of Agriculture*</b></p> <p>OGC Regulatory Division</p>	<ul style="list-style-type: none"> <li>• Poultry Products Inspection Act, P.L. 90-492, 21 U.S.C. 451</li> <li>• Federal Meat Inspection Act, P.L. 90-201, 21 U.S.C. 601</li> <li>• Egg Products Inspection Act, P.L. 91-597, 21 U.S.C. 1031</li> <li>• 7 C.F.R. 1.29</li> </ul>	<p>Administrative subpoena authority is provided by the provisions of the Federal Trade Commission Act in 15 U.S.C. 46, 48, 49, 50, incorporated by reference into these 3 statutes.</p> <ul style="list-style-type: none"> <li>• PPIA incorporation is found in 21 U.S.C. 467d.</li> <li>• FMIA incorporation is found in 21 U.S.C. 677.</li> <li>• EPIA incorporation is found in 21 U.S.C. 1051.</li> </ul>	<p>Administrative subpoenas for testimony and production of documents are issued by USDA Administrative Law Judges at the request of any party to an administrative proceeding brought to enforce the statutes.</p> <p>Investigative subpoenas are issued by the Secretary's delegatee, the Administrator of the Food Safety and Inspection Service.</p> <p>If a subpoena is not honored, the General Counsel can seek judicial enforcement of that subpoena by the Department of Justice in a Federal district court.</p>	<p>The Food Safety and Inspection Service will first seek document production or testimony on a voluntary basis.</p> <p>If the requested documents or testimony are not provided on a voluntary basis, a subpoena will be issued to compel their production.</p> <p>The Privacy Act and the Trade Secrets Act provisions and prohibitions are applicable to the exercise of subpoena authorities.</p>	<p>The Secretary's delegatee, the Administrator of the Food Safety and Inspection Service, makes the initial decision to issue an administrative investigative subpoena. The General Counsel must concur in the issuance of the subpoena.</p> <p>An administrative subpoena will be issued by USDA Administrative Law Judges in administrative proceedings upon a reasonable showing by the applicant of the grounds and necessity thereof; and with respect to subpoenas for the production of documents, the request shall show their competency, relevancy and materiality. See 7 C.F.R 1.149.</p>

<p><b>US Department of Agriculture*</b></p> <p>OGC Regulatory Division</p>	<ul style="list-style-type: none"> <li>• Plant Protection Act, P.L., 106-224, 7 U.S.C 7733.</li> <li>• Title V of the Agricultural Risk Protection Act of 2000. P.L. 106-224, 7 U.S.C. 2279f.</li> <li>• 7 C.F.R. 1.29</li> </ul>	<p>Administrative subpoena authority relating to the administration or enforcement of the Acts and any matter under investigation in connection with the Acts.</p>	<p>Administrative subpoenas for testimony and production of documents are issued by USDA Administrative Law Judges at the request of any party to an administrative proceeding brought to enforce the statutes.</p> <p>Investigative subpoenas are issued by the Secretary's delegatee, the Administrator of the Animal and Plant Health Service.</p> <p>If a subpoena is not honored, the General Counsel can seek judicial enforcement of that subpoena by the Department of Justice in a Federal district court.</p>	<p>The Animal and Plant Health Inspection Service will first seek document production or testimony on a voluntary basis.</p> <p>If the requested documents or testimony are not provided on a voluntary basis, a subpoena will be issued to compel their production.</p> <p>The Privacy Act and the Trade Secrets Act provisions and prohibitions are applicable to the exercise of subpoena authorities.</p>	<p>The Secretary's delegatee, the Administrator of the Animal and Plant Health Inspection Service, makes the initial decision to issue an administrative investigative subpoena. The General Counsel must concur in the issuance of the subpoena.</p> <p>An administrative subpoena will be issued by USDA Administrative Law Judges in administrative proceedings upon a reasonable showing by the applicant of the grounds and necessity thereof; and with respect to subpoenas for the production of documents, the request shall show their competency, relevancy and materiality. See 7 C.F.R. 1.149.</p>
<p><b>US Department of Agriculture</b></p> <p>Packers and Stockyards Programs of Grain Inspection &amp; Packers and Stockyards Administration.</p> <p>Trade Practices Division</p>	<p>Packers &amp; Stockyards Act, 7 U.S.C. 222, incorporating sections 6 and 9 of the Fed'l Trade Comm'n Act (15 U.S.C. 46 and 49), as approved September 26, 1914.</p>	<p>Packers, stockyards, dealers, market agencies; and those with whom it does business. Investigatory subpoenas issue pursuant to section 9 of FTC Act [15 U.S.C. 49] - access to and right to copy documents of entity being investigated for violation of Act. Section 6 [15 U.S.C. 46]- to gather and compile information re: business, organization</p>	<p>Section 9 of FTC Act - Enforcement in any court in US for hearing subpoenas. Investigatory subpoenas enforced in district court. Both handled by local AUSA Office.</p>	<p>No notification req'ts except those specific to Right to Financial Privacy Act). Forthwith demand issued when circumstances warrant.</p>	<p>Must have statutory jurisdiction over person and activity under investigation or being proceeded against, which is basis for authority to subpoena records in possession of unregulated entities. Reviewed for legal sufficiency by OGC. Investigatory subpoenas issued by agency Adm'r and served by agency investigator. Hearing</p>

		and conduct. Section 9-hearing subpoenas for attendance, testimony and documents; from anywhere in US to place of hearing.			subpoenas for witnesses sought by OGC attorney, issued by ALJ, served by OGC attorney.
<p><b>US Department of Agriculture</b></p> <p>Packers and Stockyards Programs of Grain Inspection &amp; Packers and Stockyards Administration.</p> <p>Trade Practices Division</p>	<p>Perishable Agricultural Commodities Act, 7 U.S.C. 499m (section 13)</p> <p>7 DFR 47.11 - Hearing and deposition subpoenas and subpoenas duces tecum.</p>	<p>Commission merchants, dealers and brokers; financial institutions. Investigatory subpoenas issue pursuant to section 13(a)- violation of section 2 or other sections of Act, e.g., section 6(c)[7 U.S.C. 499f(c)] - complaints or notifications of violation; section 9[7 U.S.C. 499i] - maintaining records. Deposition subpoenas issue pursuant to section 13(e)- appear, depose and produce records in any proceeding (including reparation) or investigations. Hearing subpoenas issue pursuant to Sec. 13(c) - Attendance, testimony and production of documents (ALJ).</p>	<p>Section 13(d)[7 U.S.C. 499m(d)] -investigatory subpoenas enforced in any court in US; hearing subpoenas are enforced in district court where hearing held. Both handled by local AUSA Office.</p>	<p>No notification requirements; time usually provided to amass required records. Notification requirements specific to Right to Financial Privacy Act (Pub. L. 95-630) when seeking financial records of individual.</p>	<p>Must have statutory jurisdiction over person and activity under investigation or being proceeded against, which is basis for authority to subpoena records in possession of financial institutions. Subpoena requests are reviewed for legal sufficiency by OGC. Investigatory subpoenas are issued by agency Administrator. Served by agency investigator. Hearing subpoenas for witnesses sought by OGC attorney, issued by ALJ, served by OGC attorney. Subpoenas and subpoenas duces tecum in reparation cases sought by att’y, issued by OGC Presiding Officer, served by att’y. Standards for issuance at 7 CFR 47.17.</p>
<p><b>US Department of Agriculture</b></p> <p>Office of Inspector General</p>	<p>Inspector General Act, 5 U.S.C.A. app. 3 § 6(a)(4) (West 1996 &amp; Supp. 2001), Pub. L. No. 95-42, 92 Stat. 1101 (1978).</p>	<p>OIG-USDA is authorized to "require [by subpoena] the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the</p>	<p>In case of a "refusal to obey", OIG may seek the enforcement of a subpoena in any appropriate United States district court. 5 U.S.C. app. 3 § 6(a)(4).</p>	<p>Privacy: OIG-USDA internal procedures require that special agents and auditors maintain all subpoenaed documents "securely" within OIG-USDA case/audit files. See IG-8551 § C1f (1)</p>	<p>Standards: OIG subpoena authority is limited to "evidence necessary in the performance of the function assigned by this Act [IG Act]." 5 U.S.C. app. 3 § 6(a)(4). OIG</p>

		<p>performance of the functions assigned by the IG Act." 5 U.S.C.A. app. 3 § 6(a)(4). OIG-USDA, in general, is authorized to issue subpoenas under 7 C.F.R. § 2610.1.</p>		<p>(Legal Procedures and Aspects).</p> <p>OIG-USDA internal procedures and the Privacy Act prohibit OIG-USDA from disclosure of "personally identifiable records" under certain circumstances. <u>See</u> 5 U.S.C.A. § 552a(a), <i>et seq.</i>; <u>see also</u> IG-1421 (Personal Privacy Information). OIG-USDA internal procedures require that any original subpoenaed document be returned to the subpoena addressee. <u>See</u> IG-8551 § C1f(3) (Legal Procedures and Aspects).</p> <p>Notification Requirements: OIG-USDA internal procedures and the Right to Financial Privacy Act ("RFPA") require OIG-USDA to provide notice of RFPA subpoenas to a customer with a copy of the subpoena. <u>See</u> 12 U.S.C.A. § 3401, <i>et seq.</i>; <u>see also</u> IG-1421Hc(2)(a) (Information Services").</p>	<p>should obtain information from other Federal agencies by means other than subpoenas. 5 U.S.C.A. app. 3 § 6(a)(4). OIG-USDA internal procedures and the RFPA prohibit release of records without certification of RFPA compliance. <u>See</u> 12 U.S.C.A. § 3403(b); <u>see also</u> IG-1427 (C)(4) (Information Services).</p> <p>Procedures: -OIG-USDA internal procedures require that subpoenas be reviewed by OIG management and Legal Staff. <u>See</u> IG-8551 (C2-C5) (OIG Subpoenas). OIG-USDA internal procedures restrict transfer of RFPA records except in accord with the RFPA. <u>See</u> IG-8611 (C7(c)(1)) (Investigative Reports). OIG-USDA internal procedures require retention of audit work papers, some of which may include documents obtained by subpoena. <u>See</u> IG-7215 (The Audit Process: General Requirements - Working Papers).</p>
<p><b>US Department of Agriculture</b></p> <p>Regulatory authority for issuing administrative</p>	<p>Rules of practice governing proceeding on petitions to modify or to be exempted from compact over-order price regulations promulgated</p>	<p>The hearing panel may compel production of documentary evidence, appearance of witnesses, or the giving of testimony by subpoena throughout all</p>			

subpoenas that could not be ascribed to a particular division within the USDA.	by the Northeast Dairy Compact Commission, 7 C.F.R. § 1381.4, authorized by 7 U.S.C. 7256.	signatory states pursuant to section 16(a) of the Compact.			
<b>US Department of Agriculture</b>  Regulatory authority for issuing administrative subpoenas that could not be ascribed to a particular division within the USDA.	Agricultural, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, Hass Avocado Promotion, Research, and Information, 7 U.S.C. § 7808	In a hearing to determine if the Hass Avocado Act has been violated the presiding officer may subpoena witnesses.	In the case of contumacy by, or refusal to obey a subpoena issued under the Act, any person, the Secretary of Agriculture may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is conducted, or where the person resides or conducts business, in order to enforce a subpoena. Any failure to obey the order of the court may be punished by the court as a contempt of the court.		
<b>Department of Agriculture</b> †	7 U.S.C. §1446	Price support investigations			
<b>Department of Commerce</b>					
<b>US Department of Commerce*</b>  <b>National Oceanic And Atmospheric Administration (NOAA)</b>  Enforcement and Litigation	Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)  16 U.S.C. § 1801 <i>et seq.</i>	The MSFCMA provides that, “[f]or the purposes of conducting any hearing [under the civil penalties section], the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and	NOAA’s civil procedure regulations, which apply in NOAA’s administrative proceedings, may be found at 15 C.F.R. – Part 904.  Under 15 C.F.R § 904.245(d), “[i]n case of disobedience to a	Right to Financial Privacy Act (P.L. 95-630)	Under 15 C.F.R § 904.245 (a) “[s]ubpoenas for the attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute under which the proceeding is conducted.”



		<p>documents...” 16 U.S.C. § 1858(e).</p>	<p>subpoena, NOAA may request the Justice Department to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.”</p> <p>Under 15 C.F.R. § 904.108 (g), a respondent’s failure to respond to written interrogatories or discovery requests pertaining to ability to pay “may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed penalty, or result in respondent being barred from asserting financial hardship.” This inference may be drawn by the enforcement attorney in assessing the penalty or by the Judge in reviewing the penalty.</p> <p>Under 15 C.F.R. § 904.240 (f), “[i]f a party fails to comply with any subpoena or order concerning discovery, the Judge may, in the interest of justice: (1) [i]nfer that the</p>		<p>These administrative subpoenas may only be issued by an Administrative Law Judge. <i>See</i> 15 C.F.R. § 904.204 (i).</p>
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			admission, testimony, documents, or other evidence would have been adverse to the party; (2) [r]ule that the matter or matters covered by the order or subpoena are established adversely to the party; (3) [r]ule that the party may not introduce into evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence; (4) [r]ule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown; (5) [s]trike all or part of a pleading (except a request for hearing), a		
<b>US Department of Commerce</b>  <b>National Oceanic And Atmospheric Administration (NOAA)</b>  Enforcement and Litigation	Endangered Species Act (ESA), 16 U.S.C. § 1531 <i>et seq.</i>	The ESA provides that “[h]earings held during proceedings for the assessment of civil penalties ... shall be conducted in accordance with section 554 of Title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths.” 16 U.S.C. §	“	“	“

		1540(a)(2).			
<b>US Department of Commerce</b>  <b>National Oceanic And Atmospheric Administration (NOAA)</b>  Enforcement and Litigation	National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 <i>et seq.</i>	The NMSA provides that “[i]n the case of any hearing ... in accordance with the procedures provided for under section 554 of Title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.” 16 U.S.C. § 1437(f).	“	“	“
<b>US Department of Commerce</b>  <b>National Oceanic And Atmospheric Administration (NOAA)</b>  Enforcement and Litigation	Northern Pacific Halibut Act of 1982, 16 U.S.C. § 773 <i>et seq.</i>	The Halibut Act provides that, “[F]or the purpose of all investigations which, in the opinion of the Secretary, are necessary and proper for the enforcement of this subchapter, the Secretary or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place or hearing.” 16 U.S.C. § 773i(f)(2).	“	“	“

<p><b>US Department of Commerce</b></p> <p><b>National Oceanic And Atmospheric Administration (NOAA)</b></p> <p>Enforcement and Litigation</p>	<p>Atlantic Tuna Conventions Act (ATCA), 16 U.S.C. § 971 <i>et seq.</i></p>	<p>The ATCA incorporates by reference the civil penalty and permit sanction provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) for violations of the ATCA. 16 U.S.C. § 971(e).</p>	<p>“</p>	<p>“</p>	<p>“</p>
<p><b>US Department of Commerce*</b></p> <p><b>National Oceanic And Atmospheric Administration (NOAA)</b></p> <p>Enforcement and Litigation</p>	<p>Lacey Act, 16 U.S.C. § 3371 <i>et seq.</i></p>	<p>The Lacey Act provides that “[h]earings held during proceedings for the assessment of civil penalties shall be conducted in accordance with section 554 of Title 5. The administrative law judge may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths.” 16 U.S.C. § 3373(b).</p>	<p>“</p>	<p>“</p>	<p>“</p>
<p><b>US Department of Commerce</b></p> <p><b>NOAA, National Environmental Satellite, Data, and Information Service</b></p>	<p>National Weather Modification Policy Act of 1976, 15 U.S.C. § 330 <i>et seq.</i></p>	<p>The Secretary may require any person to submit a report before, during, or after that person may engage in any weather modification attempt or activity. 15 U.S.C. § 330c.</p>	<p>This mechanism has not been used in the recent past.</p>		
<p><b>US Department of Commerce</b></p>	<p>Land Remote Sensing Policy Act (LRSPA), 15 U.S.C. § 5601 <i>et seq.</i></p>	<p>Under the LRSPA, the Secretary may “ . . . issue subpoenas for any</p>	<p>Under 15 CFR §§ 960.14 and 960.15, § 5623(a) of the LRSPA is</p>	<p>“</p>	<p>“</p>

<p><b>NOAA, National Environmental Satellite, Data, and Information Service</b></p> <p>Satellite Programs Counsel</p>		<p>materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section,” as well as the ability to “seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act . . . “ 15 U.S.C. § 5623(a)</p>	<p>incorporated by reference. Specifically, under 15 CFR § 960.15, “As authorized by Section 203(a) of the Act, if the Secretary . . . determines that the licensee has substantially failed to comply with the Act, the regulations in this part, or any term, condition or restriction of the [NOAA] license, the Secretary . . . may request the appropriate U.S. Attorney to seek an order of injunction or similar judicial determination from the U.S. District Court for the District of Columbia Circuit or a U.S. District Court within which the licensee resides or has its principal place of business, to terminate, modify, or suspend the license, and/or to terminate licensed operations on an immediate basis.”</p> <p>Additionally, under 15 CFR § 960.15, “ . . . (a) any person who violates any provision of the Act, any license issued thereunder, or the regulations in this part may be assessed a civil penalty by the Secretary of not more that \$10,000 for each violation. Each day of operation in</p>		
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			violation constitutes a separate violation. All civil penalties [sic] procedures shall be in accordance with 15 CFR Part 904. (b) Violation of the Act, this part, or any license issued under this part, may be subject to criminal penalty provisions prescribed in other applicable laws.”		
<b>US Department of Commerce</b>  NOAA	Fur Seal Act	16 U.S.C. § 1174	This mechanism has not been used in the recent past.		
<b>US Department of Commerce</b>  NOAA	Anadromous Stocks	16 U.S.C. § 5010	This mechanism has not been used in the recent past.		
<b>US Department of Commerce</b>  NOAA	High Seas Fishing Compliance	16 U.S.C. § 5507	This mechanism has not been used in the recent past.		
<b>US Department of Commerce</b>  NOAA	Ocean Thermal Energy	42 U.S.C. § 9152	This mechanism has not been used in the recent past.		
<b>US Department of</b>	Comprehensive	42 U.S.C. § 9609	Used to collect		

<p><b>Commerce</b></p> <p><b>NOAA</b></p>	<p>Environmental Response, Compensation and Liability Act ( CERCLA)</p>		<p>information on hazardous waste sites.</p>		
<p><b>Department of Commerce†</b></p>	<p>15 U.S.C. §155</p> <p>The Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under his direction. The statute states that the Registrar is to be located in China.</p>	<p>(a) Subpoena for attendance of witness and production of records, etc.</p> <p>For the efficient administration of the functions vested in the registrar by this chapter, he may require, by subpoena issued by him or under his direction, (1) the attendance of any witness and the production of any book, paper, document, or other evidence from any place in China at any designated place of hearing in China, or, if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within fifty miles of the actual residence or place of sojourn of such witness, and (2) the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. The registrar, or</p>	<p>(b) Aid of Federal district court</p> <p>In the case of failure to comply with any subpoena or in the case of the contumacy of any witness before the registrar or any individual so authorized by him, the registrar or such individual may invoke the aid of any Federal district court. Such court may thereupon order the witness to comply with the requirements of such subpoena and to give evidence touching the matter in question. Any failure to obey such order may be punished by such court as a contempt thereof.</p> <p>15 U.S.C. §155(b).</p>		

		<p>any officer , employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. Any witness summoned or whose deposition is taken under this section shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.</p> <p>15 U.S.C. §155(a).</p>			
<b>Department of Commerce†</b>	<p>15 U.S.C. §155</p> <p>The Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under his direction. The statute states that the Registrar is to be located in China.</p>	<p>(d) Access of registrar or his employee to books and records</p> <p>For the efficient administration of the functions vested in the registrar by this chapter, he, or any officer, employee, or agent of the United States authorized in writing by him, shall at all reasonable times, for the purpose of examination, have access to and the right to copy any book, account, record, paper, or correspondence relating to the business or affairs of a China Trade Act corporation.</p> <p>15 U.S.C. §155(d).</p>	<p>Any person who upon demand refuses the registrar, or any duly authorized officer, employee, or agent, such access or opportunity to copy, or hinders, obstructs, or resists him in the exercise of such right, shall be liable to a penalty of not more than \$5,000 for each such offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States.</p> <p>15 U.S.C. §155(d).</p>		
<b>Department of Commerce†</b>	15 U.S.C. § 1193	Secretary of Commerce [Consumer Product Safety Commission] may subpoena documents required for findings			



		pursuant to 15 U.S.C. §§ 1191 et seq. (flammable products)			
<b>Department of Commerce†</b>	15 U.S.C. § 5408	Fastener requirements investigations			
<b>Department of Commerce†</b>	16 U.S.C. § 4017	Fish and seafood promotion investigations			
<b>Department of Commerce†</b>	43 U.S.C. §§ 1845	Outer continental shelf resource management			
<b>Department of Education</b>					
<b>Department of Education</b>	Section 490A of the Higher Education Act of 1965(HEA), Pub. L. 89-329, as amended by §490B of Pub. L. 105-244, the Higher Education Amendments of 1998, codified at 20 U.S.C. §1097a. There are no regulations implementing this authority.	Education Department may by this authority require any person to produce documents and records pertaining to participation in the student financial assistance programs authorized under Title IV of the HEA. 20 U.S.C. §1097a(a). These programs include the Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, Perkins Loan, Federal Family Education Loan, and Direct Loan Programs. 20 U.S.C. 1070-1099c-2, 42 U.S.C. 2751-2756b.	Education Department is to request the attorney general to seek enforcement of the subpoena in federal district court. 20 U.S.C. 1097a(b).	None specified in statute itself; nothing in the statute preempts otherwise applicable requirements of the Right to Financial Privacy Act, and those requirements would remain applicable where Education Department seeks records from a financial institution of a customer protected that Act. Information pertaining to an individual may be protected by virtue of the Privacy Act once records are produced to Education Department, and in instances in which records sought by the subpoena may result in the production of information that would be included in records maintained by Education Department in a system of records subject to the Privacy	Authority to issue subpoenas has been delegated to the Director of the Case Management and Oversight Division, Schools, Channel, and Office of Student Financial Assistance. The delegation requires the concurrence of the Office of General Counsel. No specific standards have been adopted for issuance; in the only instance we are aware of in which the subpoena was used, the cognizant Education Department official was advised why the records were needed, whether the records sought were related to participating in the student assistance programs, whether the records had been sought by other means, and whether the records were likely to be subject to

				Act, an appropriate notice would be included in the subpoena explaining the authority for the demand, the purposes for which the information is expected to be used, the routine uses for that information, and the consequences of failure to provide the information, as required by 5 U.S.C. § 552a(e)(3),	privilege.
<b>Department of Energy</b>					
<b>Department of Energy</b>	<p>Federal Energy Administration Act of 1974.</p> <p>P.L. 93-275.</p> <p>Functions transferred to the Secretary of Energy, 42 U.S.C. §§ 7151(a), 7293.</p> <p>15 U.S.C. §§ 761, <i>et seq.</i>, 15 U.S.C. § 772(a) (mandate).</p> <p>15 U.S.C. § 772(e) (subpoena authority; enforcement);</p> <p>15 U.S.C. § 772(i) (enforcement penalties).</p> <p>10 CFR §§ 205.8, 205.198, 205.199, 205.284, and 207.3 (implementing regulations).</p>	<p>Collect, assemble, evaluate, and analyze energy information by categorical groupings.</p> <p>15 U.S.C. § 772(a).</p> <p>Power to require by subpoena the attendance and testimony of witnesses, and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section. 15 U.S.C. 772(e)(1).</p>	<p>There is no administrative appeal of a subpoena.</p> <p>10 CFR § 205.8(b)(6).</p> <p>Any appropriate United States district court may, in case of contumacy or refusal to obey a subpoena, issue an order requiring the recipient of the subpoena to appear before the Administration and to give testimony touching on the matter in question, or to produce documents. Any failure to obey such order of the court may be punished by such court as contempt of court.</p> <p>15 U.S.C. § 772(e)(2).</p> <p>Violators shall be subject to a civil penalty of not more than a \$ 2,500 for</p>	<p>The Administrator has authority not to disclose some collected information that would otherwise be available under FOIA.</p> <p>15 U.S.C. § 773(b).</p> <p>DOE regulations contain instructions on how subpoenas are to be delivered.</p> <p>10 CFR § 205.8(c).</p>	<p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p>

			each violation. Willful violaters shall be fined not more than \$ 5,000 for each violation.		
<b>Department of Energy</b>	<p>Energy Supply and Environmental Coordination Act of 1974 (ESECA).</p> <p>P.L. 93-319:  §§ 11(a), 11(b) (authority).  §§ 12(a), 12(b) (enforcement).</p> <p>15 U.S.C. §§ 796, 797.</p> <p>Functions transferred to the Secretary of Energy, 42 U.S.C. §§ 7151(a), 7293.  15 U.S.C. §§ 796, 797.</p> <p>10 CFR §§ 205.8, 207.3, 207.8.</p>	<p>Request, acquire, and collect such energy information as determined to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. §§ 751 <i>et seq.</i>].</p> <p>The Federal Energy Administrator is authorized to sign and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents; to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and to administer oaths. 15 U.S.C. §§ 796(a), 796(b).</p>	<p>Violaters shall be subject to a civil penalty of not more than \$ 2,500 for each violation. Willful violaters shall be fined not more than \$ 5,000 for each violation.  (15 U.S.C. § 797(b))</p> <p>In case of a refusal to obey a subpoena or order of the Federal Energy Administrator, the Administrator may request any United States district court within the jurisdiction of which any inquiry is carried on to issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof. 15 U.S.C. § 796(b)(3).</p>	<p>The Administrator has authority not to disclose some collected information that would otherwise be available under FOIA.  (15 U.S.C. § 773(b))</p> <p>DOE regulations contain instructions on how subpoenas are to be delivered. 10 CFR § 205.8(c).</p>	<p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents.  (10 CFR §§ 205.8(a), 205.8(b))</p>
<b>Department of Energy</b>	<p>DOE Organization Act.</p> <p>P.L. 95-91, Title V, § 501, (Aug. 4, 1977, as amended).</p> <p>42 U.S.C. §§ 7191, <i>et seq.</i></p>	<p>The Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under 15 U.S.C. § 49. That statute includes access to, for the purpose of examination, and the right to copy</p>	<p>The litigation of the Department shall be subject to the supervision of the Attorney General pursuant to 28 U.S.C. §§ 501 <i>et seq.</i> 42 U.S.C. §§ 7192.</p>		<p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p> <p>In all hearings conducted in Security Clearance</p>

	<p>42 U.S.C. § 7255.</p> <p>10 CFR §§ 205.8, 205.198, 205.199, and 205.284.</p>	<p>any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.</p> <p>Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States, at any designated place of hearing. And in case of - disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. 15 U.S.C. §49.</p> <p>The Hearing Officer shall have all powers necessary to regulate the conduct of proceedings concerning review of security clearances, including issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence. Requests for subpoenas shall be liberally granted. 10</p>	<p>The Board [of Contract Appeals] may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both, 41 U.S.C. § 610. 10 CFR § 1023.4.</p>		<p>cases under 10 CFR Part 710, the individual is responsible for producing witnesses in his own behalf, including requesting the issuance of subpoenas, if necessary, or presenting other proof before the Hearing Officer to support his defense to the allegations contained in the notification letter. 10 CFR § 710.26.</p>
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<p><b>Department of Energy</b></p>	<p>Atomic Energy Act of 1954 (AEA).</p> <p>42 U.S.C. §§ 2011, <i>et seq.</i>, Aug. 30, 1954, ch 1073, Title I, 68 Stat. 921, <i>et seq.</i></p> <p>42 U.S.C. § 2201 (subpoena authority).</p> <p>The word “commission” in the AEA referred to the Atomic Energy Commission (AEC). The AEC was abolished in 1974 (42 U.S.C. § 5814(a)), and its functions were transferred to the Administrator of the Energy Research and Development Administration (ERDA) and certain other agencies. ERDA was abolished and all its functions were transferred to and all its functions were transferred to DOE by Act Aug. 4, 1977, P.L. 95-91, Title III, § 301(a), Title III, § 301(a), Title VII, §§ 703, and 707, 91 Stat. 577, 606-607, which appear as 42 U.S.C. §§ 7151(a), 7293, and 7297, respectively.</p>	<p>CFR §710.25.</p> <p>The Commission is authorized to make such studies and investigations, obtain such information, and hold such meetings or hearings as it may deem necessary or proper to assist in exercising any authority provided in this Act, or in the administration or enforcement of this Act or any regulations or orders issued thereunder. For such purposes the Commission is authorized by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. 42 U.S.C. § 2201(c).</p> <p>The Hearing Officer shall have all powers necessary to regulate the conduct of proceedings concerning review of security clearances, including issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence. Requests for subpoenas shall be liberally granted.</p> <p>(10 CFR § 710.25)</p>	<p>The Board [of Contract Appeals] may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both, 41 U.S.C. § 610. 10 CFR § 1023.4.</p>		<p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p> <p>In all hearings conducted in Security Clearance cases under 10 CFR Part 710, the individual is responsible for producing witnesses in his own behalf, including requesting the issuance of subpoenas, if necessary, or presenting other proof before the Hearing Officer to support his defense to the allegations contained in the notification letter. 10 CFR § 710.26.</p>
<p><b>Department of</b></p>	<p>Natural Gas Act</p>	<p>Any member of the Commission, or any officer</p>	<p>Any appropriate United States district court may,</p>	<p>DOE regulations contain instructions on how sub-</p>	<p>Certain DOE officials may sign, issue and serve</p>

<p><b>Energy</b></p>	<p>June 21, 1938, ch 556, § 14, 52 Stat. 828; Oct. 15, 1970, P.L. 91-452, Title II, § 218, 84 Stat. 929.</p> <p>15 U.S.C. §§ 717, <i>et seq.</i> 15 U.S.C. § 717m</p> <p>Ex. Or. No. 10485 of Sept. 3, 1953, 18 <i>Fed. Reg.</i> 5397; Ex. Or. No. 12038 of Feb. 3, 1978, 43 <i>Fed. Reg.</i> 4957.</p> <p>The Federal Power Commission was terminated and its functions were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 U.S.C. §§ 7151(b), 7171(a), 7172(a), 7291 and 7293.</p>	<p>designated by it, is empowered to subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. 15 U.S.C. § 717m.</p>	<p>in case of contumacy or refusal to obey a subpoena, issue an order requiring the recipient of the subpoena to appear before the Commission and to give testimony touching on the matter in question, or to produce documents. Any failure to obey such order of the court may be punished by such court as contempt of court. 15 U.S.C. § 717m(d).</p>	<p>poenas are to be delivered. 10 CFR § 205.8(c).</p>	<p>subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p>
<p><b>Department of Energy</b></p>	<p>Federal Power Act</p> <p>June 10, 1920, ch 285, Part III, § 314, as added Aug. 26, 1935, ch 687, Title II, § 213, 49 Stat. 861.</p> <p>16 U.S.C. §§ 791a <i>et seq.</i></p>	<p>The Secretary may prescribe such procedures as deemed necessary or desirable for the exercise of the authority delegated by E.O. 10485.</p> <p>Further, the Secretary has authority to issue subpoenas under the DOE Organization Act (P.L. 95-91).</p>	<p>Any appropriate United States district court or certain other Federal courts may enjoin violations and enforce compliance with the Federal Power Act or any rule, regulation, or order thereunder. A court may also grant a permanent or</p>	<p>DOE regulations contain instructions on how subpoenas are to be delivered. 10 CFR § 205.8(c).</p>	<p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p>

	<p>16 U.S.C. § 824a(e)</p> <p>Ex. Or. No. 10485 of Sept. 3, 1953, 18 <i>Fed. Reg.</i> 5397; Ex. Or. No. 12038 of Feb. 3, 1978, 43 <i>Fed. Reg.</i> 4957.</p> <p>The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 U.S.C. §§ 7151(b), 7171(a), 7172(a), 7291 and 7293.</p>		<p>temporary injunction or decree or restraining order.</p> <p>16 U.S.C. 825m.</p>		
<p><b>Department of Energy</b></p> <p>Office of Inspector General</p>	<p>The Inspector General Act of 1978, as amended (IG Act).</p> <p>Section 6(a)(4), P.L. 95-452, as amended.</p> <p>5 U.S.C. app. 3.</p>	<p>The Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States</p>	<p>United States district court, pursuant to section 6(a)(4).</p>	<p>Notification, Privacy and Right to Financial Privacy Act procedures are consistent with Inspector General Directive, IG-916, dated, June 24, 1986.</p>	<p>The Inspector General procedures for issuing subpoenas are contained in IG Directive, IG-916.</p>

		district court: Provided, That procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal Agencies. §6(a)(4).			
<b>Department of Energy</b>	<p>Natural Gas Policy Act of 1978 (NGPA).</p> <p>Sec. 304, P.L. 94-586, § 11, 90 Stat. 2914, Oct. 22, 1976.</p> <p>15 U.S.C. §§ 3361, <i>et seq.</i></p> <p>15 U.S.C. § 3364(a)(1)(A) (Subpoena power)</p> <p>15 U.S.C. § 3364(a)(2) (Enforcement)</p> <p>By Ex. Or. No. 12235 of Sept. 3, 1980, 45 <i>Fed. Reg.</i> 58803, the President delegated to the Secretary of Energy the functions vested in the President by Sections 301 through 304(c) of the NGPA (15 U.S.C. §§ 3361-3364(c)), except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 301 thereof (15 U.S.C. 3361).</p>	<p>The Secretary or his delegate may sign and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents.</p> <p>15 U.S.C. § 3364(a)(1)(A).</p>	<p>The appropriate United States district court may, upon petition of the Attorney General at the request of the Secretary, in the case of refusal to obey a subpoena or order, issue an order requiring compliance therewith. Any failure to obey an order of the court may be punished by the court as a contempt thereof.</p> <p>15 U.S.C. § (a)(2).</p> <p>It shall be unlawful for any person to violate any provision of this Act or any rule or order under the NGPA. 15 U.S.C. § 3414(a).</p> <p>Any appropriate United States district court or certain other Federal courts may enjoin violations and enforce compliance with the NGPA or any rule, regulation, or order there- thereunder. Knowing violators (civil violations) may be assessed up to \$ 5,000</p>	<p>DOE regulations contain instructions on how subpoenas are to be delivered.</p> <p>10 CFR § 205.8(c).</p>	<p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p>



			for any one violation, except that violators of § 302 [15 U.S.C. § 3362] may be assessed up to \$ 25,000. Criminal penalties are also provided. 15 U.S.C. §§ 3414(b), 3414(c).		
<b>Department of Energy</b>	<p>The Defense Production Act of 1950 (DPA).</p> <p>Sept. 8, 1950, ch 932, Title VII, § 705, 64 Stat. 816.</p> <p>50 U.S.C. Appx 2061 <i>et seq.</i></p> <p>10 CFR § 205.8</p> <p>Ex. Or. No. 11790 of June 25, 1974, § 4, 39 Fed. Reg. 23185; Ex. Or. No. 12038 of Feb. 3, 1978, 43 Fed. Reg. 4957, located at 15 U.S.C. § 761 note, provided that the Secretary of Energy is authorized to exercise the authority vested in the President by this section as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government, notwithstanding the</p>	<p>While this Act is in effect and for a period of two years thereafter, the Secretary may subpoena such information or make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of any person, as may be necessary or appropriate, in his discretion, to the enforcement or the administration of the DPA and the regulations or orders issued thereunder.</p> <p>(50 U.S.C. Appx § 2155(a))</p>	<p>In case of contumacy by, or refusal to obey a subpoena served upon, any person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.</p> <p>(50 U.S.C. Appx § 2155(a))</p> <p>Willful performance of any act prohibited or willful failure to perform any act required by the DPA, or any rule, regulation, or order thereunder, shall upon conviction be subject to a fine of not more than \$10,000 or imprisonment for not more than one year or</p>	<p>DOE regulations contain instructions on how subpoenas are to be delivered.</p> <p>(10 CFR § 205.8(c))</p>	<p>The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if, prior to the return date specified in the regulations, subpoena, or other document issued with respect thereto, such person furnishes a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the Secretary as to the information contained in such books, records, or other documentary evidence.</p> <p>(50 U.S.C. Appx § 2155(b))</p> <p>Certain DOE officials may sign, issue and serve subpoenas of persons and documents. 10 CFR §§ 205.8(a), 205.8(b).</p>

	provisions of Ex. Or. No. 12919, 59 FR 29525 (June 7, 1994). Ex Order 12919, in section 902, also delegates to the Secretary of Energy the subpoena power with respect to section 101 of the DPA.		both. 50 U.S.C. Appx § 2155(c).		
<b>Department of Energy†</b>	42 U.S.C. § 13263	Authority of the Secretary or designee to require the attendance and testimony of witnesses and the production of books, papers, correspondence, and other documentary items in carrying out various provisions related to alternative fuels			
<b>Department of Energy &amp; Department of the Interior†</b>	42 U.S.C. § 6381	Energy database and energy information			
<b>Department of Health and Human Services</b>					
<b>Department of Health and Human Services</b>  Office of the Inspector General	Inspector General Act, Public Law 95-452, Appendix (the same authority possessed by other Inspectors General).	Administrative subpoena authority, generally recognized as limited to subpoena duces tecum (statutory language: “[Each Inspector General...is authorized...] to require by subpoena the production of all information, documents, reports, answer, records, accounts, papers, and other data and documentary evidence necessary in the performance of the	In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court.	None specific to the Inspector General Act; statutory notification requirements followed for Inspector General subpoenas issued pursuant to the Right of Financial Privacy Act.	OIG has established within OIG various policies and procedures regarding subpoena request and issuance.

		functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall enforceable by order of any appropriate United States district court: provided, that procedures other than subpoenas shall be used by the Inspector General to obtain information from Federal agencies.”).			
<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p> <p>Food &amp; Drug Administration</p> <p>Office of the Administrative Law Judge</p> <p>Office of the Inspector General</p>	<p>Food, Drug, and Cosmetic Act § 303(f), 21 U.S.C. § 333(f).</p>	<p>In a hearing to assess a civil money penalty for violations with respect to adulterated food, the presiding officer may authorize a party to obtain discovery from other persons and may issue a subpoena to compel testimony or production of documents from any person. 21 U.S.C. § 333(f)(2)(C) (incorporating by reference 21 U.S.C. § 346a(g)(B)).</p> <p>In the course of any investigation or hearing with respect to civil money penalties for violations with respect to devices, or the introduction into interstate commerce of adulterated food, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of documents. 21 U.S.C. § 333(f)(3).</p>	<p>In the event of refusal to obey a subpoena in a hearing to assess civil money penalties for violations with respect to adulterated food, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 21 U.S.C. § 333(f)(2)(C) (incorporating by reference 21 U.S.C. § 346a(g)(B)).</p>	<p>The presiding officer in a hearing to assess civil money penalties for violations with respect to adulterated food is governed by the Federal Rules of Civil Procedure. 21 U.S.C. § 333(f)(2)(C) (incorporating by reference 21 U.S.C. § 346a(g)(B)).</p>	

<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p> <p>Food &amp; Drug Administration Office of the Administrative Law Judge</p> <p>Office of the Inspector General</p>	<p>Food, Drug, and Cosmetic Act § 306(i), 21 U.S.C. § 335a(i).</p>	<p>In the course of any investigation or hearing with respect to debarment, temporary denial of approval, or suspension of any corporation, partnership, association, or individual, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence regarding the matter under investigation. 21 U.S.C. § 335a(i).</p>			
<p><b>Department of Health and Human Services</b> <b>Office of the General Counsel</b></p> <p>Food &amp; Drug Administration Office of the Administrative Law Judge</p> <p>Office of the Inspector General</p>	<p>Food, Drug, and Cosmetic Act § 307(b)(1)(A), 21 U.S.C. § 335b(b)(1)(A).</p>	<p>In the course of any investigation or hearing with respect to the potential imposition of civil money penalties for, among other things, false statements, misrepresentations, the payment of bribes or illegal gratuities in connection with an abbreviated drug application, the Secretary can issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence regarding the matter under investigation. 21 U.S.C. § 335b(b)(1)(A).</p>			
<p><b>Department of Health and Human Services</b></p>	<p>Food, Drug and Cosmetic Act § 308(b), 21 U.S.C. § 335c(b).</p>	<p>In the course of any investigation or hearing with respect to the withdrawal of approval of</p>			

<p>Office of the General Counsel</p> <p>Food &amp; Drug Administration</p> <p>Office of the Administrative Law Judge</p> <p>Office of the Inspector General</p>		<p>an abbreviated drug application as a result of, among other things, bribery, payment of illegal gratuities, or an applicant's demonstrated inability to produce the drug for which the application has been submitted, the Secretary can issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence regarding the matter under investigation. 21 U.S.C. § 335c(b).</p>			
<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p> <p>Food &amp; Drug Administration</p> <p>Office of the Administrative Law Judge</p>	<p>Food, Drug &amp; Cosmetic Act §§ 303, 307, 21 U.S.C. §§ 333, 335b; Public Health Service Act §§ 351, 354, 2128, 42 U.S.C. §§ 262, 263b, 300aa-28.</p> <p>21 CFR Chapter I, FDA, Subchapter A, General, Part 17, Civil Money Penalty Hearings, §§ 17.19, 17.23, 17.27, 17.28, 17.35.</p>	<p>In connection with hearings with respect to the imposition of civil money penalties, the presiding officer has the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence relating to the matter under investigation. 21 CFR § 17.19(b)(5).</p>	<p>The presiding officer can sanction a person, including a party or its counsel, for failure to comply with a subpoena by (1) the employment of an inference in favor of the person requesting the information; (2) prohibiting the party not complying with the subpoena from introducing evidence, or relying on testimony, regarding the information sought; and (3) striking pleadings of the noncomplying party. 21 CFR § 17.35(c).</p>	<p>A party to the hearing is required to request documents at least 60 days prior to the hearing. 21 CFR § 17.23.</p> <p>A party wishing to procure the attendance and testimony of an individual at a hearing (and the production of documents at the hearing) is required to request that the presiding officer issue a subpoena at least 20 days prior to the hearing. 21 CFR § 17.27(a) - (c).</p> <p>A party or person to whom a subpoena is addressed who believes that the subpoena is unreasonable, oppressive, excessive in scope, etc., can file a motion to quash the subpoena within 10 days of the subpoena. 21</p>	

				CFR § 17.27(f).  A party or prospective witness may file a motion for a protective order with respect to discovery sought by a party or with respect to a hearing, in order to limit the availability or disclosure of evidence. 21 CFR § 17.28.	
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Department of Health and Human Services</p> <p>Food &amp; Drug Administration</p> <p>Office of the Administrative Law Judge</p>	<p>Mammography Quality Standards Act, Public Health Service Act § 354(d)(2)(B), 42 U.S.C. § 263b(d)(2)(B).</p> <p>21 CFR Chapter I, FDA, HHS, Subchapter I, Mammography Quality Standards Act, Part 900, Mammography, Subpart B, Quality Standards &amp; Certification, § 900.15(d)(4).</p>	<p>In holding a formal hearing with respect to the decision of the Division of Mammography Quality and Radiation Programs (DMQRP) following its reconsideration of an accreditation body's adverse accreditation or reaccreditation decision that precludes certification or recertification of a mammography facility, an administrative law judge may issue subpoena as upon his own motion or at the request of a party. 21 CFR § 900.15(d)(4) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 21 CFR § 900.15(d)(4) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(b).</p> <p>The request must identify the witnesses or documents to be produced and specify the pertinent facts that the party expects to establish by the witnesses or documents, and why those facts could not be established without the use of a subpoena. 21 CFR § 900.15(d)(4) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(d).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 21 CFR § 900.15(d)(4) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human</b></p>	<p>Indian Self-Determination &amp; Education Act, 25 U.S.C.</p>	<p>With respect to hearings before an ALJ on appeals of, among other things,</p>			

<p><b>Services</b></p> <p>Office of the General Counsel</p> <p>Department of the Interior Interior Board of Indian Appeals Interior Board of Contract Appeals</p>	<p>§ 450f et seq., including 25 U.S.C. §§ 450f(b)(3), 450j(m), 450j-1(f), 450m-1(d), 458aaa-6, 458aaa-8(b), 458aaa-11.</p> <p>25 CFR Chapter V, BIA &amp; IHS, Part 900, Contracts Under the Indian Self-Determination &amp; Education Assistance Act, Subpart L, Appeals, § 900.164.</p>	<p>denials of certain contracts and refusals to waive certain regulations, etc. (listed in 25 CFR § 900.150), with respect to the Indian Self-Determination and Education Act, Indian tribes, tribal organizations, and the government agency all have the right to compel the presence of witnesses or the production of documents or both by subpoena at hearings or depositions. 25 CFR § 900.164.</p>			
<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p>	<p>Health Insurance Portability and Accountability Act (“HIPAA”), Pub. L. No. 104-191, 42 U.S.C. § 1320d-5(a)(2) ((incorporating by reference Social Security Act § 1128A, 42 U.S.C. § 1320a-7a, incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p>	<p>The Secretary has the authority to issue subpoenas in investigating matters and holding hearings under the Administrative Simplification provisions of HIPAA, with respect to matters involving the imposition of civil money penalties. 42 U.S.C. § 1320d-5(a)(2)(incorporating by reference Social Security Act § 1128A, 42 U.S.C. § 1320a-7a); 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p> <p>With respect to the privacy provisions, the Secretary has delegated that authority to the Office for Civil</p>	<p>In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. § 1320d-5(a)(2) (incorporating by reference Social Security Act § 1128A, 42 U.S.C. § 1320a-7a); 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p>	<p>Notice by service of the subpoena. 42 U.S.C. § 1320d-5(a)(2) (incorporating by reference Social Security Act § 1128A, 42 U.S.C. § 1320a-7a); 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p> <p>45 CFR § 160.310(c)(3) requires the protection of any protected health information obtained by the Secretary to ascertain compliance with the Administrative Simplification provisions of HIPAA and 45 CFR Parts 160 and 164.</p>	<p>The Department is in the process of developing standards and procedures for the issuance of administrative subpoenas under the Administrative Simplification provisions of HIPAA. (No covered entity is required to comply with the regulations adopted under the Administrative Simplification provisions of HIPAA until 2003 at the earliest.)</p>

		Rights.			
<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p> <p>Office of the Inspector General</p>	<p>Social Security Act § 1918, 42 U.S.C. § 1396q (incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p>	<p>In any hearing, investigation, or other proceeding relating to grants to States for medical assistance programs, the Secretary has the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question. 42 U.S.C. § 1396q (incorporating by reference Social Security Act § 205(d), 42 U.S.C. § 405(d)).</p>	<p>In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. § 1396q (incorporating by reference Social Security Act § 205(e), 42 U.S.C. § 405(e)).</p>		
<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p> <p>Center for Medicare &amp; Medicaid Services Provider Reimbursement Review Board</p>	<p>Social Security Act, § 1878, 42 U.S.C. § 1395oo(e) (incorporating by reference 42 U.S.C. § 405(d) &amp; (e)).</p> <p>42 CFR Chapter IV, CMS, Subchapter B, Medicare Program, Part 405, Federal Health Insurance for the Aged &amp; Disabled, Subpart R, Provider Reimbursement Determinations and Appeals, §§ 405.1835(a), 405.1857.</p>	<p>The Provider Reimbursement Review Board has the authority to issue subpoenas requiring the attendance and testimony of witnesses and/or the production of evidence relating to any matter at issue in Board hearings on intermediary determinations (as defined in 42 CFR § 405.1801(a)(1)) with respect to payments to providers and hospitals in the Medicare Program where the amount in controversy equals or exceeds \$10,000. 42 U.S.C. § 1395oo(e) (incorporating by reference 42 U.S.C. § 405(d); 42 CFR §§ 405.1857, 405.1835(a).</p>	<p>In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. 1395oo(e) (incorporating by reference 42 U.S.C. § 405(e)).</p>	<p>A party wishing to obtain the issuance of a subpoena shall file a written request at least 10 days before the hearing. 42 CFR § 405.1857. The written request must state the pertinent facts which the party expects to establish by the witnesses or documents and whether such facts could be established by other means. <i>Id.</i></p>	<p>The Board may issue a subpoena where reasonably necessary for the full presentation of a party's case. 42 CFR § 405.1857.</p>



<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act § 1881, 42 U.S.C. § 1395rr (incorporating by reference Social Security Act § 205, 42 U.S.C. § 405).</p> <p>42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 405, Federal Health Insurance for the Aged &amp; Disabled, Subpart U, Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services, § 405.2182.</p>	<p>In a hearing with respect to an appeal of the termination of Medicare coverage of a supplier's ESRD services because the supplier no longer meets the conditions for coverage of its services, an administrative law judge may issue subpoena as upon his own motion or at the request of a party. 42 CFR § 405.2182 (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 405.2182 (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 405.2182 (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1871, 42 U.S.C. §§ 1302, 1395hh.</p> <p>42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 405, Federal Health Insurance for the Aged &amp; Disabled, Subpart X, Rural Health Clinic and Federally Qualified Health Center Services, § 405.2402(f).</p>	<p>In a hearing with respect to an appeal of the Secretary's decision not to certify a rural health clinic or his refusal to enter into or renew an agreement with a rural health clinic, an administrative law judge may issue subpoena as upon his own motion or at the request of a party. 42 CFR § 405.2402(f) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 405.2402(f) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 405.2402(f) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p>	<p>Social Security Act §§ 1102, 1871, 42 U.S.C. §§ 1302, 1395hh.</p> <p>42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 405, Federal Health Insurance for the Aged &amp;</p>	<p>In a hearing with respect to an appeal by a rural health clinic of the termination of an agreement between CMS and the rural health clinic, an administrative law judge may issue subpoena as upon his own motion or at the request of</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 405.2404(b)(3) (incorporating by reference 42 CFR Part</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 405.2404(b)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>

Department of Health and Human Services Departmental Appeals Board	Disabled, Subpart X, Rural Health Clinic and Federally Qualified Health Center Services, § 405.2404(b)(3).	a party. 42 CFR § 405.2404(b)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).	Act § 205(d) & (e), 42 U.S.C. § 405(d) & (e)), 1396q.	498); 42 CFR § 498.58(b).	
<b>Department of Health and Human Services*</b>  Office of the General Counsel  Departmental Appeals Board	Social Security Act §§ 1102, 1871, 42 U.S.C. §§ 1302, 1395hh.  42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 405, Federal Health Insurance for the Aged & Disabled, Subpart X, Rural Health Clinic and Federally Qualified Health Center Services, § 405.2430(d).	In a hearing with respect to an appeal of the failure of CMS to enter into an agreement with an entity with respect to federally qualified health service centers, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 405.2430(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).	In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) & (e), 42 U.S.C. § 405(d) & (e)), 1396q.	A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 405.2430(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).	The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 405.2430(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).
<b>Department of Health and Human Services*</b>  Office of the General Counsel  Departmental Appeals Board	Social Security Act §§ 1102, 1871, 42 U.S.C. §§ 1302, 1395hh.  42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 405, Federal Health Insurance for the Aged & Disabled, Subpart X, Rural Health Clinic and Federally Qualified Health Center Services, § 405.2436(c)(3).	In a hearing with respect to an appeal of the termination by CMS of an agreement with a federally qualified health center, an administrative law judge may issue subpoena upon his own motion or at the request of a party. 42 CFR § 405.2436(c)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).	In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) & (e), 42 U.S.C. § 405(d) & (e)), 1396q.	A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 405.2436(c)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).	The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 405.2436(c)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).
<b>Department of Health and Human Services</b>  Office of the General	Social Security Act § 1862(b), 42 U.S.C. § 1395y(b)(3)(C), (5)(C)(ii), (6)(B) (incorporating by reference 42 U.S.C.	In the appeal/review of a determination by CMS that a group health plan does not conform to the requirements of 42 U.S.C. § 1395y(b) with respect to	In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C.	A party wishing to obtain a subpoena must file with the hearing officer a written request for a subpoena at least 10 days before the hearing. 42	The hearing officer may issue subpoenas if they are reasonably necessary for full presentation of the case. 42 CFR § 411.121(f).

<p>Counsel</p> <p>Departmental Appeals Board</p>	<p>§ 1320a-7a, incorporating by reference 42 U.S.C. § 405(d)&amp;(e)).</p> <p>42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 411, Exclusions from Medicare and Limitations on Medicare Payment, Subpart E, Limitations on Payment for Services Covered under Group Health Plans: General Provisions, § 411.121(f).</p>	<p>Medicare as a secondary payer, the hearing officer may issue – on his own motion or upon the request of any party – subpoenas for the attendance and testimony of witnesses and/or the production of documents relating to matters at issue. 42 CFR § 411.121(f)(1).</p>	<p>§ 1395y(b)(3)(C), (5)(C)(ii), (6)(B) (incorporating by reference 42 U.S.C. § 1320a-7a(j), incorporating by reference 42 U.S.C. § 405(d)&amp;(e)).</p>	<p>CFR § 411.121(f)(2). The written request must identify the witnesses or documents to be produced, identifying the pertinent facts to be established by the testimony or documents sought. 42 CFR § 411.121(f)(3).</p> <p>The subpoenas are issued at the hearing officer’s discretion. 42 CFR § 411.121(f)(4).</p>	
<p><b>Department of Health and Human Services*</b></p> <p>Center for Medicare &amp; Medicaid Services</p> <p>Medicare Geographic Classification Review</p>	<p>Social Security Act § 1886, 42 U.S.C. § 1395ww(d)(10)(G)(ii) (incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p> <p>42 CFR Chapter IV, CMS, Subchapter B Medicare Program, Part 412, Prospective Payment Systems for Inpatient Hospital Services, Subpart L, the Medicare Geographic Classification Review Board Composition and Procedures, § 412.268.</p>	<p>In review of the redesignation of a hospital – from a rural area to urban area, from one rural area to another rural area, and from one urban area to another urban area – for purposes of using the other area’s standardized amount for inpatient operating costs, wage index value, or both – the Medicare Geographic Classification Review Board may issue subpoenas – on its own motion or at the request of a party – for the attendance and testimony of witnesses and/or production of documents relevant and material to any matter of issue. 42 CFR § 412.268(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. § 1395ww(d)(10)(G)(ii) (incorporating by reference 42 U.S.C. § 405(d) &amp; (e)).</p>	<p>A party must issue a predecision request for information or data. 42 CFR § 412.268(a). Only when this request has failed to produce the necessary evidence, can the party submit a written request to the Medicare Geographic Classification Review Board for issuance of a subpoena for attendance and testimony of witnesses or production of documents. 42 CFR § 412.268(a). The request must identify the individual or documents that are to be produced and must state the pertinent facts that the party expects to establish by the requested witnesses or documents, and whether these facts</p>	<p>The Board may issue subpoenas if they are reasonably necessary for full presentation of the case, and only after a predecision request for information or data has failed to produce the necessary evidence. 42 CFR § 412.268(a).</p>

				could be established by other evidenced without the use of a subpoena. 42 CFR § 412.268(b).	
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1832, 1833, 1871, 42 CFR §§ 1302, 1395k, 1395l, 1395hh.</p> <p>42 CFR Chapter IV, CMS, Subchapter B Medicare Program, Part 416, Ambulatory Surgical Services, Subpart B, General Conditions and Requirements, § 416.26(f).</p>	<p>In a hearing with respect to an appeal by an ambulatory surgical center (“ASC”) of a decision by CMS refusing to enter into an agreement with the ASC or terminating such an agreement, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 416.26(f) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 416.26(f) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 416.26(f) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1832, 1833, 1871, 42 CFR §§ 1302, 1395k, 1395l, 1395hh.</p> <p>42 CFR Chapter IV, CMS, Subchapter B Medicare Program, Part 416, Ambulatory Surgical Services, Subpart B, General Conditions and Requirements, § 416.35(b)(3).</p>	<p>In a hearing with respect to an appeal by an ambulatory surgical center (“ASC”) of a decision by CMS terminating an agreement with the ASC, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 416.35(b)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 416.35(b)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 416.35(b)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services</b></p> <p>Office of the General Counsel</p>	<p>Social Security Act §§ 1102, 1814, 1861, 1862, 1871, 42 U.S.C. §§ 1302, 1395f, 1395x, 1395y (incorporating by reference 42 U.S.C. § 405(d) &amp; (e)), 1395hh.</p>	<p>The Provider Reimbursement Review Board has the authority to issue subpoenas requiring the attendance and testimony of witnesses and/or the production of</p>	<p>In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1395y, 1395oo(e)</p>	<p>A party wishing to obtain the issuance of a subpoena shall file a written request at least 10 days before the hearing. 42 CFR § 418.311 (incorporating by</p>	<p>The Board may issue a subpoena where reasonably necessary for the full presentation of a party’s case. 42 CFR § 418.311 (incorporating by reference 42 CFR Part</p>

<p>Center for Medicare &amp; Medicaid Services Provider Reimbursement Review Board</p>	<p>42 CFR, Chapter IV, CMS, Subchapter B, Medicare Program, Part 418, Hospice Care, Subpart G, Payment for Hospice Care, § 418.311.</p>	<p>evidence relating to any matter at issue in hearings with respect to payments to hospices (with respect to amounts in controversy that exceed \$10,000) under the Medicare Program. 42 CFR § 418.311 (incorporating by reference 42 CFR Part 405, Subpart R); 42 CFR § 405.1857.</p>	<p>(both incorporating by reference 42 U.S.C. § 405(e)).</p>	<p>reference 42 CFR Part 405, Subpart R); 42 CFR § 405.1857. The written request must state the pertinent facts which the party expects to establish by the witnesses or documents and whether such facts could be established by other means. <i>Id.</i></p>	<p>405, Subpart R); 42 CFR § 405.1857.</p>
<p><b>Department of Health and Human Services*</b>  Office of the General Counsel  Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1871, 42 U.S.C. §§ 1302, 1395hh.  42 CFR Chapter IV, CMS, Subchapter B, Medicare Program, Part 420, Program Integrity: Medicare, Subpart A, General Provisions, § 420.3(a).</p>	<p>In a hearing with respect to an appeal by a provider of a decision by CMS terminating the provider agreement for failure to comply with the disclosure of information requirements set forth in 42 CFR Part 420 Subpart C, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 420.3(a) (incorporating by reference 42 CFR Part 498); 42 CFR 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 420.3(a) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 420.3(a) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b>  Office of the General Counsel  Departmental Appeals Board</p>	<p>Social Security Act §§ 1814, 1815, 1820, 1835, 1842, 1848, 1870, 42 U.S.C. §§ 1395f, 1395g, 1395i-4, 1395n, 1395u, 1395w-4, 1395gg.  42 CFR Chapter IV, CMS, Subchapter B, Medicare Program, Part 424, Conditions for Medicare Payment, Subpart G, Special Conditions: Emergency</p>	<p>In a hearing with respect to an appeal by a nonparticipating hospital that provides emergency services of a determination by CMS that the hospital does not qualify to claim reimbursement, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 424.104(d) (incorporating by reference 42 CFR Part</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 424.104(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 424.104(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>

	Services Furnished by a Nonparticipating Hospital, § 424.104(d).	498); 42 CFR § 498.58(a).			
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act § 1102, 42 U.S.C. §1302.</p> <p>42 CFR Chapter IV, CMS, Subchapter C, Medical Assistance Programs, Part 431, State Organization and General Administration, Subpart D, Appeals Process, § 431.153(g) &amp; (h).</p>	<p>In a hearing with respect to an appeal by a nursing facility (NF) of (1) a determination by a State, denying or terminating participation in Medicaid and the basis of the determination is also a basis for denial or termination of the NF's participation in Medicare (in which the NF is participating or seeking to participate), or (2) a determination by CMS that the NF is not in substantial compliance, terminating the NF's Medicaid provider agreement or imposing alternative remedies, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 431.153(g)(1) &amp; (h) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 431.153(g)(1) &amp; (h) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 431.153(g)(1) &amp; (h) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>

<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1871, 1894, 1905, 1934, 42 U.S.C. §§ 1302, 1395, 1395eee, 1396d, 1396u-4.</p> <p>42 CFR Chapter IV, CMS, Subchapter E, Programs of All-Inclusive Care for the Elderly, Part 460, Programs of All-Inclusive Care for the Elderly (PACE), Subpart D, Sanctions, Enforcement Actions &amp; Terminations, § 460.46.</p>	<p>In proceedings to impose civil monetary fines for violations with respect to enrollment, disenrollment, excessive premiums, misrepresentations, or falsifications of information, an administrative law judge has the authority to issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings. 42 CFR § 460.46 (making Social Security Act § 1128A, 42 U.S.C. § 1320a-7a (other than (a) &amp; (b) applicable); 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act §205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 CFR § 460.46 (making Social Security Act § 1128A, 42 U.S.C. § 1320a-7a (other than (a) &amp; (b) applicable); 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act §205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p>		
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1861, 1871, 42 U.S.C. §§ 1302, 1395x, 1395hh.</p> <p>42 CFR Chapter IV, CMS, Subchapter G, Standards &amp; Certification, Part 485, Conditions of Participation: Specialized Providers, Subpart B, Conditions of Participation: Comprehensive Outpatient Rehabilitation</p>	<p>In a hearing with respect to an appeal by an entity of a determination by CMS, denying or terminating the provider's participation in the Medicare program as a comprehensive outpatient rehabilitation facility ("CORF"), an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 485.74 (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 485.74 (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 485.74 (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>

	Facilities, § 485.74.				
<b>Department of Health and Human Services*</b>  Office of the General Counsel  Departmental Appeals Board	Social Security Act §§1102, 1138, 1871, 42 U.S.C. §§ 1302, 1320b-8, 1395hh.  42 CFR, Chapter IV, CMS, Subchapter G, Standards and Certification, Part 486, Conditions for Coverage of Specialized Services Furnished by Suppliers, Subpart G, Conditions of Coverage: Organ Procurement Organizations, § 486.316(b).	In a hearing with respect to an appeal by an organization of a determination by CMS, denying the organization's application to be the designated organ procurement organization ("OPO") for its service area, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 486.316(b) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).	In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) & (e), 42 U.S.C. § 405(d) & (e)), 1396q.	A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 486.316(b) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).	The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 486.316(b) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).
<b>Department of Health and Human Services*</b>  Office of the General Counsel  Departmental Appeals Board	Social Security Act §§ 1102, 1138, 1871, 42 U.S.C. §§ 1302, 1320b-8, 1395hh.  42 CFR, Chapter IV, CMS, Subchapter G, Standards and Certification, Part 486, Conditions for Coverage of Specialized Services Furnished by Suppliers, Subpart G, Conditions of Coverage: Organ Procurement Organizations, § 486.325(c).	In a hearing with respect to an appeal by an organ procurement organization ("OPO") of a determination by CMS, terminating an agreement, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 486.325(c) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).	In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) & (e), 42 U.S.C. § 405(d) & (e)), 1396q.	A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 486.325(c) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).	The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 486.325(c) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).
<b>Department of Health and Human Services*</b>	Social Security Act §§ 1102, 1128, 1871, 42 U.S.C. §§ 1302, 1320a-7, 1395hh.	In a hearing with respect to an appeal by an institution or agency of a determination by CMS (1) that it does not qualify for	In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District	A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the	The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 488.24(c) (incorporating by



<p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>42 CFR, Chapter IV, CMS, Subchapter G, Standards and Certification, Part 488, Survey, Certification &amp; Enforcement Procedures, Subpart A, General Provisions, § 488.24(c).</p>	<p>participation or coverage because it is not in compliance with the conditions of participation or conditions of coverage, or (2) terminating a provider's agreement for that reason, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 488.24(c) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>Court. Social Security Act § 1128, 42 U.S.C. § 1320a-7 (incorporating by reference Social Security Act § 205, 42 U.S.C. § 405).</p>	<p>date set for the hearing. 42 CFR § 488.24(c) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1102, 1819, 1871, 1919, 42 U.S.C. §§ 1303, 1395i-3, 1395hh, 1396r.</p> <p>42 CFR, Chapter IV, CMS, Subchapter G, Standards and Certification, Part 488, Survey, Certification &amp; Enforcement Procedures, Subpart E, Survey &amp; Certification of Long-term Care Facilities, §488.330(e)(3).</p>	<p>In a hearing with respect to an appeal by certain providers (State-operated facilities, skilled nursing facilities (SNFs) and dually participating SNFs, and other facilities subject to a CMS validation survey or CMS review of a State's findings) of a denial of participation or certification of noncompliance leading to an enforcement remedy (including termination of the provider agreement, but except State monitoring), an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 488.330(e)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 488.330(e)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 488.330(e)(3) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of</b></p>	<p>Social Security Act</p>	<p>In a hearing with respect to</p>	<p>In event of refusal to</p>	<p>A party must file a</p>	<p>The subpoena must be</p>

<p><b>Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>§§ 1102, 1819, 1871, 1919, 42 U.S.C. §§ 1302, 1395i-3, 1395hh, 1396r.</p> <p>42 CFR, Chapter IV, CMS, Subchapter G, Standards and Certification, Part 488, Survey, Certification &amp; Enforcement Procedures, Subpart E, Survey &amp; Certification of Long-term Care Facilities, §488.330(e)(4).</p>	<p>a State’s denial of participation , termination of provider agreement, or certification of noncompliance leading to an alternative remedy (except State monitoring) with respect to a non-State operated Medicaid nursing facility (FN) which has not received a CMS validation survey or a CMS review of the State’s findings, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 488.330(e)(4) (incorporating by reference 42 CFR Part 431); § 431.153(g)(1) &amp; (h) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e)), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 488.330(e)(4) (incorporating by reference 42 CFR Part 431); 42 CFR § 431.153(g)(1) &amp; (h) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>reasonably necessary for the full presentation of the case. 42 CFR § 488.330(e)(4) (incorporating by reference 42 CFR Part 431); 42 CFR § 431.153(g)(1) &amp; (h) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1861, 1864, 1866, 1871, 42 U.S.C. §§ 1395k, 1395aa, 1395cc, 1395hh.</p> <p>42 CFR, Chapter IV, CMS, Subchapter G, Standards and Certification, Part 489, Provider Agreements &amp; Supplier Approval, Subpart E, Termination of Agreement &amp; Reinstatement After Termination, § 489.53(d).</p>	<p>In a hearing with respect to an appeal of a termination of a provider agreement by CMS pursuant to 42 CFR § 489.53(a) or (b), an administrative law judge may issue subpoena upon his own motion or at the request of a party. 42 CFR § 489.53(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e)), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 489.53(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 489.53(d) (incorporating by reference 42 CFR Part 498); 42 CFR § 498.58(a).</p>

<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Clinical Laboratories Improvement Act of 1988, Public Health Service Act § 353, 42 U.S.C. § 263a; Social Security Act §§ 1846, 1861, 1902, 42 U.S.C. §§ 1395w-2, 1395x, 1396a.</p> <p>42 CFR Chapter IV, CMS, Subchapter G, Standards &amp; Certification, Part 493, Laboratory Requirements, Subpart R, Enforcement Procedures, § 493.1844(a)(2) &amp; (b).</p>	<p>In a hearing with respect to an appeal of a laboratory dissatisfied with (a) suspension, limitation or revocation of its CLIA certificate by CMS for noncompliance with CLIA requirements, (b) denial of a CLIA certificate, (c) imposition of alternative sanctions, or (d) denial or cancellation of a laboratory's approval to receive Medicare payments for services, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 493.1844(a)(2) &amp; (b) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 493.1844(a)(2) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 493.1844(a)(2) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Clinical Laboratories Improvement Act of 1988, Public Health Service Act § 353, 42 U.S.C. § 263a; Social Security Act §§ 1846, 1861, 1902, 42 U.S.C. §§ 1395w-2, 1395x, 1396a.</p> <p>42 CFR Chapter IV, CMS, Subchapter G, Standards &amp; Certification, Part 493, Laboratory Requirements, Subpart R, Enforcement Procedures, §493.1844(a)(2), (e)(1) &amp;</p>	<p>In a hearing with respect to an appeal of a prospective lab dissatisfied with a reconsidered or a revised reconsidered determination regarding denial of a CLIA certificate or of approval for Medicare payment for services, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR § 493.1844(a)(2), (e)(1) &amp; (e)(3) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(a).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 493.1844(a)(2) &amp; (e)(3) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(b).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 493.1844(a)(2) &amp; (e)(3) (incorporating by reference 42 CFR Part 498, Subpart D); 42 CFR § 498.58(a).</p>

	(e)(3).				
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act §§ 1128, 1128A, 1156, 1866, 1819, 1891, 42 U.S.C. §§ 1320a-7 &amp; 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1320c-5, 1395cc, 1395i-3, 1395bbb.</p> <p>42 CFR Chapter IV, CMS, Subchapter G, Standards and Certification, Part 498, Appeal Procedures for Determinations that Affect Participation in the Medicare Program and for Determinations that Affect the Participation of ICFs/MR and Certain NFs in the Medicaid Program, Subpart D, Hearings, § 498.58(a), (b) &amp; (d).</p>	<p>In holding a hearing with respect to an appeal of a determination that affects (1) participation in the Medicare program of a (a) prospective provider, (b) provider, (c) prospective supplier, (d) supplier, (e) physical therapist in independent practice, (f) chiropractor, (g) nonparticipating hospital that furnishes emergency services, or (h) suspended or excluded practitioner, participation of Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) or certain Nursing Facilities (NFs) in the Medicaid program, an administrative law judge may issue subpoenas upon his own motion or at the request of a party. 42 CFR §§ 498.58(a), 498.5(a), (b), (d), (e), (g)-(k).</p>	<p>In event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 U.S.C. §§ 1320a-7, 1320a-7a (both incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)), 1396q.</p>	<p>A party must file a written request for a subpoena with the administrative law judge at least 5 days prior to the date set for the hearing. 42 CFR § 498.58(b).</p> <p>The request must identify the witnesses or documents to be produced and specify the pertinent facts that the party expects to establish by the witnesses or documents and why those facts could not be established without the use of a subpoena. 42 CFR § 498.58(d).</p>	<p>The subpoena must be reasonably necessary for the full presentation of the case. 42 CFR § 498.58(a).</p>
<p><b>Department of Health and Human Services*</b></p> <p>Office of the General Counsel</p> <p>Departmental Appeals Board</p>	<p>Social Security Act § 1128A(j), 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act § 205(d) &amp; (e), 42 U.S.C. § 405(d) &amp; (e)).</p> <p>42 CFR, Chapter V, Office of the Inspector General-Health Care,</p>	<p>In the course of a proceeding by which a party appeals an exclusion, civil money penalty, and/or assessment, an administrative law judge has the authority to issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in</p>	<p>In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court. 42 CFR § 1005.9(i) (incorporating by reference Social Security Act § 205(e), 42 U.S.C. § 405(e)).</p>	<p>A party seeking a subpoena for the appearance of a witness at the hearing and/or the production of documents at or prior to the hearing must file a written motion with the administrative law judge at least 30 days before the date fixed for the hearing. 42 CFR</p>	<p>A subpoena for the appearance and testimony of a witness at a hearing must be reasonably necessary for the presentation of the moving party's case. 42 CFR § 1005.9(a).</p>

	Department of Health & Human Services, Subchapter B, OIG Authorities, Part 1005, Appeals of Exclusions, Civil Money Penalties and Assessments, §§ 1005.4, 1005.9.	relation to hearings. 42 CFR § 1005.4.		§ 1005.9(a)-(d). The written motion must specify the evidence to be produced and designate the witnesses. 42 CFR § 1005.9(d).  The person to whom the subpoena is directed may file a motion to quash the subpoena within 10 days of service thereof. 42 CFR § 1005.9(h).	
<b>Department of Health and Human Services</b>  Office of the General Counsel  Office of the Inspector General	Social Security Act § 1128A(j), 42 U.S.C. § 1320a-7a(j) (incorporating by reference Social Security Act § 205(d) & (e), 42 U.S.C. § 405(d) & (e)).  42 CFR, Chapter V, Office of Inspector General–Health Care, Department of Health & Human Services, Subchapter B, OIG Authorities, Part 1006, Investigational Inquiries, §§ 1006.1, 1006.4(f), 1006.5.	With respect to an investigation into false or otherwise improper claims, actionable under Social Security Act § 1128A, 42 U.S.C. § 1320a-7a, the Secretary, through the Inspector General, has the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question. 42 CFR § 1006.1.  The Secretary is authorized to delegate, and has delegated, this authority to the Inspector General.	In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court where the subpoenaed person is found, resides, or transacts business. 42 U.S.C. § 1320a-7a(j) (incorporating by reference 42 U.S.C. § 405(e)); 42 CFR §§ 1006.4(f), 1006.5.		
<b>Department of Health and Human Services*</b>  Office of the General	Program Fraud Civil Remedies Act of 1986, PL 99-509, §§ 6101-04, 31 U.S.C. §§ 3801-3812.	If the Inspector General, as the investigating official, concludes that a subpoena pursuant to 31 U.S.C. § 3804(a) is warranted, relating to an investigation		The subpoena issued by the Inspector General must identify the authority pursuant to which the subpoena is issued, and identify the	A party seeking the attendance and testimony of an individual (and the production of documents by that witness) can

<p>Counsel</p> <p>Office of the Inspector General</p> <p>Departmental Appeals Board</p>	<p>45 CFR Subtitle A, Department of Health &amp; Human Services, Subchapter A, General Administration, Part 79, Program Fraud Civil Remedies, §§79.4(a), 79.18(b)(5), 79.21, 79.23, 79.24.</p>	<p>into the submission of false, fictitious, or fraudulent claims or written statements to the Department, it has the authority to issue the subpoena. 45 CFR § 79.4(a).</p> <p>In hearings with respect to program fraud, administrative law judges can issue subpoenas for the attendance of witnesses and the production of documents at depositions or at hearings. 45 CFR § 79.18(b)(5).</p>		<p>records and documents sought. 42 CFR § 79.4(a)(1).</p> <p>At the hearing stage, the parties must file motions for discovery before the ALJ at least 15 days before the hearing, which includes a copy of the requested discovery and a statement of the scope of the proposed depositions. 45 CFR § 79.21(c) &amp; (d). A party may, within 10 days of service, file an opposition to the motion for discovery or a motion for a protective order. 45 CFR § 79.21(d)(2).</p>	<p>request the ALJ to issue a subpoena. 45 CFR § 79.23(a) &amp; (b). The motion must be filed at least 15 days prior to the date set for the hearing. 45 CFR § 79.23(c).</p> <p>A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within 10 days after service. 45 CFR § 79.23(f).</p> <p>The ALJ, pursuant to a motion for a protective order, may make any order necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. 45 CFR § 79.24(b).</p>
<p><b>Department of Housing and Urban Development</b></p>					
<p><b>US Department of Housing and Urban Development</b></p> <p>Finance and Regulatory Enforcement</p>	<p>Interstate Land Sales Full Disclosure Act at 15 U.S.C. § 1714, implemented at 24 CFR part 3800</p>	<p>Empowers the Secretary to investigate for purposes of enforcing the Act, prescribing rules or recommending legislation. Secretary is authorized to issue subpoenas for testimony and documents in connection with an</p>	<p>Enforced by action in U.S. District Court.</p>	<p>Privacy Act, 5 U.S.C. §552a, as applicable, although; a 30-day minimum time for response is customary.</p>	<p>Discretion of administering office.</p>

		investigation.			
<b>US Department of Housing and Urban Development</b>  Finance and Regulatory Enforcement	Real Estate Settlement Procedures Act at 12 U.S.C. §2617, implemented at 24 CFR part 3800	Same as above.	Same as above.	Same as above.	Same as above.
<b>US Department of Housing and Urban Development</b>  Finance and Regulatory Enforcement	National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. §5413, implemented at 24 CFR part 3800	Same as above.	Same as above	Same as above.	Same as above.
<b>US Department of Housing and Urban Development</b>  Office of Inspector General	Inspector General Act of 1978, 5 U.S.C. App. 3, §6	To require the production of all information, documents, reports, records, accounts, papers and other data and documentary evidence necessary to the performance of the functions of the Inspector General under the Act.	Enforced by action in U.S. District Court.	Notification is by service of a copy of the subpoena on the responding party, and the privacy protections include the Privacy Act, supra, the Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u> , and the Electronic Communications Privacy Act, Pub. L. 99-508, codified at various sections of the United States Code.	Case law restricts the authority to issue subpoenas to those issued in furtherance of a lawful investigation of the inspector general, and which are reasonably relevant to the inquiry and not overly broad or burdensome.
<b>US Department of Housing and Urban Development</b>	The Fair Housing Act, Sec. 811(a). 42 U.S.C. 3611(a) The Fair Housing Act, Sec. 811(a). 42 U.S.C. 3611(a), implemented by regulation at 24 CFR 103.215 and 180.545.	Authority for issuance of subpoenas to same extent as ordered or served in aid of a civil action in the U.S. District Court for the district in which the investigation is taking place.	Oder of the appropriate U.S. District Court.	The provisions of the F.R.C.P. apply. The protections of persons subject to subpoenas are set forth at Rule 45(c).	It has been the experience of this office that the Department of Justice believes that it can not enforce administrative subpoenas that do not contain the prescribed language of Rule 45(c) and (d). This office has consistently required the

					use of the language of Rule 45(c) and (d) in the administrative subpoenas that it reviews for legal sufficiency.
<b>US Department of Housing and Urban Development</b>	42 U.S.C. 3612(c)	same as above	same as above	same as above	same as above
<b>Department of Housing and Urban Development</b> †	12 U.S.C. §4588	for use in connection with administrative proceedings related to enforcement of housing goals			
<b>Department of Housing and Urban Development</b> (The Secretary)†	12 U.S.C. § 2617	In order to investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of the chapter in which the authority is granted, or to secure information to serve as a basis for recommending further legislation concerning real estate settlement practices, the Secretary is authorized to subpoena the attendance and testimony of witnesses and the production of documents.			
<b>Department of the Interior</b>					
<b>US Department of the Interior</b>	Generally: Administrative procedure Act, 5 U.S.C. § 556(c)(2)	The statutory provisions referenced above generally grant authority to presiding	In contract disputes and in Indian probate, surface mining, and program	None.	The procedural regulations include general requirements for



<p>Branch of General Legal Services, Division of General Law</p> <p>Office of Hearings and Appeals</p>	<p>43 C.F.R. § 4.26</p> <p>Contract disputes: Contract Disputes Act, 41 U.S.C. § 610 43 C.F.R. §4.120</p> <p>Indian probate cases: Act of Aug. 1, 1914, 25 U.S.C. § 374 43 C.F.R. § 4.230(b)</p> <p>Native American Graves Protection and Repatriation cases: 25 U.S.C. 3007 32 C.F.R. §229</p> <p>Public land cases: Act of Jan. 31, 1903, 43 U.S.C. §§ 102-106 43 C.F.R. §§ 4.423, 4.433, 4.452-4 &amp; 4.472(a)</p> <p>Surface mining cases: Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1211(c)(1), 1271 (c) 43 C.F.R. § 4.1121(a)(2)</p> <p>Program fraud cases: Program Fraud Civil Remedies Act, 31 U.S.C. § 3804 43 C.F.R. §§ 35.18(b)(5),</p>	<p>officers to issue subpoenas in connection with administrative proceedings, in accordance with the agency's published regulations. The Department of the Interior has published regulations to govern proceedings conducted before administrative law judges and boards of contract appeals judges. These regulations, also referenced above, describe the authority of the judges to issue subpoenas to compel the attendance of witnesses, and to take and cause depositions to be taken for the purpose of taking testimony. Some regulations also grant subpoena authority to require persons to produce documents 43 C.F.R. §§ 4.120, 35.18, 35.21.</p>	<p>fraud cases, the agency can request that the Attorney General file a petition in U.S. District Court to enforce a subpoena issued by the presiding officer. In public lands cases, the wilful refusal to comply with a subpoena may be punished as a misdemeanor. (See citations under paragraph 1 above).</p>		<p>requesting, issuing, and service of subpoenas.</p>
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	35.21 & 35.23				
<p><b>US Department of the Interior</b></p> <p>Division of Land and Water and Division of Parks and Wildlife  U.S. Department of the Interior  Office of the Solicitor</p>	<p>Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 104(e), Pub. L. No. 96-510, Dec. 11, 1980, 94 Stat 2767, and amendatory acts, codified at 42 U.S.C. 9604(e)(5) (“Information gathering and access, compliance orders”).</p> <p>Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), Sec. 2(j)(1) (delegating CERCLA section 104(e)(5)(A) compliance order authority to the Secretary of the Interior, to be exercised with the concurrence of the Attorney General, with respect to hazardous substance releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of the Department of the Interior; and Sec. 2(j)(2) (subject to (j)(1), delegating CERCLA section 104(e) authority to the Secretary of the Interior with respect to the same releases described in (j)(1)).</p>	<p>Authority to issue an order directing compliance with a CERCLA section 104(e) request for information concerning the identification, nature, and quantity of certain materials, the nature or extent of a release or threatened release of a hazardous substance, or information relating to the ability of a person to pay or to perform a cleanup.</p>	<p>The Secretary may ask the Attorney General to commence a civil action to compel compliance with a request or order issued under CERCLA section 104(e)(5)(A).</p>	<p>The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances. CERCLA section 104(e)(5)(A).</p>	<p>The Secretary is authorized to issue orders "only if there is a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant" from a facility. CERCLA section 104(e)(1), 42 U.S.C. section 9604(e)(1). In addition, the authority under section 104(e) may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under CERCLA, or otherwise enforcing the provisions of CERCLA. <u>Id.</u></p>

	<p>Through Executive Order 12580, <u>supra</u>, Sec. 1(c), and 40 C.F.R. 300.600, the President has designated the Secretary of the Interior as a Federal trustee for natural resources, pursuant to CERCLA sec. 107(f)(2)(A), 42 U.S.C. 9607(f)(2)(A).</p>				
<p><b>US Department of the Interior</b></p> <p>Bureau of Indian Affairs - through SOL-DIA</p>	<p>Courts of Indian Offenses Civil procedure: 25 C.F.R. § 11.503</p> <p>Further, there are regulations which mandate compulsory production of documents/information to the BIA, though they are not technically subpoenas.</p> <p>Under the Indian Trader License Statute regulations:</p> <p>25 C.F.R. § 140.22 - Inspection of traders' prices - traders shall on request submit business information as requested</p>	<p>The Court shall follow the Federal Rules of Civil Procedure in civil cases - except where such procedures are superseded by Court of Indian Offenses orders or inconsistent rules of tribal procedure.</p> <p>The Federal Rules of Civil Procedure define subpoena authority in Rule 45. A subpoena will serve as a command to produce evidence or to permit inspection or to command an appearance, and may be issued jointly or separate. A subpoena to command attendance shall issue from the court for the district in which the hearing or trial is to take place. Similarly, one commanding production of evidence shall issue from the court</p>	<p>Failure to comply may be deemed to be contempt of the court from which the subpoena issued.</p>	<p>Compliance with the Federal Rules of Civil Procedure - Rule 45</p>	<p>Compliance with the Federal Rules of Civil Procedure - Rule 45.</p>

		for the district where production or inspection is to occur.			
<p><b>US Department of the Interior</b></p> <p>Office of the Solicitor, Division of Mineral Resources, (for Minerals Management Service)</p>	<p>Royalty Simplification and Fairness Act (RSFA), Pub. L. 104-185 (1996) <i>(as corrected by</i> Pub. L. 104-200), 30 U.S.C. § 1724(d).</p>	<p>RSFA Section 1724(d)(2)(B), gives the DOI the power to issue administrative subpoenas for a lessee of Federal oil and gas leases “to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary .”</p>	<p>No specific enforcement authority. However, RSFA amends the Federal Oil and Gas Management Act (FOGRMA), and FOGRMA provides enforcement authority as follows:</p> <p>(b) In case of refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to \$10,000 a day. 30 U.S.C. § 1717. To date, we have not litigated</p>	<p>Section 1724(d)(2)(B)(ii) provides that a subpoena may only be issued</p> <p>[A]fter the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that--</p> <p>(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or</p> <p>(II) the lessee or its designee has in writing denied the Secretary's or the applicable delegated State's written request to produce such records in the lessee's or its designee's possession or control necessary for an</p>	<p>Only applies to Federal Oil and Gas leases.</p> <p>Section 1724(d)(2)(B)(i) states only the following entities may issue a subpoena: (1) an Assistant Secretary; (2) an Acting Assistant Secretary who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations); (3) the Director or Acting Director of the respective bureau or agency; or (4) if a State has been delegated authority pursuant to section 205, the highest State official having ultimate authority over the collection of royalties from Federal leases within the State the State. The authority may not be delegated to any other person.</p> <p>Section 1724(d)(2)(B)(ii) provides that a subpoena may only be issued during the 7 year limitations period provided under Section 1724(b).</p>

			<p>whether FOGRMA Section 1717 provides subpoena enforcement authority for RSFA Section 1724(d).</p>	<p>audit, in investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or</p> <p>(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or the applicable delegated State's responsibilities under this Act after the Secretary's or delegated State's written request.</p> <p>Section 1724(d)(2)(C) provides that the Secretary or the applicable delegated State must give the lessee a reasonable period of time after a written request to provide records prior to the issuance of any subpoena.</p>	
<p><b>US Department of the Interior</b></p> <p>Office of the Solicitor, Division of Mineral Resources, (for Minerals</p>	<p>Federal Oil and Gas Management Act (FOGRMA), Pub. L. No. 97-451, and 30 U.S.C. § 1717.</p>	<p>FOGRMA section 107, 30 U.S.C. § 1717, gives the DOI various compulsory authorities in connection with its audit and enforcement responsibilities, including</p>	<p>FOGRMA section 107, 30 U.S.C. § 1717, also provides enforcement authority as follows:</p> <p>(b) In case of refusal to obey a subpoena served</p>	<p>None.</p>	<p>Only applies to Indian Oil and Gas leases.</p>

<p>Management Service)</p>		<p>the power to issue administrative subpoenas. Section 107 provides in pertinent part:</p> <p>(a) In carrying out his duties under this Act the Secretary may conduct any investigation or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties under this Act. In connection with any such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary -</p> <p>...</p> <p>(3) to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;</p>	<p>upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to \$10,000 a day.</p>		
<p><b>US Department of the Interior</b></p> <p>Office of the Inspector General Department of the Interior</p>	<p>Inspector General Act of 1978, Public Law No. 95-452, 5 U.S.C. App. 3 [This is the same authority exercised by other Inspectors General]. Specifically, I.G. subpoena authority stems from 5 U.S.C. App. 3 § 6(a)(4).</p>	<p>Administrative subpoena authority is generally recognized as limited to <i>subpoena duces tecum</i>. The statutory language provides as follows:</p> <p>Each Inspector General . . . is authorized . . . to require by subpoena the production</p>	<p>In the event of refusal to obey, a court order may be obtained through petition to enforce filed in the appropriate U.S. district court.</p>	<p>None specific to the Inspector General Act; statutory notification requirements are followed for Inspector General subpoenas issued pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3413 &amp; 3421.</p>	<p>The Office of the Inspector General has established within the office various policies and procedures regarding subpoena request and issuance.</p>

	<p>The Department of Justice authority to prosecute subpoena enforcement actions on behalf of the IGs stems from DOJ's charter to conduct litigation in which the U.S. is interested. That authority appears generally in 28 U.S.C. Ch. 31 and particularly at 28 U.S.C. §§ 516-519.</p>	<p>of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court:</p> <p><i>Provided</i>, That procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies.</p>			
<p><b>US Department of the Interior</b></p> <p>Office of the Solicitor, Division of Mineral Resources</p>	<p>Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. No, 95-87, 30 U.S.C. §§1211(c)(1), 1264(e).</p> <p>30 C.F.R. §§764.17, 769.17, 775.11(b)(3)(i), and 800.40(g)</p> <p>43 C.F.R. §§ 4.1121(a)(2), 4.1121(a)(3).</p>	<p>SMCRA gives both the Secretary, acting through OSM, 30 U.S.C. §§1211(c)(1), and regulatory authorities, 30 U.S.C § 1264(e), the power to issue subpoenas, to compel the attendance of witnesses and the production of written or printed material. The Secretary's regulation at 43 C.F.R. §§ 4.1121(a)(2) authorizes ALJs to issue administrative subpoenas for hearings. The Secretary's regulation at 4.1121(a)(3) gives ALJs</p>	<p>The agency has taken the position that all subpoenas (investigative, hearing, and deposition subpoenas) qualify as "orders of the Secretary." Pursuant to 30 U.S.C. § 1271(c), the Secretary is authorized "to request the Attorney General to institute a civil action for relief...whenever [a] permittee or his agent (A) fails or refuses to comply with any order issued by the Secretary under this Act... or (E) refuses to furnish any</p>	<p>SMCRA contains no notification requirements for subpoenas. However, notification is given via personal service of the subpoena consistent with Rule 4 of the Federal Rules of Civil Procedure. Discovery proceedings before the Office of Hearings and Appeals ("OHA") are covered by the Secretary's regulations at 43 C.F.R. §4.1130 through 4.1141. It is our understanding that documents or testimony subpoenaed are</p>	<p>The standards, qualifiers and procedures for investigative subpoenas are controlled by an OSM directive dated October 19, 1993 entitled "Subpoenas to Compel the Attendance of Witnesses, the Production of Written or Printed Material, or Both."</p> <p>The standards, qualifiers and procedures for hearing subpoenas are controlled by the ALJ pursuant to 43 C.F.R. §§ 4.1121(a)(2) and 4.1121(a)(3).</p>

		<p>authority to “issue appropriate orders relating to discovery.” The Secretary is authorized under 30 U.S.C. § 1211(c)(1) to “make those investigations and inspections necessary to ensure compliance with this Act.” It is this power that authorizes the use/issuance of investigative subpoenas.</p>	<p>information or report requested by the Secretary in furtherance of this Act, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary....” The agency has further taken the position that the “any other appropriate order” language of Section 1271(c) is broad enough to authorize enforcement of subpoenas to people other than permittees or their agents. However, to our knowledge no court has ruled on this issue.</p>	<p>public records, except where SMCRA provides for confidentiality (such as “trade secret and pricing information covered at 30 C.F.R. § 870.16(c), which references protection to the extent authorized by the Privacy Act and the Freedom of Information Act (5 U.S.C. § 552(a),(b)).</p>	
<p><b>US Department of the Interior</b>  Office of the Solicitor</p>	<p>Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 122(e)(3)(B), 42 U.S.C. section 9622(e)(3)(B)(“Collection of Information”). Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), section 4(b) (delegating CERCLA section 122 authority to the Secretary of the Interior with respect to releases or threatened releases at facilities not on the National Priorities List (NPL) where the release is on or the sole source of the release is</p>	<p>Authority to collect information necessary or appropriate to prepare non-binding preliminary allocations of responsibility in CERCLA actions, or for otherwise implementing section 122 of CERCLA (“Settlements”). Authority to require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that Interior deems necessary. Section 122(e)(3)(B).</p>	<p>Section 122(e)(3)(B) provides that “in the event of contumacy or failure or refusal of any person to obey any such subpoena,” any district court in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena.</p>	<p>Section 122 provides generally for notice to responsible parties of their potential liability under CERCLA.</p>	<p>Section 122(e)(3)(A) requires the development of guidelines for preparing nonbinding preliminary allocations of responsibility. The President may provide a nonbinding preliminary allocations of responsibility, after completion of the remedial investigation/feasibility study, “when it would expedite settlements under this section and remedial action.” Section 122(e)(3)(A). The non-binding allocation shall not be admissible as evidence in any</p>



	from any facility under the jurisdiction, custody or control of the Department of the Interior). The authority may be exercised only with the concurrence of the Attorney General.				proceeding, and no court shall have jurisdiction to review the nonbinding allocation of responsibility. Section 122(e)(3)(C). Interior can only exercise this authority with the concurrence of the Attorney General. Executive Order 12580, section 4(b).
<b>Department of the Interior†</b>	16 U.S.C. § 470ff	Archaeological resources protection			
<b>Department of the Interior†</b>	43 U.S.C. § 1619	Alaska native claims settlement			
<b>Department of the Interior†</b>	25 U.S.C. § 3007	Native Americans Graves Protection and Repatriation			
<b>Department of the Interior†</b>	30 U.S.C. § 1735	Upon written request of any State, the Secretary is authorized to delegate authority to any State with respect to all Federal land within the State.			
<b>Department of Energy &amp; Department of the Interior†</b>	42 U.S.C. § 6381	Energy database and energy information			
<b>Department of Labor</b>					
<b>Department of Labor</b>	Employee Retirement Income Security Act, P. L. 93-406, 29 U.S.C. 1134(c)	“For the purposes of any investigation provided for in this title, the provisions of §§9 and 10 (relating to the attendance of witnesses	If a subpoena needs enforcement, it is referred to the Office of the Solicitor who then takes the appropriate	29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)	The Secretary may not subpoena the books and records of any employee benefit plan more than once in a 12-month period

		<p>and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.”</p>	<p>steps to file an action in the appropriate United States District Court. Generally, the Department simply seeks to compel the respondent to appear for the deposition or comply with the request for documents contained in the administrative subpoena.</p>	<p>In most cases, the subpoenas will demand production of documents within thirty days. In some circumstances, the time period is shorter or longer, e.g., statute of limitations considerations, the respondent is represented by an attorney who agrees to take service, and sets a particular date for compliance. PWBA does not “notify targets” or potential defendants that administrative subpoenas have been served on others.</p> <p>PWBA abides by the requirements set forth under the Right to Financial Privacy Act where appropriate, (e.g., not involving the assets of an employee benefit plan—an entity not covered by the RFPA) and by any other privacy or confidentiality requirements that may apply.</p>	<p>unless the Secretary has reason to believe that a violation of ERISA may exist. (29 U.S.C. 1134(b).)</p> <p>The Secretary of Labor has delegated the authority to issue subpoenas to the Assistant Secretary of Pension and Welfare Benefits. The Assistant Secretary has re-delegated this authority to the Director of Enforcement and to the Regional Directors of the Pension and Welfare Benefits Administration (PWBA).</p> <p>PWBA Regional Directors execute and issue administrative subpoenas. They may also re-delegate that authority to other regional office personnel.</p> <p>The Office of the Solicitor of Labor reviews all subpoenas, except for accommodation subpoenas. All subpoenas, including accommodation subpoenas, must be approved by Office of the Solicitor, if someone other than a Regional Director or Associate</p>
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					<p>Regional Director signs them. Attorneys with the Office of the Solicitor either conduct depositions that are noticed pursuant to a subpoena ad testificandum or assist the investigators in doing so.</p> <p>Chapter 33 of the PWBA Enforcement Manual sets forth detailed procedures and instructions for issuing subpoenas (<a href="http://www.dol.gov/dol/pwba/public/programs/oemmanual/chap33.htm">http://www.dol.gov/dol/pwba/public/programs/oemmanual/chap33.htm</a>).</p>
<b>Department of Labor</b>	<p>Fair Labor Standards Act (FLSA), [June 25, 1938, ch. 676, Sec. 9, 52 Stat. 1065; 1946 Reorg. Plan No. 2, Sec. 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095], 29 U.S.C. 209</p>	<p>“For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.” 29 U.S.C. 209</p> <p>“The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this</p>	<p>“And in case of disobedience to a subpoena the [Secretary/Administrator/Committees] may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts ... may, in case of contumacy or refusal to obey a subpoena ... issue an order requiring such person, partnership, or corporation to appear before the [Secretary/Administrator/Committees], or to produce documentary evidence ..., or to give evidence touching the</p>	<p>CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)</p> <p>Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p>	<p>DOL Employment Standards Administration’s Wage and Hour Division’s Field Operations Handbook, Section 86b</p>

		chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.” (29 U.S.C. 211)	matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.” 15 U.S.C. 49, incorporated into 29 U.S.C. 209.29		
<b>Department of Labor</b>	Family Medical Leave Act, P. L. 103-3, 29 U.S.C. 2616	<p>“For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 209 of this title.” [Section 209 refers to the Fair Labor Standards Act, discussed above.]</p> <p>Employers are required to keep certain records and to disclose them to the Secretary upon her request. 29 C.F.R. 825.500</p>	<p>“And in case of disobedience to a subpoena the [Secretary/Administrator/Committees] may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts ... may, in case of contumacy or refusal to obey a subpoena ... issue an order requiring such person, partnership, or corporation to appear before the [Secretary/Administrator/Committees], or to produce documentary evidence ..., or to give evidence touching the matter in question; and</p>	29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)	Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.

			any failure to obey such order of the court may be punished by such court as a contempt thereof.” 15 U.S.C. 49, incorporated into 29 U.S.C. 209.		
<b>Department of Labor</b>	Federal Employees Compensation Act, ch. 458, 39 Stat. 742 (1916), 5 U.S.C. 8126, 20 CFR 10.619	<p>“The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may -</p> <ul style="list-style-type: none"> <li>(1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles...(4) require the production of books, papers, documents, and other evidence. “</li> </ul>	5 U.S.C. 8125 states that if a person "disobeys or resists a lawful order or process in proceedings under this subchapter before the Secretary of Labor" the Secretary or his representative must “certify the facts to the district court having jurisdiction in the place where he is sitting. The court must, in a summary manner, hear evidence as to the acts complained of and if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the court or commit the individual on the same conditions as if the forbidden act had occurred with reference to the process of or in the presence of the court.”	29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)  20 CFR 10.10  Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.	Federal (FECA) Procedure Manual, Part 2 -- Claims, <i>Hearings and Review of the record</i> Chapters 2-1601-6(f) & 2-1608-8(e) (January 1999) (copy attached) [ <a href="http://www.nfo.web.com/cgi-bin/om_isapi.dll?clientID=14985&amp;infobase=dol-14&amp;softpage=ref_MainView">http://www.nfo.web.com/cgi-bin/om_isapi.dll?clientID=14985&amp;infobase=dol-14&amp;softpage=ref_MainView</a> ]
<b>Department of Labor</b>	Federal Mine Safety and Health Act of 1977, P. L. 95-164, 30 U.S.C. § 813(b) , 30 CFR §44.26	“For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal or other mine, the Secretary	“In case of contumacy in refusal to obey a subpoena served upon any person under this section, the district court of the United States for	No overriding standards or procedures. Specific procedures are sometimes developed for purposes of specific hearings.	

		<p>may, after notice, hold public hearings, and may sign and issue subpoenas for the attendance and testimony of witnesses and the production or relevant papers, books, and documents, and administer oaths.”</p> <p>Federal courts have long recognized that the subpoena power of the Secretary under this and the predecessor Federal Coal Mine Health and Safety Act of 1969 (P. L. 91-173) is limited to public hearing settings, <i>United States v. Blue Diamond Coal Co.</i> 667 F2d 510, 519 (6<sup>th</sup> Cir. 1981); <i>UMWA v. Martin</i>, 785 F. Supp. 1025,1027 footnote 1 (DDC. 1992). Thus, it is clear both from the wording of the statute and the court interpretations that the subpoena power of the Mine Act is limited to investigatory public hearings being conducted by the Secretary.</p>	<p>any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary to appear and produce documents before the Secretary or both, any failure to obey such order of the court may be punished by such court as a contempt thereof.” (30 U.S.C. 813) 29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)</p> <p>Other privacy/noti fication requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p>		
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<p><b>Department of Labor</b></p>	<p>Inspector General Act of 1978, P. L. 95-452, 5 U.S.C. App. 3, section 6</p>	<p>The Act gives the Inspector General authority to subpoena documents, reports, answers, records, accounts, papers and other data and documentary evidence necessary to carry out its functions. It does not provide testimonial subpoena authority. Additionally it provides that procedures other than subpoenas be used to obtain information and documents from Federal agencies.</p>	<p>Enforcement is by the Attorney General, at the request of the Inspector General, in US District Court. No specific sanctions.</p>	<p>No notification requirements in the IG Act.</p> <p>The Right to Financial Privacy Act and certain Medical Privacy provisions may apply to Inspector General subpoenas. These contain notification provisions.</p>	<p>Only the Inspector General or the Deputy Inspector General at the Department of Labor have authority to issue subpoenas. OIG has internal procedures relating to issuance of subpoenas; these are currently undergoing revision and are not available. OIG has no regulations or published procedures.</p>
<p><b>Department of Labor</b></p>	<p>Labor Management Reporting and Disclosure Act, P. L. 86-257, 29 U.S.C. 521(b).</p>	<p>“For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.”</p>	<p>Enforcement is by the Attorney General, at the request of the Secretary of Labor, in US District Court. 29 U.S.C. 521, incorporating 15 U.S.C. 49.</p>	<p>29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)</p> <p>Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p>	<p>Employment Standards Administration/Office of Labor Management Standards’ Operation Manual, Chapter 39 [copy attached]</p>
<p><b>Department of Labor</b></p>	<p>Longshore and Harbor Workers Compensation Act, ch. 509, 44 Stat.</p>	<p>“The deputy commissioner or Board shall have power to preserve and enforce</p>	<p>Section 27(b) of the Longshore Act, 33 U.S.C. § 927(b), sets</p>	<p>29 CFR Parts 70-71 (general DOL regulations governing privacy and</p>	<p>District Director: The Longshore and Harbor Workers' Compensation</p>

	<p>1424 (1927), 33 U.S.C. 927(a)</p> <p>Coverage of the LHWCA has been extended under other federal statutes to cover other injured employees including: certain persons employed at military, air and naval bases outside the United States pursuant to the Defense Base Act, ch. 357 55 Stat. 622 (1941), 42 U.S.C. § 1651 <i>et seq.</i>; civilian employees of military exchanges under the Nonappropriated Fund Instrumentalities Act ch. 444, 66 Stat. 139 (1952), 5 U.S.C. § 8171 and; employees working on the Outer Continental Shelf pursuant to the Outer Continental Shelf Lands Act. ch. 345, 67 Stat. 462 (1953), 43 U.S.C. § 1331 <i>et seq.</i> We are not treating these as separate statutes for purposes of this study. The Black Lung Benefits Act also incorporates certain LHWCA provisions and is discussed separately above.</p>	<p>order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him [effectively] to discharge the duties of his office.”<sup>1</sup></p> <p>Prior to 1972, hearing authority was vested in the Deputy Commissioner. In 1972, the LHWCA was amended to provide for the transfer of the hearing authority from the Deputy Commissioner to the Office of Administrative Law Judges. Pub. L. No. 92-576, 86 Stat. 1251(1972), 33 U.S.C. § 919(d). As such, an administrative law judge has all the powers and duties provided to a “deputy commissioner” under section 27 of the Act. See <i>Percoats v. Marine Terminal Corp.</i>, 15 BRBS 151, 153-154 (1982). This necessarily includes the authority, under section</p>	<p>forth the enforcement mechanisms and sanctions available for those individuals who fail to comply with a subpoena. Section 27(b) directs the "deputy commissioner" and the Board to certify the facts to the district court having jurisdiction in the place he is sitting. The district court will "in a summary manner hear evidence as to the acts complained of and if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if doing of the forbidden act had occurred with reference to the process of or in the presence of the court." 33 U.S.C. § 927(b).</p> <p>The ALJ regulations also provide for sanctions for individuals who do not comply with subpoenas. 29 C.F.R. §§ 18.6(d)(2), 18.24(d). Under § 18.1 of the regulations, however, “to the extent that these rules may be inconsistent with a rule of special application as</p>	<p>disclosure of information or materials)</p> <p>Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p> <p>No specific notification procedures for district director [deputy commissioner] subpoenas.</p> <p>For ALJ subpoenas: If a party's written application for a subpoena is submitted three working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the Chief Administrative Law Judge or presiding administrative law judge, as appropriate. A motion to quash or limit the subpoena must be filed within ten days of receipt of a subpoena but no later than the date of the hearing. The person against whom the subpoena is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should</p>	<p>Act Procedure Manual, Part 3–Case Evaluation, <i>Procedures for reporting Fraud and Abuse</i> Chapter 3-700(5)(e)(3); Part 4-- Case Adjudication, <i>Authority of the District Director</i> Chapter 4-400(11); Part 5--Medical, <i>Policy on medical fees</i> 5-500(4)(c)(1). [<a href="http://www2.dol.gov/dol/esa/public/regs/compliance/owcp/lspm01.pdf">http://www2.dol.gov/dol/esa/public/regs/compliance/owcp/lspm01.pdf</a>]</p> <p>OALJ: 29 CFR 18.24 (general ALJ subpoena regulations)</p> <p>OALJ subpoena guidance: OALJ subpoena guidance: <a href="http://www.oalj.dol.gov/subpoenas.htm">http://www.oalj.dol.gov/subpoenas.htm</a></p> <p>Board: 29 C.F.R. § 802.103 Frequency of Use: District Director: DOL’s Employment Standards Administration/Office of Workers Compensation Programs/Branch of Hearings and Review does not maintain statistics on subpoena requests or denials.</p> <p>The Office of Administrative Law Judges estimates that 7065 subpoenas are issued in a typical year.</p>
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		<p>27(a), to issue subpoenas. In light of this transfer of authority, the Benefits Review Board, which handles appeals of Black Lung and Longshore cases, has held that the district directors do not have the power to issue subpoenas. <i>Maine v. Brady Hamilton Stevedore Co.</i>, 18 BRBS 129 (1986). The Board so ruled, reasoning that the Deputy Commissioner’s subpoena power, under section 27(a), was an adjunct of the Deputy Commissioner’s hearing authority. Thus, the Board concluded that when the hearing authority was transferred to the Office of Administrative Law Judges, so necessarily was the subpoena power. <i>Id.</i></p> <p>(The Board did nevertheless hold in <i>Maine</i> that a party may avail itself of discovery while the case is pending before the District Director by applying to the chief administrative law judge to request a subpoena while the case is pending before the district director. <i>Id.</i>) The Director, OWCP, however, disagrees with the Board’s <i>Maine</i> decision, believing that, notwithstanding the transfer of hearing authority to the Office of</p>	<p>provided by statute, executive order, or regulation, the latter is controlling.” 29 C.F.R. § 18.1. Because § 27(b) of the Act appears to be such a “rule of special application,” enforcement of subpoenas would appear to be controlled by the procedures outlined in section 27(b), not those discussed in sections 18.6(d)(2).</p> <p>The Board regulations simply repeat the statutory language of § 27(b) in setting forth the procedures it will follow if any person in proceedings before the Board disobeys or resists any lawful order or process. 29 C.F.R. § 802.103(b).</p>	<p>be withdrawn or why it should be limited in scope. A response to the motion to quash or limit must be filed within ten days of service. The ALJ must rule on the motion immediately after the response is due and his order must specify the date, if any, for compliance with the specifications of the subpoena. Service of the subpoena may be accomplished by certified mail or by any person who is not less than 18 years of age. A witness, other than a witness for the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding. 29 C.F.R. § 18.24. To the extent that any situation is not provided for or controlled by these rules, or by any statute, executive order or regulation, the Rules of Civil Procedure for the District Courts of the United States will apply. 29 C.F.R. § 18.1(a).</p>	<p>Benefits Review Board: The Board is an appellate tribunal. It does not, in practice, issue subpoenas.</p>
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		Administrative Law Judges, the subpoena power also is a necessary component in the District Director's exercise of his investigative authority under section 19 and thus section 27(a)'s subpoena power also continues to reside with the district director.		For Benefits Review Board: No specific notification procedure.	
<b>Department of Labor</b>	Longshore and Harbor Workers Compensation Act (LHWCA) 33 U.S.C. 944, 20 C.F.R. § 702.147(b)	The Secretary of Labor is also charged with the administration of a "special fund" under § 44 of the Act, financed by covered employers and insurance carriers, which makes payments in certain cases including, cases in which an employer is awarded "special fund" relief because its liability has been augmented by an injured worker's pre-existing disability, and cases where compensation awards cannot be satisfied because of the insolvency of the employer. 33 U.S.C. 944. A separate grant of subpoena authority is given to the Secretary to administer the special fund. Section 44(c) provides that "for the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of [§ 44], the provisions of section 9 and	The aid of any court of the United States can be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and individuals, partnerships or corporations "may be punished by such court as a contempt thereof." 15 U.S.C. § 49. Any person who disobeys an order of a district court to comply with a subpoena will "be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment." 15 U.S.C. § 50.	29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)  Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.	

		<p>10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., title 15, secs. 49 and 50) are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor.” Section 49 provides the authority to issue subpoenas for the attendance of witnesses or the submission of documentary evidence from any person, partnership or corporation being investigated against. 15 U.S.C. § 49. Such authority also applies for hearings and the taking of depositions during the course of an investigation. <i>Id.</i></p>			
<p><b>Department of Labor</b></p>	<p>McNamara-O’Hara Service Contract Act, P. L. 89-286, 41 U.S.C. 353(a), 29 CFR 6.4, 6.6(b)</p>	<p>“Enforcement of chapter Sections 38 and 39 of this title [Walsh-Healey Act] shall govern the Secretary's authority to enforce this chapter, make rules, regulations, issue orders, hold hearings, and make decisions based upon findings of fact, and take other appropriate action hereunder.”(41 U.S.C. 353(a))</p> <p>“...The Secretary of Labor</p>	<p>“In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon</p>	<p>29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials). 29 CFR 6.4</p> <p>DOL Employment Standards Administration’s Wage and Hour Division’s Field Operations Handbook, Section 86b.</p>	

		<p>or his authorized representatives shall have power to make investigations and findings as provided in sections 35 to 45 of this title..." (41 U.S.C. 38, incorporated by 41 U.S.C. 353(a))</p> <p>"Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of sections 35 to 45 of this title, and on complaint of a breach or violation of any representation or stipulation as provided in said sections, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath." (41 U.S.C. 39, incorporated by 41 U.S.C. 353(a))</p>	<p>the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof[.]" (41 U.S.C. 39, incorporated by 41 U.S.C. 353(a))</p>		
<b>Department of Labor</b>	Migrant and Seasonal Farm worker Protection Act, P. L. 97-470, 29 U.S.C. 1862(b), 20 CFR 636.7.	"The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such	"And in case of disobedience to a subpoena the [Secretary] may invoke the aid of any court of the United States in requiring the	15 U.S.C. 49, incorporated into 29 U.S.C. 1862(b).29 U.S.C. 1862(b) (confidentiality)	29 CFR Parts 70-71

		<p>investigations. The Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this chapter, the authority contained in sections 49 and 50 of title 15 [Federal Trade Commission Act], relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary in good faith.” 29 U.S.C. 1862(b).</p> <p>“To carry out this chapter the Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate, and in connection therewith, enter and inspect such places (including housing and vehicles) and such records (and make transcriptions thereof), question such persons and gather such information to determine compliance with this chapter, or regulations prescribed under this chapter.” 29 U.S.C.</p>	<p>attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts ... may, in case of contumacy or refusal to obey a subpoena ... issue an order requiring such person, partnership, or corporation to appear before the [Secretary], or to produce documentary evidence ..., or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof..”</p>	<p>(general DOL regulations governing privacy and disclosure of information or materials)</p> <p>Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p>	
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		1862(a).			
<b>Department of Labor</b>	Occupational Safety and Health Act, P. L. 91-596, 29 U.S.C. 657(b)	“In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath.”	“In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.”	29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)  29 CFR 1903.9 (Trade Secrets)  29 CFR 1913.10 (Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records)  Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.	OSHA Field Inspection Reference Manual, Chapter II, section A. 2. c. 3 ( <a href="http://www.osha-slc.gov/Firm_osh_data/100006.html">http://www.osha-slc.gov/Firm_osh_data/100006.html</a> )  OSHA Instruction ADM 4.4 AUG 19 1991 ( <a href="http://www.osha-slc.gov/OshDoc/Directive_data/ADM_4_4.html">http://www.osha-slc.gov/OshDoc/Directive_data/ADM_4_4.html</a> )
<b>Department of Labor</b>	Program Fraud Civil Remedies Act, P.L. 99-509, 31 U.S.C. 3804, 29 CFR 22.4, 22.23	The Inspector General is the "investigating official" and can require the production of material similar to that which can be obtained under the IG Act - that is, records, data, etc. but not testimony. Under the PFCRA, there is a further limitation – the only data which can be subpoenaed	Enforced by petition of the Attorney General who can seek an order from the District Court where the person receiving the subpoena resides or conducts business.  A failure to obey the order of the court is contempt.	No specific notification procedures. Subpoenas for records may be subject to the notification provisions of the Right to Financial Privacy Act and Medical Privacy Acts when they apply.	None

		<p>is that which is not otherwise reasonably available to the authority.</p> <p>Additionally the Act provides authority to the presiding officer of an Administrative hearing to subpoena documents and testimony.</p>			
<p><b>Department of Labor</b></p>	<p>Trade Act of 1974, P.L. 93-618, 19 U.S.C. 2321, 29 CFR 90.14</p>	<p>The Secretary of Labor may require by subpoena the attendance of witnesses and the production of evidence necessary to make a determination whether to certify a worker group as eligible to apply for assistance under the TAA and NAFTA-TAA programs. 19 U.S.C. 2321(a).</p>	<p>“If a person refuses to obey a subpoena issued under subsection (a) of this section, a United States district court within the jurisdiction of which the relevant proceeding under this part is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena.” 19 U.S.C. 2321(b). Enforcement is through DOJ. No specified sanctions.</p>	<p>Subpoenas under this section must be served either in person or by certified mail, return receipt requested, and the compliance date for the subpoenas must be no less than seven (7) days from the date of service.</p> <p>In practice, DOL’s Employment and Training Administration’s Office of Trade Adjustment Assistance (OTAA) uses this subpoena authority to obtain confidential business data necessary for determining whether a firm, for whose employees a petition for certification under TAA or NAFTA-TAA has been filed, has been impacted by imports or has shifted production to Canada or Mexico.</p> <p>29 CFR Part 90, provides for confidentiality of</p>	<p>In practice, subpoenas are used only as a last resort, when repeated requests for necessary business data have been refused or left unanswered by a firm whose data OTAA seeks. Typically, OTAA precedes the serving of a subpoena with the delivery to the firm in question of a “pre-subpoena” letter, warning the firm that a subpoena will be served if the firm does not provide the necessary data by a specific date. If the firm continues to refuse to provide the data or leaves the pre-subpoena letter unanswered, then OTAA serves a subpoena on the firm. The U.S. Department of Justice seeks enforcement on behalf of DOL.</p>

				<p>business data, which would include any data obtained via a subpoena. Specifically, 29 CFR 90.16(c) and (f) provide that published notices of affirmative and negative determinations, respectively, shall exclude confidential business information, as identified by the certifying officer (who is a staffer in the ETA Division of Trade Adjustment Assistance). Also, 29 CFR 90.32(b) states that confidential business information is not available to the public. Finally, 29 CFR 90.33 addresses confidential business information in detail. This provision defines confidential business information as trade secrets and commercial and financial information, which are obtained from a person and are privileged or confidential, as set forth in 5 U.S.C. 552(b) and 29 CFR Parts 70-71. Paragraph (b) of 29 CFR 90.33 requires that confidential business information be clearly identified as such on each page of a document containing such information. Finally, paragraph (c) of 29 CFR</p>	
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				<p>90.33 states that the certifying officer is entitled to refuse to accept certain information as confidential, but that the supplier is entitled to notice of the refusal and the right to withdraw the information if the certifying officer makes such a refusal.</p> <p>Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p>	
<b>Department of Labor</b>	Uniformed Services Employment and Reemployment Rights Act of 1994, P.L. 103-353, 38 U.S.C. 4326(b).	“In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation.”	Enforcement is by the Attorney General, at the request of the Secretary of Labor, in US District Court.	<p>29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)</p> <p>Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.</p>	VETS USERRA Operations Manual, pages VI-5-9, VI-17-19.
<b>Department of Labor</b>	Veterans Employment Opportunities Act of 1998, Public Law 105-339, 5 U.S.C.. 3330a(b).	“In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and	Enforcement is by the Attorney General, at the request of the Secretary of Labor, in US District Court. 5 U.S.C.	<p>29 CFR Parts 70-71 (general DOL regulations governing privacy and disclosure of information or materials)</p>	

		testimony of witnesses and the production of documents relating to any matter under investigation."	3330a(b)(3)-(4).	Other privacy/notification requirements, including the Right to Financial Privacy Act, Trade Secrets Act, or HHS Medical Privacy regulations, may apply in some cases.	
<b>Department of Labor†</b>	29 U.S.C. § 1401  Arbitration of disputes between employees and plan sponsors of multiemployer plans under ERISA	"Any arbitration proceedings under this section shall, to the extent consistent with this title, be conducted in the same manner, subject to the same limitations, carried out with the same powers (including subpoena power), and enforced in United States courts as an arbitration proceeding carried out under title 9"			
<b>Department of Labor†</b>	29 U.S.C. § 2004	Employee Polygraph Protection			
<b>Department of Labor†</b>	30 U.S.C. § 813	Mineral Lands and Mining Inspections (mandatory safety and health standards)			



## Appendices A, B, and C

# Accompanying Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

# Appendix A2:

Administrative Subpoena Authorities Held by  
Agencies Other Than the Departments of Justice and  
Treasury

Accompanying a  
Report to Congress on the  
Use of Administrative Subpoena Authorities  
by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

## Appendix A

### **Administrative Subpoena Authorities Held by Agencies Other Than the Departments of Justice and Treasury** **P.L. 106-544, Section 7(a), Executive Branch Study on Administrative Subpoena Authority,** **Scope and Protections**

† Denotes supplemental entry derived from independent research, not submitted by the relevant agency or department

\* Denotes Administrative Law Judge authority (For purposes of this report, “administrative subpoena” authority has been defined to include all powers, regardless of name, that Congress has granted to federal agencies to make an administrative or civil investigatory demand compelling document production or testimony. Civil compulsory process authorities with provision for judicial enforcement are included. Grand jury subpoenas, administrative law judge subpoenas, and investigative authorities requiring judicial approval are not within the scope of the report; however, descriptions of administrative law judge subpoenas submitted by individual agencies and entities have been included as submitted.)

<i>Name of Submitting Agency or Entity</i>	<i>Source and Common Name of Authority (Including Act Name, P.L. and U.S.C. &amp; CFR cites)</i>	<i>Scope of Authority Description</i>	<i>Enforcement Mechanism Description</i>	<i>Notification Req. and Privacy Protections</i>	<i>Issuance Standards and Qualifiers or Procedures</i>
<b>Department of State</b>	<b>Holds no administrative subpoena authority, excluding Inspector General administrative subpoena authority.</b>				
<b>Department of</b>	<b>22 U.S.C. §4833</b>	<b>In any case of serious</b>	<b>The Board may</b>	<b>Specific</b>	

<b>State†</b>		<p><b>injury, loss of life, or significant destruction of property at, or related to, a United States Government mission abroad, and in any case of serious breach of security involving intelligence activities of a foreign government directed at a U.S. government mission abroad, in certain circumstances, the Secretary of State is authorized to convene and Accountability Review Board.</b></p> <p><b>The Board is authorized to issue a subpoena for the attendance and testimony of any person and the production of documentary of other evidence from any such person if the Board finds that such a subpoena is necessary in the interests of justice for the development of relevant evidence.</b></p>	<p><b>request the Attorney General's assistance in seeking an enforcement order from a U.S. district court.</b></p>	<p><b>confidentiality protections are required under the statute.</b></p>	
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<b>Department of Transportation</b>					
<b>US Department of Transportation*</b>	<p><b>14 CFR 302.25, Subpoenas in an oral evidentiary hearing. Require the attendance of a witness at a hearing or the production of documentary evidence.</b></p>	<p><b>The administrative law judge or the DOT decision maker considering an application for a subpoena shall issue the subpoena if the application complies with section 302.25. Any person upon whom a subpoena is served has seven days to file a motion to quash or modify the subpoena with the administrative law judge or, in the event that an administrative law judge has not been assigned or is unavailable, to the DOT decisionmaker or the Chief Administrative Law Judge for action. If the person to whom the motion has been addressed has not acted by the return date, such date shall be stayed pending his or her final action. The DOT decisionmaker may at any time</b></p>	<p><b>Any party may make an application for subpoena without notice. Any person who objects to the public disclosure of documents or oral testimony covered by a subpoena may file a motion requesting confidential treatment pursuant to [CFR 302.12. Under that rule, requests for confidential treatment are judged in accordance with the standards of disclosure found in the Freedom of Information Act (5 U.S.C. section 552). The Right to Financial Privacy Act may or may not apply. Pursuant to 14 CFR 302.27, any person appearing as a witness response to a subpoena is entitled to counsel and must be tendered the same</b></p>	<p><b>An application shall contain a statement or showing of general relevance and reasonable scope of the evidence sought that, in the case of evidence, shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible, or, in the case of a witness, the name of the witness and a general description of the matters concerning which the witness will be asked to testify. The person considering the application shall issue the subpoena if the application complies with 14 CFR 302.25.</b></p>	<p><b>The subpoena power can be valuable in obtaining evidence in aviation enforcement proceedings pursuant to 14 CFR 302 Subpart D. The subpoena power is used sparingly.</b></p>

		<p>review, upon his or her own initiative, the ruling of the administrative law judge or Chief Administrative Judge denying a motion to quash. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.</p>	<p>mileage and attendance fees as are paid to witness for such service in the courts of the United States.</p>		
<p><b>US Department of Transportation</b></p>	<p><b>14 CFR 305.7, Issuance of Investigation subpoenas in informal, non-adjudicatory, nonpublic investigations for determining whether formal enforcement action should be instituted with respect to alleged violations of DOT orders, rules or statutory provisions.</b></p>	<p><b>Require the attendance of a person to testify or the production of documentary evidence.</b></p>	<p><b>The Deputy General Counsel, the DOT decisionmaker, Chief Administrative Law Judge or the administrative law judge designated to preside at the reception of evidence may issue the subpoena. The person upon whom an investigative subpoena is served has seven days to file a motion to quash or modify the subpoena with the official who issued the subpoena. If the person to who the motion has been addressed has not</b></p>	<p><b>Any issued subpoena shall briefly advise the person required to testify or to submit documentary evidence of the purpose of the Investigation and have attached a copy of the order initiating the investigation. The investigation at which the person appears shall be attended only by the witness and his or her counsel, the administrative law judge, and department employees concerned with the conduct of the investigation.</b></p>	<p><b>No set standard, subject to the general style of reasonableness that request be within the scope of the order initiating the investigation.</b></p>



			<p>acted by the return date, such date shall be stayed pending his or her final action. A subpoena will be quashed or modified if the evidence whose production is required is not reasonably relevant to the matter under investigation or the demand made does not describe with sufficient particularity the information sought, or the subpoena is unlawful or unduly. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of the administrative law judge or Chief Administrative Law Judge denying a motion to quash. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.</p>	<p>Unless DOT determines otherwise, all orders instituting the investigation which do not disclose the identify of the particular persons or firms under investigation shall be published in the Federal Register. Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents, which shall not be available to the general public. The use of such records in formal hearings subject to 14 CFR Part 302 shall be subject to aviation requesting confidential treatments pursuant to 14 CFR 302.12. If no corrective action is found to be warranted after the completion of the investigation, all documentary evidence will be</p>	
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				<p>returned to the person that produced it. 14 CFR 305.7 requires that witnesses subpoenaed to appear shall be paid attendance and mileage fees a la 14 CFR 302.27.</p>	
<p><b>US Department of Transportation</b></p>	<p><b>49 U.S.C. 46104, Evidence</b></p>	<p>The Secretary of Transportation may subpoena witnesses and records related to a matter involved in a hearing or investigation from any place in the United States to the designated place of the hearing or investigation, examine witnesses and receive evidence at a place the Secretary designates.</p>	<p>If a person disobeys a subpoena, the Secretary or a party to a proceeding before the Secretary may petition a court of the United States in the jurisdiction in which the proceeding or investigation is conducted to enforce the subpoena. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court. The Secretary may designate an employee of the Department under section 3105 of Title 5 to carry out the powers granted by this action.</p>	<p>“</p>	<p>“</p>

<p><b>US Department of Transportation</b></p>	<p><b>49 U.S.C. 41708, Reports.</b></p>	<p>The Secretary of Transportation may require an air carrier or foreign air carrier to file reports with the Department under oath, to provide specific answers to questions, and to file agreements between carriers related to transportation.</p>	<p><b>Order of the Department.</b></p>	<p>Order issued by the Department and served on the carrier or person. The carrier or person may file motion requesting confidential treatment pursuant to 14 CFR 302.12. The Right to Financial Privacy Act may or may not apply.</p>	<p>To the extent that the Secretary finds it necessary to issue the order to carry out 49 U.S.C. Subpart VII.</p>
<p><b>US Department of Transportation</b></p>	<p><b>Inspector General Act of 1978, as amended, Pub.L. No. 95-452, 5 U.S.C. app.3</b></p>	<p>Administrative authority Subpoenas duces tecum to acquire, with respect to the programs and operations of the Department of Transportation, all information documents, reports, answers, records, accounts, papers and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act, which subpoena, in the case of conformity or refusal to obey, shall be enforceable by order</p>	<p>In the event of refusal to obey, court order obtained through Petition to Enforce filed in appropriate district court.</p>	<p>None specific to Inspector General Act of the Motor Carrier Safety Improvement Act, however, the right to Financial Privacy Act. Publ. L. No. 95-630, 12 U.S.C. §3401. Et seq., requires certain steps be taken with respect to a subpoena for financial records of an individual. Likewise, the Stored Wire and Electric Communications and Transaction Records Access Act. Pub.L. No. 99-508, 18 U.S.C. §2701, et seq. Requires certain</p>	<p>Subpoena records within purview of audit and investigative function of DIG. A level of review has been established to make that determination as well as a determination that the records and information sought via subpoena is not overbroad; oppressive, and otherwise meets with all legal requirements as well as a determination that the records or information cannot be obtained otherwise.</p>

		<p>of any appropriate United States District Court. Authority extends to grantees, contractors, recipients of DOT funds, individuals or entities colluding with a DOT employee to violate the law, and pursuant to the Motor Carrier Safety Improvement Act., Publ. No. 106-159, 5 U.S.C. app. 3, 1, mode 1, any individual or entity regulated by the Department.</p>		<p>safeguards before accessing stored communications (telephone toll records, for example).</p>	
<p><b>US Department of Transportation</b></p> <p>US Coast Guard, G-LMI</p>	<p>Marine Casualty Investigation and License suspension proceedings</p>	<p>46 U.S.C. 6304 and 46 CFR 4.07-5</p>	<p>Through local US Atty petition to enforce filed in appropriate USDC</p>	<p>Actual service of subpoena w/compliance win a “reasonable time”.</p>	<p>Issued by local U.S.C.G Officer in Charge Marine Inspection representative in aid of marine casualty investigation or Mariner License or Document suspension or revocation proceeding.</p>
<p><b>US Department of Transportation</b></p> <p>US Coast Guard, G-LMI</p>	<p>Ports and Waterways Safety Act violation Investigations</p>	<p>33 U.S.C. 1227(b)</p>	<p>Same as above although this authority has seldom, if ever, been utilized because of the lack of implementing regulations</p>	<p>Same as above. There are no regulations in place implementing the statute.</p>	

<p><b>US Department of Transportation</b></p> <p>US Coast Guard, G-LMI</p>	<p>Outer Continental Shelf Lands Act casualty investigations Certain Alaska Cruise Ship Operations</p>	<p>Same as above. There are no implementing regulations. Local US atty petition to USDC for enforcement.</p>	<p>Reasonable time for compliance after actual notice through service of subpoena on responsible official of cruiseship owner/operator's agent for service of process or Master of vessel involved.</p>		
<p><b>US Department of Transportation</b></p> <p>US Coast Guard, G-LMI</p>	<p>Certain Alaska Cruise Ship Operations</p>	<p>Title XIV, Sec. 1409(a)(9) of P, Law 106-554, 114 Stat. 2763, and 33 CFR 159.321(a)(2)(ii).</p>			<p>Because this statute is so new, we are unaware if any subpoena have been issued under it at this time.</p>
<p>Coast Guard†</p>	<p>33 U.S.C. § 1227</p>	<p>In the case of any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this Act, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States, the</p>			
<p><b>US Department of Transportation</b></p> <p>Federal Aviation Administration</p>	<p>49 U.S.C. §46104(a)</p>	<p>Administrator may subpoena witnesses and records related to a matter involved in a hearing or</p>	<p>49 U.S.C. §46104(b). Petition U.S. District Court to enforce subpoena. This is the avenue of</p>		

		<b>investigation.</b>	<b>enforcement for all FAA subpoenas.</b>		
<b>US Department of Transportation</b>  Federal Aviation Administration	<b>14 C.F.R. § 13.57</b>	<b>Party to a proceeding under 14 C.F.R. part 13, subpart D, may apply for subpoena requiring the production of documents or tangible evidence at a hearing, or for the purpose of taking depositions.</b>	<b>Same as above.</b>		<b>In application to Hearing Officer must show general relevance and reasonable scope.</b>
<b>US Department of Transportation</b>  Federal Aviation Administration	<b>14 C.F.R. § 13.11</b>	<b>In formal FAA fact-finding investigation under 14 C.F.R. part 13, subpart F, Presiding Officer may issue a subpoena directing any person to appear to testify or produce documents relating to any matter under investigation.</b>	<b>Same as above.</b>		<b>Subpoena issued by clerk subject to motion to quash.</b>
<b>US Department of Transportation</b>  Federal Aviation Administration	<b>49 U.S.C. § 5121(a)</b>	<b>The Secretary may issue subpoenas, conduct hearings, require the production of records and property.</b>	<b>49 U.S.C. § 5122(a). Bring action in appropriate U.S. District Court to enforce subpoena.</b>		

<p><b>US Department of Transportation</b></p> <p><b>Federal Aviation Administration</b></p>	<p>49 U.S.C. §47122(b)</p>	<p>In conducting an investigation or public hearing under subchapter I of Part B, the Secretary has the same authority that he has under 49 U.S.C. 46104(a).</p>	<p>Enforce under 49 U.S.C. §46104(b).</p>		
<p><b>US Department of Transportation</b></p> <p><b>Federal Railroad Administration</b></p>	<p>No common names 49 U.S.C. §20107(a), formerly § 208 of the Federal Railroad Safety Act of 1970, P.L. 91-458, P.L. 103-372, (superseding 45 U.S.C. §437); 49 C.F.R. §§1.49(m) and 209.7(a), 209.8(a), 209.315, and 240.409.</p>	<p>As the delegate of the Secretary of Transportation the administrator of FRA is charged with enforcing the Federal railroad safety laws, and is authorized to conduct investigations, make reports, issue subpoenas, require the production of documents take depositions and prescribe record keeping and reporting requirements.</p>	<p>FHA may seek enforcement by the Attorney General of subpoena in Federal District Court, as authorized by 49 U.S.C. §§ 2011(a)(3) and 201.12(a)(3), and 40 C.F.R. §209.7(i).</p>	<p>Under 49 C.F.R. § 209.7(d), service of a subpoena to a <u>person</u> is made by; handling it to the person; leaving it at his or her office with the person in charge; leaving it at his or her dwelling or usual abode with someone of suitable agent and discretion; mailing it by registered or certified mail to a last known address; or giving actual notice. Service to an <u>entity</u> other than a person is made by handing a copy to a registered agent or company official; mailing it by registered or certified mail to a last known address; or giving actual notice. Under 49 C.F.R. § 209.11, a</p>	

				party may request confidential treatment of any document provided to FHA.	
<b>US Department of Transportation</b>  <b>Federal Railroad Administration</b>	No common names; 49 U.S.C. §20902(b), formerly §3 of the Accidents Report Act (superseding 45 U.S.C. §40); P.L. 103-272; 49 U.S.C. §103(c)(1); 49 C.F.R. §§1.49, 209.7(a), and 225.31(b).	As the delegate of the Secretary of Transportation the Administrator of FRA is charged with enforcing the Federal railroad safety laws, including investigating accidents and incidents, and is authorized to subpoena witnesses, require the production of records, exhibits, and other evidence, administer oaths, and take testimony.	Under its general authority under the railroad safety laws, FRA may seek enforcement by the Attorney General of a subpoena in Federal District Court, as authorized by 49 U.S.C. §§20111(a)(3) and 20112(a)(3), and 49 C.F.R. §209.7(i).	Same notification and privacy protections discussed above. See 49 C.F.R. §§209.7(d) and 209.11.	When necessary to carry out and investigate an accident or incident, either because it resulted in the death of a railroad employee or the injury of five or more persons or because it appeared that an investigation would substantially serve to promote railroad safety, FRA may authorize the issuance of subpoenas to require the production of records and the giving of testimony.
<b>US Department of Transportation</b>  <b>Federal Railroad Administration</b>	No common name; hazardous materials transportation laws, P. L. 93-633, P.L. 103- 272, 49 U.S.C. § 5121 (formerly the Hazardous Materials Transportation Act, 49 U.S.C. app. § 1808); 49 C.F.R. §§	In enforcing the hazardous materials laws, to the extent necessary, as the delegate of the Secretary of Transportation, the FRA Administrator may investigate, make reports , issue	Under 49 U.S.C. § 5122, the FRA Administrator, as the delegate of the Secretary of Transportation, may seek enforcement by the Attorney General of a subpoena in Federal District	Some notification and privacy protections discussed above. See 49 C.F.R. §§209.7(d) and 209.11 and 209.115.	Under 49 C.F.R. § 209.7, the Chief Counsel may issue a subpoena in any matter related to enforcement of the railroad safety laws. In hearings involving hazardous materials penalties, the



	<b>1.49, 209.7(a) and 209.115.</b>	<b>subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities.</b>	<b>Court.</b>		<b>presiding officer may issue subpoenas upon the written request of a party to the proceeding who makes an adequate showing that the information sought will materially advise the proceeding. Under 49 U.S.C. §5121(c) and 49 C.F.R. §1.49, the FRA Administrator, as the delegate of the Secretary of Transportation, may authorize inspectors to enter upon, inspect, and examine, at reasonable times and in a reasonable way, the records and properties of shippers and railroads to the extent such records and properties relate to the manufacture, fabrication, marking, reconditioning, repair, testing, or distribution of packages or containers for use by any shipper or manufacturer in the transportation of</b>
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					hazardous materials in commerce.
<b>US Department of Transportation</b>  National Highway Traffic Safety Administration	<b>49 U.S.C. Chapter 301, Motor Vehicle Safety Section 30117</b>	Agency may require that a manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety	Civil Action by DOJ at request of DOT	Service-personal or by registered letter  Subject to Privacy Act, FOIA exemptions and the provisions of 49 U.S.C. 30167 dealing with disclosure of information by the government.	Information will be needed to further investigation or proceeding
<b>US Department of Transportation</b>  National Highway Traffic Safety Administration	<b>49 U.S.C. 30166</b> Reports including document production and Special Orders that are comparable to subpoenas.	Agency may conduct an inspection or investigation relating to motor vehicle safety.	Civil action by DOJ at request of DOT	Give reasonable notice of inspection or request.	To determine in manufacture is complying with safety requirements.
<b>US Department of Transportation</b>  National Highway Traffic Safety Administration	<b>49 U.S.C. Chapter 323, Consumer Information Section 32307- Investigative Powers</b>	Agency may require manufacturer to provide information regarding damage sU.S.C.eptibility, crashworthiness, damage repair costs and vehicle operation costs.	Civil action by DOJ at request of DOT.	Give reasonable notice. Privacy Act, FO:IA and provisions of 18 U.S.C. 1905	To ensure compliance with consumer with consumer information requirements relating to motor vehicles.
<b>US Department of Transportation</b>	<b>49 U.S.C. Chapter 325, Bumper</b>	Agency may require manufacturer of	Civil action by DOJ at request of DOT	Given reasonable notice, agency may	To ensure compliance with bumper

<p><b>National Highway Traffic Safety Administration</b></p>	<p><b>Standards Section 32505. Information and compliance requirements</b></p>	<p><b>passenger motor vehicles or equipment to provide information on bumper standards</b></p>		<p><b>require manufacturer to provide documents or make reports. Privacy Act, FOIA, and provisions of 18 U.S.C. 1905</b></p>	<p><b>standards established by this Chapter</b></p>
<p><b>US Department of Transportation</b>  <b>National Highway Traffic Safety Administration</b></p>	<p><b>49 U.S.C. Chapter 327, Odometers Section 32706</b></p>	<p><b>Agency may conduct investigations, conduct inspections or require reports dealing with motor vehicle odometers.</b></p>	<p><b>Civil action by DOJ at request of DOT</b></p>	<p><b>Given reasonable notice agency may enter premises, inspect records or require reports that relate to odometers of motor vehicles.</b></p>	<p><b>To ensure industry compliance with odometer standards</b></p>
<p><b>US Department of Transportation</b>  <b>National Highway Traffic Safety Administration</b></p>	<p><b>49 U.S.C. Chapter 329, Automobile Fuel Economy Section 32910 Administrative</b></p>	<p><b>Agency may inspect and copy records, require reports and answers under oath.</b></p>	<p><b>Civil action by DOJ at request of DOT</b></p>	<p><b>given reasonable notice agency may enter premises, inspect records or require reports that relate to fuel standards.</b></p>	<p><b>To ensure industry compliance with automobile fuel economy standards.</b></p>
<p><b>US Department of Transportation</b>  <b>National Highway Traffic Safety Administration</b></p>	<p><b>49 U.S.C. Chapter 301, Motor Vehicle Safety Section 30117-</b></p>	<p><b>Agency may require that a manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety</b></p>	<p><b>Civil Action by DOJ at request of DOT</b></p>	<p><b>Service-personal or by registered letter. Subject to Privacy Act, FOIA exemptions and the provisions of 49 U.S.C. 30167 dealing with disclosure of information by the government.</b></p>	<p><b>Information will be needed to further investigation or proceeding</b></p>

<p><b>US Department of Transportation</b></p> <p>National Highway Traffic Safety Administration</p>	<p>49 U.S.C. 30166 Reports including document production and Special Orders that are comparable to subpoenas.</p>	<p>Agency may conduct an inspection or investigation relating to motor vehicle safety</p>	<p>Civil action by DOJ at request of DOT</p>	<p>Give reasonable notice of inspection or request</p>	<p>To determine in manufacturer is complying with safety requirements.</p>
<p><b>US Department of Transportation</b></p> <p>National Highway Traffic Safety Administration</p>	<p>49 U.S.C. Chapter 323, Consumer Information Section 32307 Investigative Powers</p>	<p>Agency may require manufacture to provide information regarding damage sU.S.C.eptibility, crashworthiness, damage repair costs and vehicle operation costs.</p>	<p>Civil action by DOJ at request of DOT</p>	<p>Give reasonable notice. Privacy Act, FOIA and provisions of 18 U.S.C. 1905.</p>	<p>To ensure compliance with consumer information requirements relating to motor vehicles.</p>
<p><b>US Department of Transportation</b></p> <p>National Highway Traffic Safety Administration</p>	<p>49 U.S.C. Chapter 325, Bumper Standards Section 32505. Information and compliance requirements</p>	<p>Agency may require manufacturer of passenger motor vehicles or equipment to provide information on bumper standards.</p>	<p>Civil action by DOJ at request of DOT.</p>	<p>Give reasonable notice, agency may require manufacturer to provide documents or make reports. Privacy Act, FOIA, and provisions of 18 U.S.C. 1905.</p>	<p>To ensure compliance with bumper standards established by this Chapter.</p>
<p><b>US Department of Transportation</b></p> <p>National Highway Traffic Safety Administration</p>	<p>49 U.S.C. Chapter 327, Odometers Section 32706</p>	<p>Agency may conduct investigations, conduct inspections or require reports dealing with motor vehicle odometers.</p>	<p>Civil action by DOJ at request of DOT</p>	<p>Given reasonable notice agency may enter premises, inspect records or require reports that relate to odometers of motor vehicles.</p>	<p>To ensure industry compliance with odometer standards.</p>

<p><b>US Department of Transportation</b></p> <p>National Highway Traffic Safety Administration</p>	<p>49 U.S.C. Chapter 329, Automobile Fuel Economy Section 32910 Administrative</p>	<p>Agency may inspect and copy records, require reports and answers under oath.</p>	<p>Civil action by DOJ at request of DOT.</p>	<p>Given reasonable notice agency may enter premises, inspect records or require reports that relate to fuel standards.</p>	<p>To ensure industry compliance with automobile fuel economy standards.</p>
<p><b>US Department of Transportation</b></p> <p>Maritime Administration</p>	<p>Section 214 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1124;46 CFR 201.121-127</p>	<p>MARAD is authorized to issue a subpoena and testificandum or subpoena duces tecum for the purpose of investigation which is necessary and proper in carrying out the Merchant Marine Act.</p>	<p>MARAD may invoke the aid of any district court of the United States within the jurisdiction in which the person resides or carries out business. A failure to obey an order of the court may be punished by the court as contempt.</p>	<p>No notification requirement but 46 CFR 201.124 provides for opportunity to request quashing of subpoena. Elicited information may be treated as confidential under 46 CFR 201.151.</p>	<p>Subpoena and testification -upon request of an interested party (46 CFR 201.121); subpoena duces tecum-not unreasonable, oppressive, excessive in scope or unduly burdensome (46 CFR 201.123)</p>
<p><b>US Department of Transportation</b></p> <p>Research and Special Programs Administration</p>	<p>Hazardous Materials Transportation Act as codified by P.L. 103-272 at 49 U.S.C. 5101, 5121. 49 C.F.R. 107.13, 107.305</p>	<p>To require the attendance of witnesses or the production of documentary or other tangible evidence, or both.</p>	<p>Civil action by DOJ at the request of DOT.</p>	<p>Service in person (or on a duly authorized representative) or by certified or registered mail. Agency may treat any document provided confidential after a request and showing that it is exempt from disclosure under FOIA or otherwise.</p>	<p>A showing that the information will materially advance a proceeding under, or a determination of compliance with, the hazardous material transportation law. Within 10 days a person receiving a subpoena may apply to quash or modify the subpoena.</p>
<p><b>US Department of</b></p>	<p>Pipeline Safety Act</p>	<p>To require the</p>	<p>Civil action by DOJ</p>	<p>Service in person (or</p>	<p>A showing that the</p>

<p><b>Transportation</b></p> <p>Research and Special Programs Administration</p>	<p>as codified by P.L. 103-272 at 49 U.S.C. 60101, 60117 49 C.F.R. 190.7, 190.203</p>	<p>attendance of witnesses or the production of documentary or other tangible evidence, or both.</p>	<p>at the request of DOT.</p>	<p>on a duty authorized representative) or by certified or registered mail. Agency may treat any document provided confidential after request and showing it is exempt from disclosure under FOIA or otherwise.</p>	<p>information will materially advance a proceeding or determine the appropriate action to be taken under the pipeline safety law. Within 10 days, a person receiving a subpoena may apply to quash or modify the subpoena.</p>
<p><b>US Department of Transportation</b></p> <p>Federal Motor Carrier Safety Administration (designee of the Secretary)</p>	<p>49 U.S.C. §502</p>	<p>Grants FMCSA right to inquire into, and report on the management of the business of the motor carrier; or a person controlling, controlled by, or under common control with those carriers to the extent that the business of the person is related to the management of the business of that carrier; and obtain from those carriers and persons information the secretary determines to be necessary. FMCSA may subpoena witness and records related to a proceeding or investigation.</p>	<p>If a witness does not obey a subpoena, the agency, or a party before the agency, may petition the district court to enforce the subpoena. The court can enforce a refusal to obey an order of the court as an contempt of court.</p>	<p>Reasonable notice must be given in writing before taking a deposition.</p>	<p>Notice shall state the name of the witness and the time and place of the deposition. Testimony taken under oath. Person taking the deposition shall prepare a transcript of the testimony taken. Transcript shall be subscribed by the deponent.</p> <p>Testimony of a witness who is in a foreign country may be taken by the FMCSA and filed promptly. Witness summoned before the agency is</p>

		<p>FMCSA may take testimony of a witness by deposition and may order the witness to produce records.</p>			<p>entitled to the same fees and mileage paid for those services in the courts of the U.S.</p>
<p><b>US Department of Transportation</b></p> <p>Federal Motor Carrier Safety Administration</p>	<p>49 U.S.C. §504</p>	<p>Authorizes the Secretary to prescribe the form and type of records to be maintained.</p> <p>Authorizes employees to inspect and copy records, and inspect the equipment of a carrier, lessor, or association.</p> <p>Employees are also authorized to inspect and copy any record of a person controlling, controlled by, or under common control, with a carrier, if the secretary considers inspection relevant to that person's relation to, or transaction with, that carrier.</p>	<p>Provides for a legal right of entry to permit an inspection, enforced by court of competent jurisdiction.</p>	<p>Secretary may prescribe the time period for records to be preserved.</p> <p>Report of an accident or of an investigation of the accident cannot be admitted as evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.</p> <p>Courts have held that in closely regulated industries, there is a diminished expectation of privacy and warrantless searches within the trucking industry have been upheld and codified at section 504.</p> <p>Merely the showing of a legitimate investigatory</p>	<p>On demand and display of proper credentials, an employee may inspect records and equipment of a carrier, lessor, or association.</p> <p>A contract for DOT has the same right of inspection of equipment and records of a motor carrier as an FMCSA employee.</p>

				purpose and the need to conduct the inspection is sufficient to warrant the issuance of an injunction mandating the inspection.	
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §507	Authorizes the Secretary to bring a civil enforcement action against a carrier to enforce chapter 5 and the regulations under it. The Attorney General is authorized to institute actions on request of the Secretary.	In a civil action under this provision, trial is in the judicial district where the carrier operates.	Process may be served without regard to territorial limits of the district or of the State in which the action is brought.	A person participating with the carrier in a violation can be joined in the civil action without regard to the residence of the person.
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §523(c)	Prohibits an FMCSA employee who makes an inspection under §504 to knowingly disclose information acquired during that inspection.	Subject to fines of not more than \$500, imprisonment for not more than 6 months, or both.		
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §5121	Grants the Secretary authority to investigate, make reports, issue subpoenas, conduct hearings, require the reproduction of records and property, take depositions and	After notice and an opportunity for hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed in this	An officer or employee, or agent shall display proper credentials when requested Provides for notice and hearing.	



		conduct research, development, demonstration, and training activities, relating to the transportation of hazardous materials.	chapter.		
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §5122	The Attorney General may, upon the request of the Secretary, bring civil action an appropriate district court of the U.s. to enforce chapter 51 or a regulation prescribed or order issued under this chapter.			
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §14122	Secretary can prescribe the form of records required to be compiled by carriers and brokers and may inspect them.	If violator refuses access, cannot subpoena records. The enforcement mechanism would be to obtain an injunction in district court ordering production of records [49 U.S.C. 14701].	Upon the display of proper credentials, the Secretary or employee designee may inspect, copy, and examine any records, Lands, buildings, and equipment of a carrier or broker.	Time period of preservation of records is determine by the Secretary or designee.
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §14702	This provision enables the Secretary to bring a civil action to enforce 49 U.S.C. §14103, or this part, or a regulation or order of the Secretary when	Trial is in the judicial district in which the carrier operates.	Process may be served without regard to the territorial limits of the district or State in which the action is instituted.	A person participating with a carrier in a violation can be joined in the civil action without regard to the residence of the

		violated by a carrier or broker, or by a foreign motor carrier or foreign motor private carrier.			person.
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §14909	Criminal provision for failing to obey a subpoena or requirement of the Secretary to appear and testify or produce records.			
<b>US Department of Transportation</b>  Federal Motor Carrier Safety Administration	49 U.S.C. §31133	Secretary may conduct inspections and investigations; compile statistics; make reports, issue subpoenas; require production of records and property; take depositions; hold hearings; prescribe record keeping and reporting requirements; conduct or make contracts for studies, development, testing, evaluation, and training; and perform other acts the Secretary considers appropriate.	Secretary may delegate to a State receiving a grant under section 31102 of this title those duties and powers related to enforcement (including conducting investigations) of this subchapter and regulations prescribed under this subchapter that the Secretary considers appropriate.		Secretary shall consult with employers and employees and their authorized representatives in connection with inspections and investigations and offer them a right of accompaniment.
<b>US Department of Transportation</b>	49 U.S.C. §31143	§31143(a) requires the Secretary to conduct timely investigations of		Secretary required to give the compliant timely notice of the	

<p><b>Federal Motor Carrier Safety Administration</b></p>		<p><b>nonfrivolous written complaints alleging that a substantial violation of a regulation prescribed under this subchapter is occurring or has occurred within the prior 60 days.</b></p>		<p><b>findings of the investigation.</b></p> <p><b>The Secretary may disclose the identity of a complaint only if disclosure is necessary to prosecute a violation.</b></p> <p><b>If disclosure is necessary, the Secretary shall take every practical means within the Secretary's authority to ensure that the complaint is not subject to harassment, intimidation, disciplinary action, discrimination or financial loss because of disclosure.</b></p>	
<p><b>US Department of Transportation</b></p> <p><b>Federal Motor Carrier Safety Administration</b></p>	<p><b>49 U.S.C. §31306(c)</b></p>	<p><b>Secretary is required to develop drug and alcohol testing requirements that promote, to the maximum extent practicable, individual privacy in the collection of specimens [§31306(c)(L)].</b></p>		<p><b>§31306(c)(7) provides for the confidentiality of test results and medical information (except information about alcohol or a controlled substance of employees, except that this clause does not prevent the use of test results for the orderly imposition of</b></p>	

				appropriate sanctions under this section. §31306(c)(8) ensures that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.	
<b>Department of Transportation†</b>	<b>46 U.S.C. Appx § 1124</b>	<b>Creation and function of maritime agencies</b>			
<b>Department of Transportation†</b>	<b>33 U.S.C. § 1907</b>	<b>Investigations in violation of the MARPOL protocol</b>			
<b>Department of Veterans Affairs</b>					
<b>Department of Veterans Affairs</b>	<b>38 U.S.C. §5711.</b>		<b>Order of U.S. District Court.</b>	<b>Right to Financial Privacy Act, 12 U.S.C. §§3401-3422.</b>	

<b>Department of Veterans Affairs</b>	<b>Inspector General Act (P.L. 95-452); 5 U.S.C. App. §6(a)(4)</b>		<b>Order of U.S. District Court.</b>	<b>Right to Financial Privacy Act, 12 U.S.C. §§3401-3422.</b>	<b>Internal guidelines.</b>
<b>Environmental Protection Agency</b>	<b>Holds no administrative subpoena authority, excluding the Inspector General authority. No unique, agency-specific IG Act authority held.</b>				
<b>Environmental Protection Agency</b>	<b>Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), P.L. 92-500, as amended, 33 U.S.C. § 1318(a)(A), CWA § 308(a)(A).</b>	<b>Owner or operator of any point source may be required to: (i) establish and maintain records; (ii) make reports; (iii) install, use, and maintain monitoring equipment; (iv) sample effluents; and (v) provide such other information as EPA “may reasonably require.”</b>	<b>Negligent and knowing violations subject to criminal penalties (CWA § 309(c)(1-3)). Violations also subject to judicial civil penalties not to exceed \$27,500 per day for each violation (CWA § 309(b), (d)). Violations also subject to administrative civil penalties not to exceed \$11,000 per day up to \$137,500</b>	<b>Information obtained under CWA § 308 is not publicly available if EPA determines “that records, reports, or information, or particular part thereof (other than effluent data), ... would divulge methods or processes entitled to protection as trade secrets....” (i.e. protected under Section 1905 of Title 18), CWA § 308(b).</b>	<b>EPA may require submission of this information whenever required to carry out the objective of this statute, including but not limited to: developing a limitation, prohibition or effluent standard, pretreatment standard or standard of performance; determining whether a person is in violation of such standard or limitation; any</b>

			(CWA § 309(g)(1-2).		requirement under the statute; or carrying out specific listed provisions of the statute.
<b>Environmental Protection Agency</b>	Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), P.L. 92-500, as amended, 33 U.S.C. § 1318(a)(B), CWA § 308(a)(B).	Authorizes EPA to have access to and copy records and inspect equipment required by CWA § 308(a)(A).	Negligent and knowing violations subject to criminal penalties (CWA § 309(c)(1-3)). Violations also subject to judicial civil penalties not to exceed \$27,500 per day for each violation (CWA § 309(b), (d)). Violations also subject to administrative civil penalties not to exceed \$11,000 per day up to \$137,500 (CWA § 309(g)(1-2).	Information obtained under CWA § 308 is not publicly available if EPA determines “that records, reports, or information, or particular part thereof (other than effluent data), ... would divulge methods or processes entitled to protection as trade secrets....” (i.e. protected under Section 1905 of Title 18), CWA § 308(b).	EPA may require submission of this information whenever required to carry out the objective of this statute, including but not limited to: developing a limitation, prohibition or effluent standard, pretreatment standard or standard of performance; determining whether a person is in violation of such standard or limitation; any requirement under the statute; or carrying out specific listed provisions of the statute.

<p><b>Environmental Protection Agency*</b></p> <p>Office of Regulatory Enforcement</p>	<p>Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), P.L. 92-500, as amended, 33 U.S.C. § 1319(g)(10), CWA § 309(g)(10).</p>	<p>EPA (and the U.S. Army Corps of Engineers) “may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with” administrative civil penalty hearings pursuant to CWA § 309(g).</p>	<p>Subpoenas may be issued by an Administrative Law Judge or other Presiding Officer (40 C.F.R. § 22.21(b)) and are enforceable through contempt proceedings in federal district court (CWA § 309(g)(10)).</p>	<p>Notice is provided prior to seeking federal court enforcement of the subpoena.</p>	<p>EPA (and the U.S. Army Corps of Engineers) may issue subpoena.</p> <p>Subpoenas may be issued by an Administrative Law Judge or other Presiding Officer (40 C.F.R. § 22.21(b)).</p>
<p><b>Environmental Protection Agency*</b></p> <p>Office of Regulatory Enforcement</p>	<p>Oil Pollution Act/ Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), P.L. 92-500, as amended, 33 U.S.C. § 1321(b)(6)(I), CWA § 311(b)(6)(I).</p>	<p>EPA (and the U.S. Coast Guard) “may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with” administrative civil penalty hearings pursuant to CWA § 311(b)(6).</p>	<p>Subpoenas may be issued by an Administrative Law Judge or other Presiding Officer (40 C.F.R. § 22.21(b)) and are enforceable through contempt proceedings in federal district court (CWA § 309(b)(6)(I)).</p>	<p>Notice is provided prior to seeking federal court enforcement of the subpoena.</p>	<p>EPA (and the U.S. Coast Guard) may issue subpoena.</p> <p>Subpoenas may be issued by an Administrative Law Judge or other Presiding Officer (40 C.F.R. § 22.21(b)).</p>
<p><b>Environmental Protection Agency</b></p> <p>Office of Regulatory Enforcement</p>	<p>Public Health Service Act (“Safe Drinking Water Act” or “SDWA”), P.L. 93-523, as amended, 42 U.S.C. § 300j-4(a)(1)(B), SDWA § 1445(a)(1)(B).</p>	<p>To determine compliance with the SDWA, “[e]very person who is subject to a national primary drinking water regulation” may be required to “provide such information as</p>	<p>Failure or refusal to comply with a requirement under this provision is subject to a judicial civil penalty not to exceed \$27,500 (SDWA § 1445(c)). Any person who</p>	<p>Consultation with State required if State has primary enforcement responsibility (SDWA § 1445(a)(1)(B)). Information obtained under SDWA § 1445 is not publicly</p>	<p>Information may be requested, on a case-by-case basis, to determine compliance with the statute.</p>

		[EPA] may reasonably require.”	violates, or fails or refuses to comply with an administrative order requiring compliance with SDWA § 1445 is subject to administrative civil penalties of not more than \$25,000 per day of violation (SDWA § 1414(g)(3)).	available if EPA determines that the information “would divulge trade secrets or secret processes.” (SDWA § 1445(d)).	
<b>Environmental Protection Agency</b>  <b>Office of Regulatory Enforcement</b>	<b>Public Health Service Act (“Safe Drinking Water Act” or “SDWA”), P.L. 93-523, as amended, 42 U.S.C. § 300j-4(a)(1)(C), SDWA § 1445(a)(1)(C).</b>	<b>To assist EPA in developing national drinking water regulations, “[e]very person who is subject to a national primary drinking water regulation” may be required to “provide such information as [EPA] may reasonably require.”</b>  <b>Before exercising this authority, EPA must “seek to obtain the information by voluntary submission” (SDWA § 1445(c)).</b>	<b>Failure or refusal to comply with a requirement under this provision is subject to a judicial civil penalty not to exceed \$27,500 (SDWA § 1445(c)). Any person who violates, or fails or refuses to comply with an administrative order requiring compliance with SDWA § 1445 is subject to administrative civil penalties of not more than \$25,000 per day of violation (SDWA § 1414(g)(3)).</b>	<b>Consultation with suppliers of water and State (if State has primary enforcement responsibility) is required (SDWA § 1445(a)(1)(C)). Information obtained under SDWA § 1445 is not publicly available if EPA determines that the information “would divulge trade secrets or secret processes.” (SDWA § 1445(d)).</b>	<b>Information may be requested to assist the Administrator in developing regulations.</b>
<b>Environmental Protection Agency</b>	<b>Public Health Service Act (“Safe Drinking Water Act”</b>	<b>Authorizes EPA to inspect, audit, and examine certain</b>	<b>Failure or refusal to allow EPA to exercise this</b>	<b>Before exercising this authority, EPA must provide written</b>	<b>May exercise this authority to determine</b>



<p><b>Office of Regulatory Enforcement</b></p>	<p>or “SDWA”), P.L. 93-523, as amended, 42 U.S.C. § 300j-4(b)(1), SDWA § 1445(b)(1).</p>	<p>records, files, reports, records, etc. possessed by “any supplier of water or other person subject to (A) a national primary drinking water regulation,... (B) an applicable underground injection control program, or (C) a requirement to monitor an unregulated contaminant pursuant to [SDWA § 1445(a)], or person in charge of the property....”</p>	<p>authority is subject to a judicial civil penalty not to exceed \$27,500 (SDWA § 1445(c)). Any person who violates, or fails or refuses to comply with an administrative order requiring compliance with SDWA § 1445 is subject to administrative civil penalties of not more than \$25,000 per day of violation (SDWA § 1414(g)(3)).</p>	<p>notice to the supplier of water or other person and to the State (if the State has primary enforcement responsibility) (SDWA § 1414(b)(1-2)). Information obtained under SDWA § 1445 is not publicly available if EPA determines that the information “would divulge trade secrets or secret processes.” (SDWA § 1445(d)).</p>	<p>compliance, and to examine/audit records of a grantee which are required to be maintained or which are pertinent to any financial assistance under the subchapter.</p>
<p><b>Environmental Protection Agency*</b></p> <p><b>Office of Regulatory Enforcement</b></p>	<p>Underground Injection Control (“UIC”) - Public Health Service Act (“Safe Drinking Water Act” or “SDWA”), P.L. 93-523, as amended, 42 U.S.C. § 300h-2(c)(8), SDWA § 1423(c)(8).</p>	<p>EPA may issue subpoenas “compelling attendance and testimony of witnesses and subpoenas duces tecum,” in connection with administrative hearings pursuant to SDWA § 1423(c).</p>	<p>Subpoenas may be issued by an Administrative Law Judge or other Presiding Officer (40 C.F.R. § 22.21(b)) and are enforceable (with sanctions) in federal district court (SDWA § 1423(c)(8)).</p>		<p>Subpoenas may be issued in connection with administrative proceedings under Section 1423.</p>
<p><b>Environmental Protection Agency</b></p> <p><b>Office of Regulatory Enforcement</b></p>	<p>Marine Protection, Research, and Sanctuaries Act (“MPRSA”), P.L. 92-532, Title I, as amended, 42 U.S.C. § 1414(e), MPRSA §</p>	<p>EPA (or the U.S. Army Corps of Engineers) may require MPRSA permit applicants “to provide such information as [EPA or the Corps] may</p>			

	104(e).	consider necessary to review and evaluate such application” (MPRSA § 104(e)).			
<b>Environmental Protection Agency</b>  Office of Regulatory Enforcement	Shore Protection Act (“SPA”) P.L. 100-688, as amended, 33 U.S.C. § 2606.	EPA (and the U.S. Dept. of Transportation) may issue subpoenas compelling “the attendance and testimony of witnesses, including parties in interest, and the production of any evidence....” (SPA § 2606(a)).	Subpoenas under this section are enforceable (with contempt sanctions if a court order is disobeyed) in federal district court (SPA § 2606(c)).		
<b>Environmental Protection Agency</b>  Office of Regulatory Enforcement	Solid Waste Disposal Act, 42 U.S.C.A. 6901 to 6992K, (also cited as Resource Conservation and Recovery Act; includes amendments in 1996, 1992, 1988, 1984, 1980, 1976);  § 7001(e), 42 U.S.C. 6971(e)	Authorizes EPA to require persons to present information in connection with EPA's investigation of employment shifts and losses allegedly attributable to the administration or enforcement of RCRA (including individual allegations of discharge, lay off or discrimination)	No specific enforcement authority in RCRA		
<b>Environmental Protection Agency</b>	Solid Waste Disposal Act, 42 U.S.C.A. 6901 to 6992K, (also cited as Resource Conservation and	Section 3007(a) authorizes any officer, employee or representative of EPA duly designated by the	EPA issues information request letters under RCRA § 3007(a). RCRA § 3008(a); 42 U.S.C. §	Section 3007(b) states that all records, reports or information obtained shall be available to	

<p><b>Office of Regulatory Enforcement</b></p>	<p>Recovery Act; includes amendments in 1996, 1992, 1988, 1984, 1980, 1976);</p> <p>Section 3007, 42 U.S.C. 6927</p>	<p>Administrator, or any duly designated officer, employee or representative of a State having an authorized hazardous waste program to: request information from any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste; enter any place where hazardous wastes have been or are generated, stored, treated, disposed of, or transported from; and to copy all records relating to such wastes; to inspect and obtain samples of such wastes and samples of any containers or labeling for such wastes.</p>	<p>6928(a) authorizes enforcement by EPA for failure to provide a complete and truthful response to an information request, subjecting respondent to \$27,500 in penalties per day of noncompliance for each violation.</p>	<p>the public, except on a showing by the person that if made public such information would divulge information entitled to protection under section 1905 of Title 18. If that showing is made, the information will be treated as confidential except that it may be disclosed to other U.S. employees carrying out this statute. See RCRA § 3007(b) and 40 C.F.R. 260.2</p>	
<p><b>Environmental Protection Agency</b></p> <p>Office of Regulatory Enforcement</p>	<p>Solid Waste Disposal Act, 42 U.S.C.A. 6901 to 6992K, (also cited as Resource Conservation and Recovery Act; includes amendments in 1996, 1992, 1988,</p>	<p>Authorizes EPA to issue orders as “may be necessary to protect public health and the environment” including ordering: (a) sampling, testing, and analysis; and (2)</p>	<p>Authorizes enforcement in judicial civil action brought by EPA for willful violation, failure or refusal to comply with EPA order. Subjects</p>	<p>Requires public meeting and opportunity to comment whenever US or EPA proposes to settle any claim arising under RCRA §7003, 42 U.S.C. §</p>	<p>After EPA determines that the handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an imminent and</p>

	1984, 1980, 1976);  Section 7003, 42 U.S.C. 6973	monitoring, (3) submission of reports on above activities and on progress of cleanup.	violation to judicial civil penalty of \$5,500 per day of violation.	6873	substantial endangerment, EPA may issue orders as “may be necessary to protect human health and the environment.”
<b>Environmental Protection Agency</b>  Office of Regulatory Enforcement	Solid Waste Disposal Act, 42 U.S.C.A. 6901 to 6992K, (also cited as Resource Conservation and Recovery Act; includes amendments in 1996, 1992, 1988, 1984, 1980, 1976); § 3013(a), 42 U.S.C. 6934(a)	Authorizes EPA to require persons to require owner or operator of a facility or site to: (1) make reports; (2) conduct monitoring and testing; and (3) conduct analyses as EPA deems “reasonable to ascertain the nature and extent” of a hazard.	EPA issues orders under RCRA § 7003(a), 42 U.S.C. § 6934(a). Violations subject to judicial civil penalties not to exceed \$5,500 per day during which person fails or refuses to comply with EPA order under RCRA § 3013(e), 42 U.S.C. 6934(e).		EPA may require submission of information upon determination that: (1) the presence of any hazardous waste at a facility or site where it is, or has been stored, treated, or disposed of, or (2) the release of any such waste from such a facility or site, “may present a substantial hazard to human health or the environment.”
<b>Environmental Protection Agency</b>  Office of Regulatory Enforcement	SWDA, also known as RCRA (same cite as above);  Section 9005, 42 U.S.C. 6991d	Section 9005 authorizes any officer, employee or representative of EPA duly designated by the Administrator, or any duly designated officer, employee or representative of a State acting pursuant to Section 9003b(h)(7) or with an approved	Failure to comply may result in EPA issuing an order for compliance.	Information obtained shall be available to the public, except on a showing by the person that if made public such information would divulge information entitled to protection under section 1905 of Title 18. If that showing is made, the	Information may be requested for the purposes of developing or assisting in the development of any regulation; conducting a study; taking corrective action; or enforcing provisions of the statute.

		<p>program to request information from any owner or operator of an underground storage tank (UST) relating to such tank, their associated equipment, and their contents; to enter any establishment or other place where an UST is located; to inspect and obtain samples of any regulated substances contained in such tank; to conduct monitoring and sampling of the tanks, associated equipment, contents or surrounding soils, air, surface water or groundwater; and to take corrective action.</p> <p>This authority also authorizes EPA to request the owner/operator to conduct monitoring or testing and permit EPA access to copy records and have access for corrective action.</p>		<p>information will be treated as confidential except that it may be disclosed to other U.S. employees carrying out this statute.</p>	
<b>Environmental Protection Agency</b>	<b>Comprehensive Environmental</b>	<b>CERCLA 104(e) authorizes the</b>	<b>EPA may (pursuant to CERCLA</b>	<b>A recipient of a 104(e)(2) request is</b>	<b>EPA can exercise these authorities only</b>

<p><b>Office of Site Remediation Enforcement U.S. EPA</b></p>	<p><b>Response, Compensation and Liability Act (CERCLA, also known as “Superfund”), P.L. 99-499, 42 U.S.C. 9604(e)</b></p>	<p><b>President to require persons to furnish, upon reasonable notice, information or documents relating to: the identification, nature, and quantity of materials which have been or are generated, stored, or disposed of at a vessel or facility; the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility; or information relating to the ability of a person to pay for or to perform a cleanup.</b></p>	<p><b>104(e)(5)(A)) issue an order directing compliance with the request.</b></p> <p><b>Under CERCLA 104(e)(5)(B), the President may ask the Attorney General to commence a civil action to compel compliance with a 104(e)(2) request or 104(e)(5)(A) order.</b></p> <p><b>Where there is a reasonable basis to believe that there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall enjoin interference with such requests or orders or direct compliance with such requests or orders unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse</b></p>	<p><b>not required to furnish information unless EPA has provided “reasonable notice.”</b></p> <p><b>Similarly, EPA may issue an order pursuant to CERCLA 104(e)(5)(A) “after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.”</b></p> <p><b>Considered public information unless party can make a showing that is satisfactory to the President that the information is protected under 1905 of Title 18 or other applicable statutes. Specific information as listed in 104(e)(7)(F) is not protected from public release.</b></p>	<p><b>for the purposes of determining the need for response, or choosing or taking any response action under CERCLA, or otherwise enforcing the provisions of CERCLA.</b></p> <p><b>EPA can only request information from a person “who has or may have information relevant to” one of the prescribed categories.</b></p> <p><b>EPA’s ability to obtain financial information about a PRP from a source other than a PRP itself is limited by the Right to Financial Privacy Act, 12 U.S.C. 3401, et. seq.</b></p>
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			of discretion, or otherwise not in accordance with law. The court may assess a civil penalty not to exceed \$27,500 for each day of noncompliance against any person who unreasonably fails to comply with a request or order.		
<b>Environmental Protection Agency</b>  Office of Site Remediation Enforcement U.S. EPA	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also known as “Superfund”), P.L. 99-499, 42 U.S.C. 9610(e)	Authorizes EPA to require persons to present information in connection with EPA's investigation of employment shifts and losses allegedly attributable to the administration or enforcement of CERCLA (including individual allegations of discharge, lay off or discrimination)	No specific enforcement authority in CERCLA.		
<b>Environmental Protection Agency</b>  Office of Site Remediation Enforcement U.S. EPA	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also known as “Superfund”), P.L. 99-499, 42 U.S.C. 9622(e)(3)(B)	CERCLA 122(e)(3)(B) provides that the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other	If a respondent to such a subpoena refuses to appear to testify or provide documentary evidence, or refuses to answer any or all of the questions put to him, EPA may commence	EPA can exercise this authority only in order to “collect information necessary or appropriate for performing the allocation under” CERCLA 122(e)(3)(A) “or for	

		<p>information that the President deems necessary.</p>	<p>enforcement proceedings in U.S. district court. The statute provides that in the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.</p>	<p>otherwise implementing” CERCLA section 122 (which relates to CERCLA settlements).</p>	
<p><b>Environmental Protection Agency</b></p> <p><b>Office of Regulatory Enforcement</b></p>	<p>Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also known as “Superfund”), P.L. 99-499, 42 U.S.C. 9609(a)(5) and 9609(b).</p>	<p>CERCLA 109(a)(5) and 109(b) authorize the President to issue subpoenas for the attendance and testimony of witnesses and the production of documents and in connection with hearings on administrative penalties proposed for violations enumerated in Sec. 109(a)(1)(A)-</p>	<p>If a respondent to such a subpoena refuses to appear to testify or provide documentary evidence, or refuses to answer any or all of the questions put to him, EPA may commence enforcement proceedings in U.S. district court. The statute provides that</p>	<p>Notice is provided prior to seeking enforcement of a subpoena.</p>	<p>EPA can exercise these authorities for the purpose of obtaining testimony and documentation relevant to issues in hearings on administrative penalties proposed for violations of CERCLA 103.</p>



		(E), (b)(1)-(5).	in the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.		
<b>Environmental Protection Agency</b>  <b>Office of Regulatory Enforcement</b>	<b>Section 11(c) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2610(c), Public Law 94-469 (October 11, 1976), and 40 C.F.R. 750.5.</b>	<b>Authorizes Administrator of EPA to issue subpoenas to require attendance and testimony of witnesses and/or production of reports, documents, answers to questions, and other information Administrator deems necessary for carrying out Administrator's responsibilities under TSCA.</b>	<b>If there is noncompliance with a subpoena, United States can go to US District Court to get order requiring compliance. Failure to comply with District Court order is subject to contempt of court.</b>	<b>None in statute or regulations, although information provided under subpoena could be entitled to protection as confidential business information under TSCA section 14 (15 U.S.C. 2613). (Information provided under subpoena is entitled to same level of protection under section 14 as any other material</b>	<b>For purposes of carrying out the statute.</b>

				provided to EPA pursuant to TSCA.)	
<b>Environmental Protection Agency</b>  Office of Regulatory Enforcement	Air Pollution Prevention and Control; Section 114 of the Clean Air Act (CAA), 42 U.S.C. §7414, Pub.L. 91-604	The Administrator may require a person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this statute, with one exception, on a one-time, periodic, or continuous basis to establish and maintain records; make reports; keep records; submit compliance certifications; and provide such other information as the Administrator may reasonably require.	EPA may enter the facility at reasonable times, upon showing proper credentials, to inspect records. EPA may issue a compliance order if information request is not responded to. EPA may also issue civil penalties and seek a subpoena to compel production of the documents.	Records are available to the public except upon a showing satisfactory to the Administrator that they are protected under Section 1905 of Title 18.	For the purposes of developing or assisting in development of any implementation plan, standard of performance, or emission standard under specific provisions of the statute; for the purpose of development of any regulation under specific provisions of the statute; for determining compliance with any of these standards or requirements; or carrying out any provision of this statute, except for a provision of subchapter II with respect to a manufacturer of new motor vehicles or engines.
<b>Environmental Protection Agency</b>	Air Pollution Prevention and Control; Section 208 of the Clean Air Act, 42 U.S.C. §7542,	Every manufacturer of new motor vehicles or new motor vehicle engines, engine parts or components, and	EPA may enter the facility at reasonable times, upon showing proper credentials, to inspect records.	Records are available to the public except upon a showing satisfactory to the Administrator that	Information that the Administrator may reasonably require to determine whether the person is in

<p><b>Office of Regulatory Enforcement</b></p>	<p>Pub.L. 89-272</p>	<p>persons subject to the requirements of this part or subpart C of this subchapter, shall establish and maintain records and provide information the Administrator may reasonably require to determine whether the person is in compliance or to otherwise carry out the provision of this part and part C.</p>	<p>EPA may issue civil penalties and seek injunctive relief to compel production of the required information.</p>	<p>they are protected under Section 1905 of Title 18.</p>	<p>compliance or to otherwise carry out the provision of this part and part C.</p>
<p><b>Environmental Protection Agency</b>  <b>Office of Regulatory Enforcement</b></p>	<p><b>Air Pollution Prevention and Control; Section 321(b) of the Clean Air Act, 42 U.S.C. §7621(b), Pub.L. 89-272</b></p>	<p>Authorizes EPA to require persons to present information in connection with EPA's investigation of employment shifts and losses allegedly attributable to the administration or enforcement of CAA (including individual allegations of discharge, lay off or discrimination)</p>	<p>No specific enforcement authority in CAA</p>		
<p><b>Environmental Protection Agency</b>  <b>Office of Regulatory Enforcement</b></p>	<p><b>Sec. 307(a) of the Clean Air Act, 42 U.S.C. 7607, Pub.L. 89-272.</b></p>	<p>The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he</p>	<p>Power to subpoena witnesses and to issue subpoenas <u>duces tecum</u>.</p>	<p>Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books,</p>	<p>Subpoenas may be issued only in connection with any determination under section 110(f) [42 U.S.C. § 7410(f)], or for purposes of</p>

		may administer oaths.		documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 202(c) [42 U.S.C. § 7521(c)], or	obtaining information under section 202(b)(4) or 211(c)(3) [42 U.S.C. §§ 7521(b)(4) or 7545(c)(3)], [or] any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the Act (including but not limited to section 113, section 114, section 120, section 129, section 167, section 205, section 206, section 208, section 303, or section 306 [42 U.S.C. §§ 7413, 7414, 7420, 7429, 7477, 7524, 7525, 7542, 7603, or 7606].
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				when relevant in any proceeding under this Act.	
<b>Environmental Protection Agency</b>	Sec. 12 of Noise Control Act, 42 U.S.C. 4912, 4915	Authority to collect information from manufacturer of regulated products “as may be reasonably required” to determine whether manufacturer is in compliance with Noise Control Act	Statute provides no explicit enforcement mechanism, but does provide penalties of up to \$10,000 and imprisonment for up to six months for false submissions or tampering with required monitoring device.	Confidential business information is explicitly protected as provided in 18 U.S.C. 1905.	None
<b>Environmental Protection Agency*</b>  Office of General Counsel Pesticides and Toxic Substances Law Office	Section 6(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136d(d), Pub.L. 92-516, 86 Stat. 984, and 40 C.F.R. 164.70.	The Administrative Law Judge presiding in a public hearing on EPA decisions to cancel, suspend, or deny registration or change the classification of a pesticide product may issue a subpoena to compel testimony or production of documents from any person.	Subpoena may be enforced by an appropriate United States district court.	The Administrative Law Judge shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness.	Subpoenas may be issued only upon determination by the Administrative Law Judge (1) that such discovery shall not in any way unreasonably delay the proceeding, (2) that the information to be obtained is not otherwise obtainable and (3) that such information has significant probative value.  The Administrative Law Judge shall be guided by the principles of the Federal Rules of Civil Procedure in making

					any order for the protection of a witness or the content of the documents produced.
<b>Environmental Protection Agency</b>  Office of General Counsel Pesticides and Toxic Substances Law Office	Section 408(g)(2)(B) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(g)(2)(B) as amended by the Food Quality Protection Act (FQPA) of 1996, Pub.L. 104-170	Presiding officer in public hearings on EPA decisions to establish, modify, suspend or revoke a tolerance or exemption from the requirement of a tolerance for a pesticide chemical residue in food or feed may issue a subpoena to compel testimony or production of documents from any person.	Subpoena may be enforced by a federal district court.	The presiding officer shall be governed by the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness.	The presiding officer shall be governed by the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness.
<b>Environmental Protection Agency†</b>	42 U.S.C. § 11045	Toxic Substances Control Act - in any proceeding for the assessment of a civil penalty			
<b>Environmental Protection Agency†</b>	42 U.S.C. § 14304	Management of rechargeable batteries and batteries containing mercury generally			

<b>Environmental Protection Agency†</b>	33 U.S.C. § 1369	State reports on water quality & discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited.			
<b>Environmental Protection Agency†</b>	42 U.S.C. § 300h-2	Safety of public water systems and protection of underground sources of drinking water			
<b>Export-Import Administration</b>	Holds no administrative subpoena authority, excluding IG authority. No unique, agency-specific authority under the IG Act.				
<b>Farm Credit Administration</b>					
<b>Farm Credit Administration</b>  Office of Inspector General	Inspector General Act of 1978, P.L. 95-452, 5 U.S.C. app.	Administrative subpoena	United States district court enforcement.		Department of Justice Monograph.
<b>Farm Credit Administration</b>	Farm Credit Act of 1971, as amended, Pub. L. 92-181, Title V, § 5.37, as added	In connection with any enforcement proceeding or examination or	FCA may enforce a subpoena or a subpoena duces tecum in the United	The FCA may serve a subpoena by personal service or certified mail with a return	In an administrative hearing, the presiding officer may require FCA to show the

<p><b>Office of Inspector General Farm Credit Administration</b></p>	<p>Pub. L. 99-205, Title II, §204, Dec. 23, 1985, 99 Stat. 1702, and amended Pub. L. 100-233, Title VIII §805(ee). Jan. 6, 1988, 101 Stat. 1717</p> <p>12 U.S.C. §2273. 12 C.F.R. Part 622.</p>	<p>investigation under the Farm Credit Act, the FCA or its designated representative has the power to issue, revoke, quash or modify subpoenas and subpoenas duces tecum.</p>	<p>States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which the proceeding is being conducted. Such courts have jurisdiction and power to order and require compliance with the subpoena. Any person who willfully fails to comply with a subpoena shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine or not more than \$1,000 or to imprisonment for a term of not more than one year, or both.</p>	<p>receipt to the last know address of the person. 12 C.F.R §§622.9 and 622.106.</p> <p>Unless ordered by the FCA Board or required by law, the entire record of any administrative hearing is for the confidential use only of the FCA and its staff, the presiding officer, the parties, and other appropriate supervisory authorities and shall not be public. 12 C.F.R. § 622.20.</p> <p>All information, documents, or testimony that the FCA obtains in the course of a formal Investigation is confidential. 12 C.F.R. §622.103.</p>	<p>general relevance and reasonable scope of the testimony or other evidence sought as a condition precedent to issuing the subpoena. 12 C.F.R. §622.9.</p> <p>Any person to whom a subpoena is directed may apply to quash or modify the subpoena both in an administrative hearing and a formal investigation. The presiding officer, FCA representative, or the FCA Board may deny the application or, after notice to the party that issued the subpoena and after affording that party an opportunity to reply, may quash or modify the subpoena or impose reasonable conditions. 12 C.F.R. §§ 622.9 and 622.106.</p>
<p><b>Federal Communication s Commission</b></p>					



<p><b>Federal Communications Commission</b></p>	<p>Communications Act of 1934, as amended, 47 U.S.C. §151 <u>et seq.</u></p> <p>47 U.S.C § 409(e)</p> <p>47 C.F.R. §§ 1.331 <u>et seq.</u></p> <p>47 C.F.R. §§ 0.10(k), 0.11(k)</p>	<p>Production of information and documents related to agency implementation and enforcement of the Communications Act of 1934, as amended, and orders, rules and regulations of the agency. The federal courts have recognized the broad administrative subpoena authority of the Commission. <u>See, e.g., Schrieber v. FCC</u>, 201 F. Supp. 421 (S.D. Calif. 1962), <u>modified and aff'd., FCC v. Schrieber</u>, 329 F. 2d 517 (d.C. Cir. 1964); <u>aff'd., FCCv. Schrieber</u>, 381 U.S. 279, (1965); <u>FCC v. Cohn</u>, 154 F. Supp. 899 (S.D.N.Y. 1957).</p>	<p>U.S. district courts have authority to enforce a Commission administrative subpoena pursuant to 47 U.S.C. § 409(g).</p>	<p>All applicable laws, including subpoena rules 47 C.F.R. §§ 1.331 <u>et seq.</u>, an confidentiality/FOIA rules, 47 C.F.R. §§ 0.441 <u>et seq.</u></p>	<p>Discretion of authorized Commission personnel, subject to requirement in the case of certain personnel that no administrative subpoena may issue without the prior approval of the Commission's Office of General Counsel <u>See 47 C.F.R. §§ 1.331 et seq.</u> (Issuance by Commissioners and by ALJs in hearing cases) 47 C.F.R. §§ 0.101(k), 0.111(k) (certain offices and bureaus must obtain prior OGC approval of any subpoena issuance).</p>
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<b>Federal Communications Commission</b>	Inspector General Act, 5 U.S.C. app. § 6	Production of information and documents related to agency programs/operations from entitites/persons other than federal agencies	U.S. district courts	All applicable laws.	
<b>Federal Deposit Insurance Corporation</b>					
<b>Federal Deposit Insurance Corporation</b>  FCIC Compliance and Enforcement Section	Section 10(c) and 8(n) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. §§1820(c) and 1818(n); 12 U.S.C. §§821(d)(2)(I)(i) and 823(d)(3)(A), Pub. L. 89-695.	Administrative subpoena authority.	8(n) District court enforcement and criminal penalties.	The FDIC's use and dissemination of subpoenaed information is subject to various laws including the Right to Financial Privacy Act, the Privacy Act and the Trade Secrets Act.	Procedures applicable to section 10(c) investigations, 12 C.F.R. § 308.144-150 (2001).
<b>Federal Deposit Insurance Corporation</b>  Deputy Counsel to the Inspector General	The Office of Inspector General (OIG) of the FDIC is authorized to issue administrative subpoenas pursuant to the Inspector General (IG) Act of 1978, as amended, 5 U.S.C. app. 3 (2001).	The FDIC is authorized to subpoena all information and documentary evidence necessary in the performance of the functions assigned by the IG Act.	In the case of refusal to obey, the OIG enforces subpoenas through actions brought in U.S. district court.	The OIG's use and dissemination of subpoenaed information is subject to various laws including the Right to Financial Privacy Act, the Electronic Communications Privacy Act, the Freedom of Information Act, and the Privacy Act.	The FDIC OIG has established a policy governing requests for and the issuance of administrative subpoenas, FDIC OIG Policy 110.6 (May 1999).

<b>Federal Deposit Insurance Corporation (Resolution Trust Corporation)†</b>	<b>12 U.S.C. § 1821(l)</b>	<b>Only w/ approval from the Board or their designees; The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution, exercise any power authorized under section 1818(n) of this title (including subpoena authority)</b>			
<b>Federal Deposit Insurance Corporation†</b>	<b>12 U.S.C. § 1829b</b>	<b>Recordkeeping - provision has been interpreted to allow subpoenas.</b>			
<b>Federal Election Commission</b>					
<b>Federal Election Commission</b>	<b>Subpoenas for desposition and document production and orders to submit written answers. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 208(a), 88 Stat. 1263,</b>	<b>The Commission may authorize its Chairman or Vice Chairman to issue an order requiring any person to submit sworn written answers to written questions. 2 U.S.C. §437d(a)(1); 11 C.F.R. § 111.11. The Commission may also</b>	<b>For refusals to obey any order or subpoena, the Commission may petition a United States district court seeking a court order that requires compliance. 2 U.S.C. § 437d(b).</b>	<b>Subpoenas that seek financial information may be subject to the Right to Financial Privacy Act of 1978, Pub. L. No. 95-630-, 92 Stat. 3697 (1978). Pursuant to the Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (1974),</b>	<b>The Commission reviews the content of subpoenas and orders and votes to approve their issuance. Motions to quash or modify subpoenas are also considered by the Commission. 11 C.F.R. § 111.15.</b>

	<p>1282(1974)(amending Federal Election Campaign Act of 1971, §311, Pub. L. No. 93-443,) codified at 2 U.S.C. §437d(a)(1)-(4); See also 11 C.F.R, §§ 111.11 - 111.15, 9007.1(b)(1)(v), &amp; 9038.1(b)(1)(v).</p>	<p>compel deposition testimony and the production of evidence relating to the execution of the Commission's duties. 2 U.S.C. §437d(a)(3),(4); &amp; 11 C.F.R. § 111.12.</p>		<p>the Commission published its System of Records at 62 Fed. Reg. 65, 694 (1997), which permits release of all records to the public once the case has closed, with the exception of those records that are exempt from disclosure by the Freedom of Information Act. The System of Records is currently under review for potential revisions.</p>	
<p><b>Federal Election Commission</b></p>	<p>Inspector General subpoenas. Inspector General Act of 1978, as amended, Pub.L. No. 95-452, 92 Stat. 1101 (1978) codified at 5 U.S.C. app. 3, §6(a)(4).</p>	<p>Essentially a subpoena duces tecum for all documentary evidence necessary for the performance of the functions assigned under the IG Act.</p>	<p>For refusals to obey an IG Subpoena, the IG may petition a United States district court seeking a court order that requires compliance. 5 U.S.C. app. 3, §6(a)(4).</p>	<p>Same as Federal Election Commission process above, except under the System of Records, response to IG subpoenas are not publicly released.</p>	<p>The scope of IG subpoenas and methods of service are promulgated in 13 C.F.R. §§ 101.302-101.303. Internal standards and procedures have been issued in an FEC OIG manual.</p>
<p><b>Federal Emergency Management Agency</b></p>					

<p><b>Federal Emergency Management Agency</b></p>	<p>Section 6(a)(4) of the Inspector General Act of 1978.</p> <p>(Exercises authority similar to those of other Inspector Generals under the Act.)</p>				
<p><b>Federal Housing Finance Board</b></p>					
<p><b>Federal Housing Finance Board</b></p>	<p>The source of authority for the subpoena power of the Federal Housing Finance Board (Finance Board) is section 2B(a)(5) of the Federal Home Loan Bank Act (Act), 12 U.S.C. § 1422b(a)(5), as amended by section 606 of the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), Title VI of the Gramm-Leach-Bliley Act, Pub. Law No. 106-102, 113 Stat. 1338 (Nov. 12, 1999). Section 2B(a)(5) of</p>	<p>Section 2B(a)(5) of the Act incorporates by reference the subpoena authority in section 1379B of the Safety and Soundness Act, <i>see</i> 12 U.S.C. § 4641. Under that authority and section 2B(a)(7) of the Act, the Finance Board's proposed rule provides that in the course of or in connection with an administrative enforcement proceeding, the Finance Board shall have the authority to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and</p>	<p>Under the Act, the Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena <u>duces tecum</u> issued pursuant to section 2B(a)(5). <i>See</i> 12 U.S.C. §§ 1422b(a)(5) and (a)(7). Such courts shall have</p>	<p>The Finance Board's subpoena authority only extends to the 12 Banks, the Office of Finance, and to persons who are executive officers or directors of a Bank or the Office of Finance, in connection with an enforcement proceeding under section 2B(a)(5) of the Act. Apart from this specific authority, the Finance Board does not have authority to subpoena the financial records of any private citizen. The subpoena provisions in the proposed rule would</p>	<p>The proposed rule contains provisions addressing the requirements for the issuance of subpoenas or subpoenas <u>duces tecum</u>, but the Finance Board has not yet adopted a final rule on these matters.</p>

	<p>the Act confers on the Finance Board the same administrative enforcement powers with respect to the twelve Federal Home Loan Banks (12 Banks) and the Office of Finance, and their executive officers and directors, as those granted to the Office of Federal Housing Enterprise Oversight (OFHEO) with respect to the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or their directors or executive officers, under sections 1371-1379B of Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness</p>	<p>subpoenas <u>duces tecum</u>, and to revoke, quash, or modify subpoenas and subpoenas <u>duces tecum</u>. The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.</p>	<p>jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas <u>duces tecum</u>. See 12 U.S.C. § 4641(c). The proposed rule sets out this authority. See 12 CFR § 908.8, 65 Fed. Reg. 78994, 79000. The proposed rule also establishes procedures for the issuance and enforcement of subpoenas, including: failure to appear at a proceeding (§ 908.9(a)(4)); authority of the presiding officer to issue subpoenas and subpoenas <u>duces tecum</u> (§908.21(b)(5)); service of subpoenas (§ 908.26(d)); witnesses fees and expenses (§ 908.29); no discovery of privileged matter (§ 908.46(d)); motions to compel document</p>	<p>allow for adequate notice to a Bank, the Office of Finance, or any executive officer or director of a Bank or the Office of Finance. The Finance Board's civil administrative subpoenas are not self-enforcing and, as stated, the Finance Board has the authority under the Act to seek enforcement of such subpoenas in an appropriate district court, as set forth in the rule.</p>	
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	<p>Act of 1992. Pub. Law No. 102-550, Title XIII, §§ 1371-1379B, 106 Stat. 3986 - 3994 (Oct. 28, 1992) (Safety and Soundness Act). <i>See</i> 12 U.S.C. §§ 4631-4641. The Finance Board has not yet adopted any rules implementing the statutory provisions, but has a proposed rule outstanding that addresses, among other things, the agency's subpoena authority. <i>See</i> 65 Fed. Reg. 78994 (Dec. 18, 1999) (proposed rule) (to be codified at 12 CFR Part 908).</p>		<p>discovery from parties (§ 908.47(f)); issuance of protective orders (§ 908.47(g)); enforcement of discovery subpoenas (§ 908.7(h)); document subpoenas to non-parties (§ 908.48), and issuance and enforcement of subpoenas requiring attendance at a deposition in lieu of appearance at a hearing (§ 908.49)). <i>See</i> 65 Fed. Reg. 78994 <i>ff.</i></p>		
<b>Federal Maritime Commission</b>					
<b>Federal Maritime Commission</b>	<p>Subpoena in investigations and adjudicatory proceedings (Shipping Act of 1984, as amended;</p>	<p>In investigations and adjudications under the Shipping Act, the Commission may compel attendance of witnesses and</p>	<p>In case of refusal to obey, the Attorney General at the request of the Commission may seek enforcement by</p>	<p>Notice and opportunity for hearing are required prior to suspension of a tariff, , or request to the Secretary of</p>	<p>A presiding officer may require the party seeking a subpoena to show the relevance and scope where it appears that such</p>

	<p>Pub. L. 105-258; 46 U.S.C. app. § 1711(a)(2); 46 C.F.R. §502.131.)</p>	<p>production of evidence.</p>	<p>a U.S. district court. 46 U.S.C. app. § 1713(c).</p> <p>In addition, the Commission may suspend a common carrier's tariff or use of a tariff for failure to supply information. 46 U.S.C. app. § 1713(b)(2). Additional penalties of up to \$50,000 per shipment may apply to carriers who operate under such a suspended tariff. 46 U.S.C. app. § 1713(b)(3). The Commission may also request that the vessels of such carrier be refused clearance by the Secretary of the Treasury. 46 U.S.C. app. § 1713(b)(4). Such orders are subject to the disapproval of the President. 46 U.S.C. app. § 1712(b).</p>	<p>Treasury. 46 U.S.C. app. § 1712(b)(2) &amp; (3).</p>	<p>subpoena may be "unreasonable, oppressive, excessive in scope, or unduly burdensome." 46 C.F.R. §502.131.</p>
<p><b>Federal Maritime Commission</b></p>	<p>Section 15 reports (Shipping Act of</p>	<p>The Commission may require any common</p>	<p>In case of refusal to obey, the Attorney</p>		



	1984, 46 U.S.C. app. § 1714)	carrier to file “any periodical or special report or any account, record, rate or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier.”	General at the request of the Commission may seek enforcement by a U.S. district court. 46 U.S.C. app. § 1713(c).		
<b>Federal Maritime Commission</b>	Section 19 information demand. (Merchant Marine Act of 1920, 46 U.S.C. app. § 876.)	In furtherance of the Commission’s mandate to make rules and regulations affecting shipping in the foreign trade to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, the Commission may require any person to file “a report, answers to questions, documentary materials and other information.” 46 U.S.C. app. § 876(f)(1). In addition, the Commission may subpoena witnesses and evidence in such proceedings. 46 U.S.C. app. § 876(g)(2).	Failure to file a report, etc. as required by the Commission, results in liability for a civil penalty of not more than \$5000 for each day the information is not provided. 46 U.S.C. app. § 876(f)(4).  Failure to comply with a subpoena may result, after notice and hearing, in suspension of a common carrier’s tariff or use of a tariff, and a penalty of not more than \$5000 for each day the information is not provided. 46 U.S.C. app. § 876(g)(4).	Notice and hearing before suspension of tariff to enforce subpoena.  The Commission may refuse to disclose to the public a response provided under the terms of 46 U.S.C. § 876, notwithstanding any other law. 46 U.S.C. § 876(h).	

			<p>The Commission may seek enforcement by a U.S. district court. 46 U.S.C. app. § 876(g)(5).</p>		
<p><b>Federal Maritime Commission</b></p>	<p><b>Foreign Shipping Practices Act Information Requests (Foreign Shipping Practices Act, 46 U.S.C. app. 1710a.)</b></p>	<p>Pursuant to its authority to investigate “whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in conditions that ... adversely affect the operation of United States carriers... and do not exist for foreign carriers of that country in the United States,” the Commission may require any person to file reports, answers to questions, documentary material or other information. 46 U.S.C. app. § 1710a(d)(1).</p> <p>In addition, the</p>		<p>The Commission may determine that information submitted under this provision “shall not be disclosed to the public.” 46 U.S.C. app. § 1710a(d)(3).</p>	

		Commission may issue subpoenas to compel attendance and testimony of witnesses and production of evidence. 46 U.S.C. app. § 1710a(d)(2).			
<b>Federal Maritime Commission</b>	Nonadjudicatory investigations (46 C.F.R. Part 502, Subpart R.).	In connection with investigations undertaken pursuant to the Commission's regulatory duties, the Commission may issue orders or subpoenas directing persons to appear or to produce documents, 46 C.F.R. § 502.286, order testimony be take by deposition, § 502.287, or order filing of a report or answer to specific questions, § 502.288.	In case of failure to comply with such processes, the Commission may initiate "actions for enforcement by the Commission or the Attorney General and for forfeiture of penalties or criminal actions by the Attorney General." 46 C.F.R. § 502.289.	Such investigatory proceedings are "nonpublic." 46 C.F.R. § 502.291.	
<b>Federal Maritime Commission</b>	Inspector General (IG) subpoenas (Inspector General Act of 1978, as amended; Pub. L. 95-452; 5 U.S.C. app 3, § 6(a)(4).	The IG exercises no unique, agency-specific authority.			

<b>Federal Mediation and Conciliation Service</b>	Holds no administrative subpoena authority and no unique, agency-specific authority under the Inspector General Act.				
<b>Federal Mine Safety and Health Commission</b>					

<b>Federal Mine Safety and Health Review Commission</b>	Section 113(e) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §823(e)(1994), Pub. L. 95-164.	In connection with hearings before the Commission or an ALJ, permits agency to compel the attendance and testimony of witnesses and the production of books, papers, documents or	Commission or ALJ may apply to appropriate U.S. district court to enforce Commission or ALJ order to appear, testify, or produce evidence.	None specified. RFPAs generally not applicable because subpoenas are rarely if ever issued to financial institutions.	Standards not specified. Standard evidentiary privileges recognized through case adjudication.
<b>Federal Mine Safety and Health Review Commission</b>	29 C.F.R. §2700.60	Permits Commission and ALJs to issue subpoenas, on their own motion or on application of a party, requiring the attendance of witnesses and the production of documents or physical evidence.	ALJ or General Counsel at request of ALJ or direction of Commission, may initiate proceedings in appropriate U.S. district court to enforce subpoena.	None specified.	Subpoenas may be issued for relevant, non-privileged matter that is admissible evidence or appears likely to lead to the discovery of admissible evidence. Subpoenas must describe with sufficient particularity the evidence required to be produced, and must not

					<p>be otherwise “invalid” or “unreasonable.” Subpoenas may be served by any person 18 or over or by registered or certified mail, return receipt requested. Copy of subpoena bearing certificate of service to be filed with Commission or ALJ. Witness fees the same as the U.S. district courts. Motions to revoke or modify subpoenas may be filed within 5 days of service of the subpoena or at the hearing, whichever is sooner.</p>
<b>Federal Reserve, Board of Governors of the</b>					
<b>Board of Governors of the Federal Reserve System</b>	Federal Reserve Act, 12 U.S.C. § 603	Authorizes investigations, including authority to “send for persons and papers, subpoena witnesses, and administer oaths,” to ensure compliance with agreements limiting activities of Agreement corporations	None identified	None stated; RFPA applies to subpoena to financial institution seeking customer records unless disclosure is exempt under 12 U.S.C. § 3413 or copy of subpoena is sent first to customer under 12 U.S.C. § 3405.	Investigation may be instituted, triggering subpoena authority, whenever the Board “shall ascertain that the regulations prescribed by it are not being complied with.”
<b>Board of Governors</b>	Change in Bank Control Act, 12 U.S.C.	Authorizes investigations of principals who seek to	Judicial enforcement same as under 1818(n);	None stated; RFPA applies to subpoena to	Subpoenas are authorized in connection

<p><b>of the Federal Reserve System</b></p>	<p>§ 1817(j)(15)</p>	<p>acquire control of voting stock of a financial institution, including exercise of authority under 1818(n). See below.</p>	<p>see below. Also, Board may disapprove acquisition by any person who fails to furnish information required by the agency. 12 U.S.C. § 1817(j)(7)(E).</p>	<p>financial institution seeking customer records unless disclosure is exempt under 12 U.S.C. § 3413 or copy of subpoena is sent first to customer under 12 U.S.C. § 3405. RFPAs exemptions include § 3413(b), which exempts from the RFA disclosures to the Board by a financial institution pursuant to the Board's supervisory or regulatory functions with respect to any financial institution, holding company, subsidiary, or institution-affiliated party thereof; § 3413(d), which governs records and information required to be reported under Federal law or regulation; and § 3413(f), which relates to subpoenas issued by administrative law judges in formal adjudicatory proceedings.</p>	<p>with any investigation to determine relevant factors under Change in Bank Control Act, or to make independent determination of accuracy and completeness of information provided by notificant, or any other investigation deemed necessary by the agency to determine whether any person has filed inaccurate, incomplete or misleading information or has violated, is violating, or is about to violate the act or its regulations. 12 U.S.C. § 1817(j)(15)(A).</p> <p>Under Board practice, subpoena authority is granted to specified Board counsel pursuant to a formal Order of Investigation issued by the Board's General Counsel upon a showing of possible violation of law, regulation, etc.</p>
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<p><b>Board of Governors of the Federal Reserve System</b></p>	<p><b>Federal Deposit Insurance Act, 12 U.S.C. § 1818(n)</b></p>	<p>Authorizes agency or designated representative to “issue, revoke, quash, or modify” subpoenas in connection with administrative enforcement proceedings under 12 U.S.C. § 1818, which include proceedings against financial institutions and their institution-affiliated parties for unsafe or unsound banking practices, breaches of fiduciary duty, and violations of law or regulation. Subpoenas may require documents from any place within the jurisdiction of the United States.</p>	<p>U.S. District Courts may enforce subpoenas or subpoenas duces tecum; refusal to comply is a misdemeanor punishable by up to \$1000 or one year imprisonment, or both.</p>	<p>None stated; see above regarding RFPA</p>	<p>Subpoenas are authorized “in the course of or in connection with any proceeding under” sections 1818 or 1820(c) relating to enforcement proceedings against financial institutions and their institution-affiliated parties and claims for insured deposits.</p> <p>Under Board practice, subpoena authority is granted to specified Board counsel pursuant to a formal Order of Investigation issued by the Board’s General Counsel upon a showing of possible violation of law, regulation, etc.</p>
<p><b>Board of Governors of the Federal Reserve System</b></p>	<p><b>Federal Deposit Insurance Act, 12 U.S.C. § 1820(c)</b></p>	<p>Authorizes exercise of subpoena powers under § 1818(n) in connection with bank examinations as well as investigations to determine compliance with banking laws.</p>	<p>See above regarding § 1818(n)</p>	<p>None stated; see above regarding RFPA</p>	<p>As under § 1818(n), Board practice requires issuance of a formal Order of Investigation to authorize issuance of a subpoena.</p>
<p><b>Board of Governors of the Federal Reserve System</b></p>	<p><b>Bank Holding Company Act, 12 U.S.C. § 1844(f)</b></p>	<p>Authorizes exercise of subpoena power in connection with any application, examination,</p>	<p>Same enforcement authority as under § 1818(n).</p>	<p>None stated; see above regarding RFPA</p>	<p>See above regarding Order of Investigation</p>

		<p>investigation, or other proceeding under the Act. As with subpoenas under § 181(n), testimony and documents may be required from any place within the jurisdiction of the United States.</p>			
<p><b>Board of Governors of the Federal Reserve System</b></p>	<p>International Banking Act of 1978, 12 U.S.C. § 3108</p>	<p>Authorizes Board or its designated representative to issue, revoke, quash, or modify subpoenas in connection with any application, examination, investigation, or other proceeding under the Act. Production is required from any place subject to the jurisdiction of the United States</p>	<p>Enforceable through action in United States District Court; fine for noncompliance is imposed “under Title 18,” or imprisonment of up to one year, or both; each day of refusal to comply is considered a separate offense</p>	<p>None stated; see above regarding RFPA</p>	<p>See above regarding Order of Investigation</p>
<p><b>Board of Governors of the Federal Reserve System</b></p> <p>Office of Inspector General</p>	<p>Inspector General Act of 1978, Public Law 95-452, 5 U.S.C. appendix [This is the same authority exercised by other Inspectors General.]</p>	<p>Administrative subpoena authority, generally recognized as limited to <i>subpoena duces tecum</i> (statutory language: [Each Inspector General...is authorized... ] to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the</p>	<p>In the event of refusal to obey, court order obtained through petition to enforce filed in the appropriate U.S. District Court</p>	<p>None specific to the Inspector General Act; statutory notification requirements followed for Inspector General subpoenas issued pursuant to the Right to Financial Privacy Act</p>	<p>OIG has established within OIG various policies and procedures regarding subpoena request and issuance.</p>



		<p>performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: <i>Provided, That</i> procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies</p>			
<b>Federal Retirement Thrift Investment Board</b>	Holds no administrative subpoena authority.				
<b>Federal Trade Commission</b>					
<b>Federal Trade Commission</b>	Section 20 of the Federal Trade Commission (FTC) Act, Act of September 26, 1914, 38 Stat. 717, as amended, 15 U.S.C. § 57b-1; <u>see</u> 16 C.F.R. § 2.7	Civil investigative demands (CID) to testify or produce documentary evidence in FTC investigations of unfair or deceptive practices in or affecting commerce or of antitrust violations	Federal district court. <u>See</u> 16 CFR § 2.13.	Strict confidentiality protections provided by FTC Act §§ 6(f) (confidential financial or commercial information), 21 (information obtained pursuant to compulsory process or in lieu thereof). In certain	Requires “reason to believe” that recipient is in possession, custody, or control or documentary material, or has information, relevant to unfair or deceptive acts or practices in or affecting commerce within the meaning of

				cases, other restrictions may also apply, e.g.: <b>Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 et seq.</b> (customer financial records); <b>Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2701 et seq.</b> (stored electronic communications and customer records); <b>Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.</b> (consumer reports), etc.	<b>FTC § 5</b> , or relevant to antitrust violations. <b>Must be signed by a Commissioner pursuant to a Commission resolution; authority is non-delegable.</b> Recipients may file petitions to limit or quash. <u>See 16 CFR § 2.7(d).</u>
<b>Federal Trade Commission</b>	<b>Section 9 of the FTC Act, 15 U.S.C. § 49; see, e.g., 16 CFR §§ 2.7, 2.10, 2.11, 2.12</b>	<b>Subpoenas for testimony of witnesses and production of documentary evidence in FTC investigations other than those covered by section 20 of the FTC Act (see below)</b>	See above.	See above.	<b>Subpoena must “relat[e] to a matter under investigation” by the FTC and must be signed by “a member of the Commission.”</b> Recipients may file petitions to limit or quash for disposition by a designated Commissioner. <u>See 16 CFR § 2.7(d).</u> Subpoenas are also available in agency adjudicatory proceedings. <u>See 16 CFR § 3.34.</u>
<b>Federal Trade</b>	<b>Section 6(b) of the FTC Act; 15 U.S.C. § 46(b)</b>	<b>Annual and special reports of persons,</b>	See above.	See above.	<b>Reports under oath may be required, via general</b>

<b>Commission</b>		partnerships, and corporations			or special order, to persons, partnerships, and corporations (except exempted entities) engaged in, or whose business affects, commerce.
<b>Federal Trade Commission</b>	Section 6(a)(4) of the Inspector General Act of 1978, as amended, P.L. 95-452, 5 U.S.C. app.	Subpoenas for production of information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence	Federal district court.	FTC Act § 6(f) (confidential commercial or financial information). In certain cases, other restrictions may also apply: Privacy Act, 5 U.S.C. 552a (agency systems of records pertaining to individuals); RFPA; ECPA; FCRA, etc.	Procedures other than subpoenas must be used to obtain documents and information from Federal agencies.
<b>Federal Trade Commission†</b>	“Second Request” authority under the Hart-Scott-Rodino Antitrust Improvements Act of 1976: Section 7A of the Clayton Act, 15 U.S.C. 18a as amended by Section 630 of Pub.L. No. 106-553, 114 Stat. 2762(2000). The authority to issue second requests is found in 15 U.S.C. 18a(c). Rules implementing the Act are found at 16	Certain mergers and acquisitions may not be consummated until the parties provide the FTC and the Department of Justice (DOJ) with premerger notification and observe a waiting period. During that waiting period, either the FTC or DOJ “may require the submission of additional information or documentary material relevant to the proposed acquisition” from the	Under 15 U.S.C. 19a(g)(2), if a party fails substantially to comply with a second request, a district court may order compliance, extend the waiting period until there has been compliance, and grant other equitable relief.		

	C.F.R. Part 801 et seq. See 16 C.F.R. 803.20 (“Requests for additional information or documentary material”)	parties. (This is referred to as issuing a “second request.”)			
<b>General Services Administration</b>					
<b>General Services Administration</b>  Personal Property Division (LP)  U.S. General Services Administration, Office of the Inspector General	The Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101, as amended, 5 U.S.C. App III.	The GSA Inspector General has the authority to require the production of “all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act...”  The GSA OIG’s authority extends to the programs and operations of GSA.	Subpoenas issued by the GSA Inspector General “shall be enforceable by order of any appropriate United States district court....”	In the exercise of its subpoena authority, the GSA OIG complies with the notification and privacy provisions and other procedures, when applicable, of the Right to Financial Privacy Act, 12 U.S.C. §3401 <i>et seq.</i> , the Cable Act, 47 U.S.C. §551, the Electronic Communications Privacy Act, 18 U.S.C. §2701 <i>et seq.</i> , (and related statutes), and the Health Insurance Portability and Accountability Act of 1996, 104 Pub. L. 191.	GSA OIG subpoenas are signed by the Inspector General himself or, in his absence, by the Deputy Inspector General, after review and concurrence by the Counsel to the Inspector General. Legal review is based on legal sufficiency, scope, and, if appropriate, whether other available means of obtaining the necessary information have been explored.
<b>General Services Administration</b>  Personal Property Division (LP)	The Contract Disputes Act of 1978, Pub. L. No. 95-563, 92 Stat. 2383, as amended, at § 11; 41 U.S.C. § 610 (1994). Board Rule 120, 48	A Board judge may require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence	If a person who resides, is found, or transacts business within the jurisdiction of a United States district court, refuses to obey a	Every subpoena must be in the form specified in the appendix to the Board’s rules of procedure . 48 CFR 6101.20(d) [Rule 120(d)].	Board Rule 120(a) states the expectation that, in Board proceedings, parties are expected to cooperate by making witnesses and evidence

<p>U.S. General Services Administration, Board of Contract Appeals</p>	<p>CFR 6101.20 (2000).</p>	<p>by deposition or in the hearing of an appeal by the Board.</p>	<p>subpoena issued by the Board, the Board, through the Attorney General, may apply to that court to issue an order requiring the person to appear before the Board, to produce evidence or to give testimony, or both. Failure to obey the order may be punished by the court as a contempt of court.</p>	<p>The subpoena form is GSA Form 9534 (Rev. 1-98), 48 CFR Pt. 61, App. Board Rule 120 contains the procedures for obtaining, serving, and governing proof of service of a subpoena; provides for motions to quash or modify a subpoena; and sets forth the statutory enforcement mechanism described above. Each appellant receives a copy of the Board's rules of procedure with the notice of docketing of its appeal. There are no specific privacy protections connected to a Board subpoena, which is part of the record in the appeal. However, Board Rule 112(h)(1) provides that a party may request that documents be submitted under protective order or held <u>in camera</u>, and Rule 112(h)(2) states that a party may ask, or the Board direct, that testimony be received under protective order or <u>in camera</u>. 48 CFR 6101.12(h).</p>	<p>available without a subpoena. If one party requests a subpoena, the hearing judge usually consults with the opposing party before making the determination to issue the subpoena. In many instances in which subpoenas are requested, the subpoenas are essential to securing evidence necessary to resolve contract disputes. Some requests for Board subpoenas, however, do not involve lack of cooperation by the parties. A party may request a subpoena on behalf of a witness who needs to demonstrate to an employer that he or she is testifying in an administrative proceeding. In addition, some federal agencies, as a standard operating procedure, require a subpoena before they will provide documents or depositions in an appeal.</p>
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<b>Institute of Museum and Library Studies</b>	<b>Holds no administrative subpoena authority.</b>				
<b>Inter-American Foundation</b>	<b>Holds no administrative subpoena authority.</b>				
<b>Foreign Claims Commission</b>					
<b>Foreign Claims Commission†</b>	<b>22 U.S.C. § 1631h</b>	<b>Debt claims against asserted against Bulgaria, Hungary, or Rumania OR based upon an obligation expressed or payable in any currency</b>			
<b>Foreign Claims Commission†</b>	<b>22 U.S.C. § 1623(c)</b>	<b>Settlement of International Claims: Any member or employee of the commission may, by designation of the Chairman of the Commission, require by subpoena the attendance and testimony of witnesses and the production of all necessary books, papers, documents, records, correspondence and other</b>	<b>Enforceable by U.S. district court</b>		

		evidence.			
<b>Commission on Security and Cooperation in Europe</b>					
<b>Commission on Security and Cooperation in Europe†</b>	<b>22 U.S.C. § 3004</b>	<b>In carrying out this Act . . [the Commission] may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary</b>			
<b>U.S. International Trade Commission</b>					
<b>U.S. International Trade Commission</b>	<b>19 U.S.C. §1333</b>	<b>Subpoenas are authorized for the purposes of carrying out the Commission’s functions and duties in connection with any investigation authorized by law.</b>	<b>The Commission may invoke the aid of any district court, which may issue an order requiring compliance, failure to obey may be punished as contempt of court.</b>	<b>The Commission must not disclose to unauthorized persons confidential business information or business proprietary information gathered through subpoenas. The Commission routinely issues orders protecting information obtained, and issues sanctions accordingly when such</b>	<b>A majority of the Commission must authorize issuance, but any member may sign a subpoena; subpoenas may issue with respect to papers, information, and testimony pertaining to any Commission investigation.</b>

				<b>information is improperly handled.</b>	
<b>U.S. International Trade Commission</b>  Office of the Inspector General	Inspector General subpoena authority is under the Inspector General Act. ( 5 U.S.C. App. 3, §§ 3(a), 6(a)(4), 8G(d) and 8G(g)(1).	The Inspector General is authorized to require by subpoena , information necessary in the performance of the functions assigned by the Inspector General Act. (5 U.S.C. App. 3 § 6(a)(4)).	Subpoenas are enforceable by a United States district court order. (5 U.S.C., App. 3 § 6(a)(4))	Right to Financial Privacy Act (12 U.S.C. § 3401).	1) Information sought must be within the authority of the Inspector General.  2) Information sought is reasonably relevant to the Inspector General's inquiry.  3) Production of the information cannot be unduly burdensome.
<b>United States International Trade Commission†</b>	19 U.S.C. § 1677f(7)(a)	Disclosure of proprietary information under protective orders issued pursuant to the North American Free Trade Agreement or the United States-Canada Agreement			
<b>(North American Free Trade Agreement)</b>					
<b>(North American Free Trade Agreement)†</b>	19 U.S.C. § 3433	Authorizing any member of an extraordinary challenge committee convened under paragraph 13 of article			



		<b>1904 to summon witnesses and require the production of documents, books, and records</b>			
<b>National Commission on Electronic Fund Transfers</b>					
<b>National Commission on Electronic Fund Transfers†</b>	<b>12 U.S.C. § 2404</b>	<b>To require the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission</b>	<b>Enforceable by any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.</b>		
<b>Legal Services Corporation</b>					

<p><b>Legal Services Corporation</b></p>	<p><b>Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 6(a)(4).</b></p>	<p><b>To require the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the IG Act.</b></p>	<p><b>In the case of contumacy or refusal to obey, enforceable by order of any appropriate United States district court.</b></p>	<p><b>Because LSC is not a government agency, it is unclear that the Right to Financial Privacy Act applies to LSC OIG subpoenas.</b></p> <p><b>Certain information potentially subject to LSC OIG subpoena is protected from further disclosure by the OIG, see Pub. L. 104-134, Sec. 509:</b></p> <p><b>(h) Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient shall be made available to any auditor or monitor of the recipient, including any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and any independent auditor or</b></p>	<p><b>The LSC OIG has internal procedures for issuance of OIG subpoenas.</b></p>
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				<p><b>monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation, except for reports or records subject to the attorney-client privilege.</b></p> <p><b>(i) The Legal Services Corporation shall not disclose any name or document referred to in subsection (h), except to - (1) a Federal, State, or local law enforcement official; or (2) an official of an appropriate bar association for the purpose of enabling the official to conduct an investigation of a rule of professional conduct.</b></p>	
<b>U.S. Merit Systems Protection Board</b>					
<b>U.S. Merit Systems Protection Board</b>	<b>5 U.S.C. §1204 (Powers and functions of the Merit Systems Protection Board)</b>	<b>Subpoenas may be issued by any member of the Board, any administrative law judge appointed by the Board under 5 U.S.C. §3105, and any Board employee designated by</b>	<b>If the Board's subpoena is not obeyed, the Board may apply to the United States district to order enforcement. The district court may punish any failure to</b>		<b>The Board does not generally issue subpoenas to compel the appearance of agency witnesses, that is, witnesses employed by the respondent agency.</b>

		<p>the Board (generally administrative judges). Under this authority, the Board may require the attendance and presentation of an individual's testimony, the production of documentary or other evidence, or the taking of depositions from, and responses to written interrogatories, by any such individual.</p>	<p>obey the order of the court as a contempt thereof. 5 U.S.C. §1204(c).</p> <p>The Board generally has fewer than five cases a year in which it applies to a district court for enforcement of its subpoena. Upon application to the Board by the Special Counsel, the Board may also apply to the district court to enforce a subpoena issued by the Special Counsel. 5 U.S.C. §1212(b)(3). This provision has rarely been employed, and had not been employed recently</p>		<p>Rather, the agency must arrange for the appearance of its employees. If the employee does not make an appearance, the administrative judge may impose sanctions under 5 C.F.R. §1201.41.</p> <p>Under 5 C.F.R. §1201.43, the administrative judge is granted discretion in imposing sanctions as necessary to serve the ends of justice. In the case of federal employees who are not employed by the respondent agency, and who do not appear in response to an order by the administrative judge for the agency to provide the witness pursuant to 5 C.F.R. §1201.33, the Board has determined that obtaining a subpoena is a better course of action than imposing sanctions. For more details, see Chapter 7, "Witnesses, Subpoenas, and Sworn Statements," in the</p>
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					<b>Merit Systems Protection Board Judge's Handbook.</b>
<b>U.S. Merit Systems Protection Board †</b>	<b>5 U.S.C. §1221</b>	<b>At the request of an employee, former employee or a applicant for employment . . . seeking corrective action . . . the board shall issue a subpoena for the attendance and testimony of any person if the Board finds that the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.</b>			
<b>U.S. Merit Systems Protection Board †</b>	<b>5 U.S.C. §1507</b>	<b>Allows the Board to administer oaths, examine witnesses, and receive evidence</b>	<b>Enforceable in United States district court</b>		
<b>National Aeronautics and Space Administration</b>					
<b>National Aeronautics and Space Administration</b>	<b>Inspector General Act of 1978, as amended, 5 U.S.C.A. App. 3, Section 6(a)(4)</b>	<b>“production of all information, documents, reports, answers, records, accounts, papers, and</b>	<b>“in the case of contumacy or refusal to obey, shall be enforceable by or der of</b>	<b>Right to Financial Privacy Act, 12 U.S.C. Section 3401 <u>et seq.</u></b>	<b>Request to issue IG subpoena is reviewed by chain of command, by IG Counsel, and is</b>

		<p>other data and documentary evidence necessary in the performance of the functions assigned by [the IG Act]...procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies"</p>	<p>any appropriate United States district court"</p>		<p>signed by the IG or designee. DoJ monograph is consulted as well as case law and standards in Special Agents' Manual</p>
<p><b>National Aeronautics and Space Administration</b></p>	<p>Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812; 14 CFR Part 1264</p>	<p>Investigative subpoena <i>duces tecum</i>, 14 CFR 1264.103; trial subpoena 14 CFR 1264.122.</p>	<p>Sanctions under 14 CFR 1264.128.</p>	<p>Notice under 14 CFR 1264.103.</p>	<p>Standards as set forth in the PFCRA and its implementing regulations.</p>
<p><b>National Archives and Records Administration</b></p>	<p>Holds no administrative subpoena authority, excluding IG authority. No unique, agency-specific authority under the Inspector General Act. Inspector General Act of 1978, 5 U.S.C. App. 3 sec.8G(d))</p>				
<p><b>National Capitol Planning Commission</b></p>					

<b>National Capitol Planning Commission</b>	Holds no administrative subpoena authority.				
<b>National Credit Union Administration</b>					
<b>National Credit Union Administration</b>	Inspector General Act of 1978, as amended, 5 U.S.C.A. App. 3, Section 6(a)(4)	“production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by [the IG Act]...procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies.	“in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court”	Right to Financial Privacy Act, 12 U.S.C. Section 3401 <u>et seq.</u>	Decision to issue IG subpoena is reviewed by auditor’s or investigator’s supervisors, by IG Counsel, and by the IG. Alternative means to obtain information are tried first, and scope of subpoena is made as narrow as possible, consistent with case needs
<b>National Credit Union Administration</b>	Examination and Investigation Authority. Federal Credit Union Act, as amended, 12 U.S.C. §§1784(b), 1786(p), and 1787(b)(2)(1). (June 26,	The NCUA has the ability to issue subpoenas for documents and testimony in connection with the examination or investigation of any federally insured credit	As set forth in the above cited statutes, the NCUA enforces compliance with its subpoenas via application to the United States District	The NCUA’s regulations set forth that all information and documents obtained by the agency in the course of any investigation are non-public, unless made	Pursuant to delegated authority from the NCUA Board, the agency’s General Counsel may institute formal investigative proceedings by the entry

	<p>1934, c. 750, Title II, §204, as added Oct. 19, 1970, Pub.L. 91-468, §1(3), 84 Stat. 1001, and amended Nov. 10, 1978, Pub.L. 95-630, Title V, §502(b), 92 Stat. 3681; Oct. 15, 1982, Pub.L. 97-320, Title I, §132(a)(1), 96 Stat. 1487; Aug. 9, 1989, Pub.L. 101-73, Title IX, §§915(a), (b), and (c), 103 Stat. 486; Nov. 29, 1990, Pub.L. 101-647, Title XXV, §2521(a)(2)). Also, the Rules and Regulations of the National Credit Union Administration, 12 C.F.R. Part 747, Subparts H and I.</p>	<p>union. The purpose of this authority is to determine whether a credit union or an institution-affiliated party (“IAP”) is complying with applicable law and regulations, and/or to determine whether such credit union or party has violated, is violating or is about to violate any provision of the Federal Credit Union Act, the NCUA’s Board’s regulations, or other relevant statutes or regulations that may bear on a party’s fitness to participate in the affairs of a credit union. This subpoena power extends to any person or entity with knowledge of the affairs of a credit union. This subpoena power extends to any person or entity with knowledge of the affairs of the federally insured credit union, including the ability to subpoena personal financial records and accounts (after compliance with applicable Right to Financial Privacy Act</p>	<p>Court. The DOJ files the application to the United States District Court. The DOJ files the application on behalf of the NCUA, as the agency does not have independent litigation authority.</p>	<p>a matter of public record by the NCUA Board (usually in connection with the agency issuing a Notice of Charges for formal enforcement action). While maintaining the non-public nature of the testimony or documents obtained during an investigation, the NCUA will share this information with other relevant law enforcement officials, including but not limited to the DOJ. 12 C.F.R. Part 747.702. Moreover, the NCUA complies with all applicable provision of the Right to Financial Privacy Act of 1978 (“RFPA”), 12 U.S.C. §§3401-3422, with respect to obtaining financial records from other non NCUA regulated institutions, and with respect to releasing any information obtained during the course of its investigation.</p>	<p>of an order indicating the purpose of the investigation, and designating the persons conducting the investigation. Upon issuance of the Investigation Order the designated representative has the power to issue subpoenas for testimony and documents. 12 C.F.R. Parts 747.703 and 747.803.</p>
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		notice requirements). This subpoena authority also extends to any proceeding in connection with a claim for insured deposits.			
<b>National Foundation on the Arts and Humanities</b>					
<b>National Endowment for the Arts</b>  Inspector General	Inspector General Act, Pub. L.95-452, Oct. 12, 1978, 5 U.S.C. App., Section 6.	General subpoena authority as necessary for IG functions.	U.S. District Court	<ol style="list-style-type: none"> <li>1. Inspector General Act Sec. 7.</li> <li>2. Privacy Act</li> <li>3. Freedom of Information Act</li> <li>4. Right to Financial Privacy Act</li> <li>5. Fair Credit Reporting Act</li> <li>6. 26 U.S.C. 6103 (tax returns)</li> </ol>	<ol style="list-style-type: none"> <li>1. Audit or investigation within IG authority</li> <li>2. Information sought reasonably relevant to audit or investigation</li> <li>3. Demand not unreasonably broad or burdensome</li> </ol>
<b>National Labor Relations Board</b>					
<b>National Labor Relations Board</b>	National Labor Relations Act (NLRA), as amended, Section 11 (29 U.S.C. §161) (July 5, 1935, c. 372, §11, 49 Stat. 455; June 23, 1947, c. 120, Title I, §101, 61 Stat. 150; June 25, 1948, c. 646, §32(b),	In Section 111 of the NLRA (29 U.S.C. §161), the Board is empowered to issue subpoenas to obtain and copy documentary material, and to summon witnesses and take testimony in order to obtain evidence	The Board's subpoenas are not self-enforcing. In the event that any person refuses to obey an administrative subpoena issued by the Board pursuant to 29 U.S.C. §161(1), the Board is authorized by	Each Board subpoena contains language notifying the person served of his or her right pursuant to 29 U.S.C. §161(1) to petition the Board to revoke the subpoena, and the statutory five day time	Any party to a Board proceeding may apply to the Board for an administrative subpoena. 29 U.S.C. §161(1); 29 C.F.R. §102.31(a). Such parties to Board proceedings include, without

	<p>62 Stat. 991; May 24, 1949, c. 139, §127, 63 Stat. 107; Oct. 15, 1970, Pub.L. 91-452, Title II, §234, 84 Stat. 930; June 11, 1960, Pub. L. 86-507, §1(57), as added May 21, 1980, Pub. L. 96-245, 94 Stat. 347.) Our Inspector General has subpoena authority in accordance with the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3 §6(a)(4).</p> <p>There is no unique authority or procedure for the Inspector General at this Agency.</p>	<p>that relates to any matter under investigation or in question concerning any representation proceeding conducted pursuant to 29 U.S.C. §159 or any unfair labor practice or compliance proceeding conducted pursuant to 29 U.S.C. §160 of the NLRA. Any party to representation or unfair labor practice proceedings is permitted to make application to the Board for issuance of such subpoenas. The attendance of witnesses and the production of evidence may be required to be made at any place and from any place in the United States, Territory, or Possession</p>	<p>29 U.S.C. §161(2) to apply to any federal district court for an order compelling compliance with the subpoena.</p>	<p>limit within which such petition must be filed. The Board will revoke the subpoena if the Board concludes that: the evidence sought does not relate to any matter under investigation, the evidence sought is not described with sufficient particularity, or the subpoena is invalid for any other reason sufficient in law. 29 U.S.C. §161(1); NLRB Rules and Regulations, as amended, 29 C.F.R. §102.31(b). If the Board makes application to a district court for subpoena enforcement, the subpoenaed party can proffer legal and factual argument to the court as to why they believe the subpoena should not be enforced.</p> <p>In appropriate circumstances, the following additional statutes will provide protection to the privacy of persons whose evidence is required by an NLRB administrative subpoena: The Right to</p>	<p>limitation, the Regional Director in whose Region the proceeding is pending, any person filing a charge or petition under the NLRA, any person named as a respondent, as employer, or as a party to a contract in any Board proceeding, any labor organization alleged to be subject to unlawful activity, and counsel for the Board's General Counsel. 29 C.F.R. §102.8. Applications for subpoenas filed prior to a hearing shall be filed with the Regional Director. Applications filed during a hearing shall be filed with the administrative law judge (29 C.F.R. §102.31) or hearing officer (29 C.F.R. §102.66(c)). There is no right to an investigative subpoena (as contrasted with a hearing subpoena) available to parties other than the General Counsel. The NLRB's Regional Directors, administrative law</p>
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				<b>Financial Privacy Act, 12 U.S.C. §3401; The Privacy Act, 5 U.S.C. §552a; The Freedom of Information Act, 5 U.S.C. §552.</b>	<b>judges, and hearing officers grant applications on behalf of the Board.</b>
<b>Federal Labor Relations Authority</b>	<b>The Federal Labor Relations Authority (FLRA) is an independent agency responsible for administering the labor-management relations program for 1.9 million Federal employees world-wide. Its mission is to promote stable and constructive labor-management relations that contribute to an efficient and effective government.</b>				

<b>Federal Labor Relations Authority†</b>	<b>5 U.S.C. §7132</b>	<b>Any member of the Authority, the General Counsel, or the Panel or any Administrative Law Judge holds the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the U.S., etc.</b>	<b>Enforceable by U.S. district court. Punishable as contempt.</b>		
<b>Federal Labor Relations Authority</b>  <b>Foreign Service Labor Relations Board†</b>	<b>22 U.S.C. § 4107</b>	<b>Authorizes the Board to issue subpoenas.</b>			
<b>National Science Foundation</b>					
<b>National Science Foundation</b>	<b>Antarctic Conservation Act, 16 U.S.C. § 2401, et seq., P.L. 95-541</b>  <b>a) 16 U.S.C. § 2407 (45 CFR § 672.3)</b>  <b>b) 16 U.S.C. § 2409 (45 CFR § 672.3)</b>	<b>Presiding officer may issue subpoenas for witnesses and documents for hearing.</b>  <b>A n t a r c t i c L a w Enforcement Officers may secure, execute &amp; serve subpoenas.</b>	<b>16 U.S.C. § 2407 (b) sets forth that United States may apply to District Court for enforcement.</b>	<b>Right To Financial Privacy Act provides that if recipient of administrative subpoena fails to follow the procedures mandated by the Act upon expiration of ten days from the date of service or fourteen days from the date of mailing of the</b>	<b>Hearing procedures are set forth at 45 CFR Part 672</b>

				<p><b>notice , the records or information requested in the subpoena will be made available. (See 12 U.S.C. § 3405)</b></p> <p><b>Recipient may file a sworn statement and motion to quash in an appropriate court within ten days from the date of service of the notice or fourteen days from the date of mailing the notice to challenge the subpoena. <i>Id.</i></b></p> <p><b>The Family Educational And Privacy Rights Act provides that institutions that are subject to the Act will comply with a lawfully issued subpoena upon the condition that parents and the students are notified of all such subpoenas in advance of the compliance date by the educational institution or agency. (See 20 U.S.C. § 1232g(b)(2)(B)).</b></p> <p><b>In addition, personal information shall only be transferred to a third party on the condition</b></p>	.
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				that such party will not permit any other party to have access to such information without the written consent of the parents or student. ( <i>Id.</i> at (4)(B) and (7)(D)).	
<b>National Science Foundation</b>	Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, at § 6(a)(4), P.L. 95-452, § 1, Oct. 12, 1978, 92 Stat.	Limited to documentary evidence including information, reports, answers, records, accounts, papers, and	16 U.S.C. § 2407 (b) sets forth that United States may apply to District Court	See above.	Hearing procedures are set forth at 45 CFR Part 672.  Guidance and procedures

	1101, as amended.	other data and documentary evidence necessary in the performance of the functions of the OIG. However, authority does not allow OIG to compel testimony. Additionally, OIG does not have authority to subpoena documents maintained by the United States government or its agencies, including NSF. (See 5 U.S.C. App. 3 at § 6(a)(4))	In the case of contumacy or refusal to obey, the subpoena is enforceable by order of any appropriate United States district court. ( <i>Id.</i> , Inspector Generals Act at § 6(a)(4)).		for the use, approval, drafting and enforcement of OIG subpoenas is maintained within NSF/OIG.
<b>National Transportation Safety Board</b>					
<b>National Transportation Safety Board</b>	Independent Safety Board Act of 1974, as amended, 49 U.S.C. §§1101-1155. Subpoena authority is specifically found at 49 U.S.C. §1113(a); P.L. 93-633, §304(a)(1)(A), (b)(1), (3), (4), (7)-(9); and P.L. 100-372, §4.  49 C.F.R. §§831.9(a); 821.20(a), and	Under 49 U.S.C. §1113, the NTSB, through a Board member, administrative law judge, or employee designated by the Chairman, may “require, by subpoena or otherwise, necessary witnesses and evidence.”  This authority is utilized during the investigation of an accident, either at the	As stated in 49 U.S.C. §1113(a)(4), the NTSB may enforce a subpoena by initiating a civil action in Federal district court.	Protection of trade secrets is outlined at 49 U.S.C. §1114(b) and 49 C.F.R. 831.6. In addition, documents obtained during the course of an accident investigation that are deemed pertinent but not appropriate for public dissemination are placed in the “Official Use Only” docket. This	In accident investigation matters, the NTSB issues subpoenas for information necessary to the completion of a thorough investigation and fulfillment of its statutory mandate to determine the probable cause or causes of certain transportation accidents and to conduct studies of transportation

	845.21(c).	field phase or during a public hearing; study of transportation safety issues; and by an administrative law judge, when necessary, during a hearing of an FAA enforcement action.		section of the accident investigation file contains material for internal use only, such as intra- and interagency memorandums and correspondence, analytical reports and various other types of documents (whether prepared by or for the Board), autopsy protocols, pre-redacted material, and other items exempt from disclosure under the Freedom of Information Act and the Privacy Act that nevertheless should be retained by the Board.	safety matters.  As for subpoena issued in the context of an aviation enforcement case, the law judge applies the criteria set forth in 49 C.F.R. §821.20(a).
<b>Neighborhood Reinvestment Corporation</b>	Holds no administrative subpoena authority.				
<b>Nuclear Regulatory Commission</b>					
<b>Nuclear Regulatory</b>	Section 161c. of the Atomic Energy Act of	Section 161c. provides:	A. Authority	Any information collected by an NRC	A. Subpoenas issued by NRC Administrative



<p><b>Commission</b></p> <p><b>Office of Management and Budget</b></p>	<p>1954, 42 U.S.C. §2201(c).</p>	<p>“In the performance of its functions, the Commission is authorized to . . . make such studies and investigations, obtain such information, and hold such meetings and hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths or affirmations, and by subpoena to require any person to appear and testify or appear and produce documents, or both, at any designated place.”</p> <p>The Atomic Energy Act defines the word “person” to include a corporation or other business entity, a government agency (except for the Department of Energy),</p>	<p>Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2281, provides:</p> <p>“In case of failure or refusal to obey a subpoena served upon any person pursuant to subsection 161c., the district court for any district in which the person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.”</p> <p>B. Process</p>	<p>subpoena may be used in two ways. First, it may be used by the NRC regulatory staff to evaluate the activities of licensees or others subject to NRC jurisdiction in order to protect the public health and safety and the common defense and security, and to enforce the Commission’s regulations and orders. Second, the information may be used in connection with adjudicatory proceedings before the NRC’s administrative tribunals to determine whether to authorize issuance of a license or license amendment or to determine whether to enforce an NRC order.</p> <p>In either case, the information may be protected from disclosure under the provisions of 10 C.F.R. §2.790 and in 10 C.F.R. Part 9. These regulations include the</p>	<p><b>Tribunals</b></p> <p>An NRC administrative tribunal may, at the request of a party, issue a subpoena in a judicial proceeding. If the person who is named in the subpoena refuses to comply, the Commission may ask the Department of Justice to seek enforcement of the subpoena, as described above.</p> <p>B. Subpoenas Issued by the NRC Regulatory Staff</p> <p>1. <u>The Executive Director of Operations</u> The Commission has delegated authority to the Executive Director for Operations (“EDO”) to issue subpoenas. See NRC Management Directive 9.17-02 (Sep. 12, 1991). The EDO has the authority to delegate that power to lower officials. Id. at 9.17-04. The Commission also has explicitly delegated</p>
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		<p>or a state or its agencies as well as an individual. See Section 11s of the Atomic Energy Act, 42 U.S.C. §2014(s).</p>	<p>Generally, when the recipient of an NRC subpoena advises the NRC that he or she intends to defy the subpoena, the NRC must file a request with the Department of Justice (Civil Division, Federal Programs Branch), asking the Department to file a petition to enforce the subpoena. If the Department approves the request, the Federal Programs Branch either handles the matter itself or refers the matter to the appropriate U.S. Attorney's Office.</p>	<p>exemptions from disclosure under the Freedom of Information Act and other statutes for the protection of personal, privacy, proprietary, commercial and financial information. Any person who submits material in response to an NRC subpoena may request that the material be protected from release under a specific category of 10 C.F.R. §2.790. If the NRC denies that request, the person who made the request (and submitted the information) may challenge the decision in a federal district court. In addition, if the subpoena is issued in an NRC administrative proceeding, the person affected may apply for a protective order under 10 C.F.R. §2.740(c), to prevent disclosure of that information in the proceeding.</p>	<p>the authority to issue subpoenas to the Director of the Office of Nuclear Materials Safeguards and Safety ("NMSS"), see NRC Management Directive 9.26, §0124-0212 (Oct. 27, 1989), subject to review and concurrence from the Office of the General Counsel, id. at §0128-0210, (Feb. 27, 1990).</p> <p>2. The Office of Investigations.</p> <p>The Office of Investigations ("OI") has authority, as stated in the Commission's regulations, to issue subpoenas in furtherance of its investigations of potential licensee wrongdoing. See 10 C.F.R. §1.36(e). The Director of OI has delegated that authority to the Directors of each of the four OI Regional Field Offices, subject to review of the proposed</p>
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					subpoena by the Office of the General Counsel.
<p><b>Nuclear Regulatory Commission</b></p> <p><b>Office of Management and Budget</b></p>	<p>Section 6(a)(4) of the Inspector General Act of 1978.</p>	<p>Section 6(a)(4) gives each Inspector General the authority to require by subpoena the production of all information, documents, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act. Subpoenas shall not be used by Inspector General to obtain documents from Federal Agencies.</p>	<p>The Inspector General Act provides that in the case of contumacy or refusal to comply with an Inspector General subpoena, the subpoena shall be enforceable by order of any appropriate United States District Court.</p>	<p>Generally, an Inspector General subpoena will not be issued unless other means to obtain the required information have been exhausted or appear impractical. Whenever the Inspector General elects to use a subpoena to obtain financial records from a financial institution, the Inspector General must comply with the Right of Financial Privacy Act of 1978. The Act requires government agencies seeking to subpoena financial records to notify the financial institution's customer that a subpoena has been filed, the purpose of the subpoena, and the customer's right to file a motion to quash the subpoena. Any records collected by an Inspector General subpoena are used by Inspector General staff</p>	<p>In accordance with the Inspector General Act, the Inspector General may issue a subpoena for documents. Information sought must be reasonably related to an investigation or audit within the Inspector General's jurisdiction and must be defined and limited to that necessary for the investigation or audit. Additionally, an Inspector General subpoena will not be issued unless other means to obtain the required information have been exhausted or appear impractical. All proposed Inspector General subpoenas are reviewed by the appropriate Assistant Inspector General, the Deputy Inspector General, and the General Counsel to the Inspector General to ensure compliance with all legal requirements</p>

				to evaluate the activities of NRC employees and contractors or the operation of NRC programs and operations. Any documents collected by a subpoena issued by the Inspector General are protected from public release or disclosure in accordance with the Freedom of Information Act or Privacy Act.	prior to the subpoena being signed by the Inspector General.
<b>Occupational Safety and Health Review Commission</b>					
<b>Occupational Safety and Health Review Commission</b>	Section 12(h) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 661(b), Pub. L. 91-596 (“the Act”) 29 C.F.R. § 2200.57. Issuance of subpoenas; petitions to revoke or modify subpoenas; right to inspect or copy data.	Permits the Commission in any proceeding before it to order testimony to be taken by deposition and to compel the appearance of witnesses and the production of books, papers, or documents. Permits Commission judge on the application of any party to issue subpoenas requiring the appearance of witnesses or the production of	Upon failure to comply w/subpoena, the Commission by its counsel may initiate enforcement proceedings in the appropriate district court (with assistance from the U.S. Attorney’s office)	The Act requires that Commission hearings and records be open to the public. Section 15 of the Act provides that the Commission may issue orders where appropriate to protect the confidentiality of trade secrets. The Commission’s ALJ may revoke or modify a subpoena in order to protect claims of	Section 12(g) of the Act permits the Commission to make necessary rules for the orderly transaction of its proceedings (see scope of applicable procedural rules related to agency’s subpoena authority in section below). Unless the Commission has adopted a different rule, its proceedings are conducted in accordance

		<b>evidence</b>		<b>privilege. (See 29 C.F.R. § 2200.11)</b>	<p><b>with the Federal Rules of Civil Procedure. The party to whom the subpoena is issued is responsible for its service. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service may be made by service on the person named, by certified mail return receipt requested, or by leaving a copy at person's principal place of business or at the person's residence.</b></p> <p><b>Person served with a subpoena may within 5 days move to revoke or modify the subpoena.</b></p> <p><b>Persons compelled to submit data or evidence are entitled to retain or procure copies of transcripts of the data or evidence submitted by them.</b></p> <p><b>Other issuance standards, qualifiers and procedures are in</b></p>
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					accordance with the Federal Rules of Civil Procedure.
<b>Office of Governmental Ethics</b>	Holds no administrative subpoena authority.				
<b>Office of Personnel Management (OPM)</b>					
<b>Office of Personnel Management (OPM)</b>	<p>Inspector General Act, section 6(a)(4), which provides that the Inspector General may:</p> <p>“Require by subpoena the production of all information, documents, reports answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the</p>	<p>Since the Inspector General Act limits the scope of an inspector general’s audit and investigative authority to programs of his respective agency, at OPM our subpoenas are issued primarily in relationship to the Federal Employees Health Benefits Program and the federal retirement annuity program.</p>	<p>Inspector general subpoenas are enforceable by any appropriate United States district court.</p>	<p>The subject of an investigation is notified of the issuance of a subpoena only when financial records are covered by the Right to Financial Privacy Act, 12 U.S.C. §§3401-3422. Under that Act, absent a court order pursuant to §3409, the subject must be provided with prior written notice of the purpose and scope of the subpoena and the</p>	<p>There are three criteria that must be met for issuance and enforcement of an inspector general subpoena:</p> <p>1) the audit of investigation must be within the statutory authority of the Inspector General;</p> <p>2) the information sought must be</p>

	<p>functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court. . .”</p>			<p>opportunity to challenge the subpoena in a federal district court. No notice is required if the inspector general is seeking certain limited identifying information on the account.</p> <p>Once subpoenaed records are received by an inspector general and become part of a system of records maintained by his or her respective agency, they are subject to the Privacy Act, 5 U.S.C. §552a exchangeable without the subject’s permission only for a law enforcement purpose or routine use prescribed by agency regulations.</p>	<p>reasonably relevant to the investigation or audit; and</p> <p>3) the demand may not be unreasonably broad or burdensome.</p> <p>Prior to issuance, all applications for subpoenas are reviewed by the Assistant Inspector General for Investigations (or Audits if issued pursuant to an audit), the Assistant Inspector General for Legal Affairs, the Deputy Inspector General and the Inspector General to assure these criteria have been met.</p>
Office of Personnel Management (OPM)	42 U.S.C. § 1973g	Upon the request of the applicant or the challenger or, on its own motion, the Civil Service Commission.			
Peace Corps					
Peace Corps	Holds no administrative subpoena authority, excluding the Inspector General authority granted in Section				

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<p><b>Pension Benefit Guaranty Corporation</b></p>	<p><b>General Act of 1978. (Peace Corps Inspector General Exercises authority similar to those of other Inspector</b></p>				
<p><b>Pension Benefit Guaranty Corporation</b>  Office of Inspector General</p>	<p><b>Generals under the Inspector General Act of 1978 as amended, 5 U.S.C. App. 3</b></p>	<p><b>May obtain documentary evidence for both investigations and audit.</b></p>	<p><b>Enforcement action filed in the appropriate U.S. District Court by DOJ, with assistance from IG counsel.</b></p>	<p><b>No requirement to notify individual that OIG is seeking records</b></p>	<p><b>OIG has authority to “require by subpoena [sic] the production of all information, documents reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of functions assigned by this Act” App. 3, §6(a)(4)</b></p>



<b>Pension Benefit Guaranty Corporation</b>	<b>Right to Financial Privacy Act (RFPA), 12 U.S.C. 3401-3420.</b>	<b>Financial records of individuals and partnerships of 5 or fewer individuals may be obtained; written notice to customer and opportunity to challenge subpoena must precede document release</b>	<b>If OIG complies with notification and customer does not file challenge within statutory timeframe, OIG entitled to records.</b>  <b>If the financial institution does not comply with the subpoena, DOJ files an enforcement action in the appropriate U.S. District Court with assistance from IG counsel.</b>	<b>OIG must serve the customer a copy of the subpoena and form documents to challenge the subpoena. If a challenge is filed, U.S. District Court judge must determine whether OIG entitled to obtain records.</b>	<b>OIG is entitled to records if there is “substantial compliance” with the provisions of RFPA, and there is a “demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records are relevant to the inquiry” (12 U.S.C. §3419(c)).</b>
<b>Pension Benefit Guaranty Corporation</b>	<b>Employee Retirement Income Security Act of 1974, as amended</b>  <b>29 U.S.C. §1303</b>	<b>The corporation may make investigations it deems necessary to enforce any provision of ERISA, Title IV, or any rule or regulation thereunder.</b>  <b>ERISA §4003</b>	<b>Administrative subpoena requiring document production for terminating pension plan participant records. Enforcement action filed in the appropriate District Court.</b>	<b>Freedom of Information Act (FOIA), 5 U.S.C. §552 (FOIA) (for business records PBGC maintains in a system of records).</b>  <b>Privacy Act, 5 U.S.C. §552a (for individual records PBGC) maintains in a system of records)</b>	<b>PBGC Directive Section GA 05-1.</b>  <b>PBGC Insurance Operations Manual.</b>
<b>Postal Rate Commission</b>					
<b>Postal Rate Commission</b>	<b>Holds no administrative subpoena authority or</b>				

	<p>authority to issue subpoenas or make judicially enforceable demands compelling document production or testimony.</p>				
<p><b>United States Postal Service</b></p>					
<p><b>United States Postal Service</b></p>	<p>Deceptive Mail Prevention and Enforcement Act, (PL 106-168), 39 U.S.C. 3001, <i>et seq.</i> 39 U.S.C. § 3016  39 C.F.R. §§ 913 [issued by Office of General Counsel] and 952.19 [Judicial Subpoenas]</p>	<p>Authority limited to the investigations of violations of 39 U.S.C. 3005(a), the Postal Service false representations and lottery laws. New sweepstakes and skill contest restrictions are incorporated by reference in 39 U.S.C. 3001.</p>	<p>Enforcement by Attorney General in district court where recipient resides, does business, or may be found. 39 U.S.C. § 3016(c)</p> <p>The Right to Financial Privacy Act, 12 U.S.C. § 3405, provides that certain notice must be given when seeking bank records about an individual.  Records obtained by means of this authority are exempted from disclosure under the FOIA. 39 U.S.C. § 3016(d), 39 C.F.R. § 913.4.</p> <p>To the extent applicable here, the USPS is also specifically prohibited from disclosing any names or addresses of postal patrons or other persons under 39 U.S.C. § 412.</p>	<p>Postmaster General subpoenas must be issued only where: (a) specific case with identified entity or individual (b) appropriate supervisory and legal review of request, and (c) no delegation of authority below USPS Deputy General Counsel. Judicial Subpoenas issued where Judicial Officer considers records relevant or material to existing proceeding.</p>	

<b>United States Postal Service</b>  Office of Inspector General	The USPS Office of the Inspector General exercises only the basic subpoena authority found in the Inspector General Act of 1978, 5 U.S.C. app. 3.				
<b>United States Postal Service†</b>	18 U.S.C. § 3061(1)	Authority of the Postal Inspector and other Postal Service agents to serve subpoenas issued under the authority of the United States in investigating criminal matters related to the postal service and the mails			
<b>Railroad Retirement Board</b>					
<b>Railroad Retirement Board</b>	Inspector General Act of 1978 P.L. 95-452, as amended 5 U.S.C. Appx. 3, Section 6(a)(4)	“To require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any district court; Provided that procedures other than subpoenas	The OIG files an action in federal district court for summary enforcement of its subpoena	No notification requirements. Records obtained from subpoenas are treated in accordance with the agency’s system of records.	Limited to responsibilities set forth in the Inspector General Act.

		shall be used by the Inspector General to obtain documents and information from Federal agencies.”			
<b>Railroad Retirement Board</b>	Right to Financial Privacy Act of 1978, P.L. 95-63, 12 U.S.C. §3401 et seq.	Disclosure of customer’s financial institution financial records when required in connection with a law enforcement inquiry.	The OIG files an action in federal district court for summary enforcement of its subpoena.	At or before the time of service of an administrative subpoena upon a financial institution for records covered by the Act, the IG must serve upon the individual whose records are sought a customer notice, statement of customer rights under the RFPA, customer consent and authorization for access to financial records, instructions for completing and filing customer challenge motions and sworn statement, motion for order pursuant to customer challenge provisions of the RFPA, and sworn statement of movant. The customer has a 10 days [14 days if service by mail] in which to give consent or to challenge government access to their financial records.	Limited to responsibilities set forth in the Inspector General Act.
<b>Securities and Exchange Commission</b>					

<p><b>Securities and Exchange Commission</b></p>	<p>Securities Act of 1933, Pub. L. No. 73-22 (as amended), Secs. 19(b), 20(a), 20(c), and 22(b), 15 U.S.C. 77s(b), 77t(a), 77t(c), and 77v(b); 17 CFR 200.30-4(a)(10); Rule of Practice 232, 17 CFR 201.232; and 17 CFR 203.7.</p>	<p>Securities Act Section 19(b) provides that any member of the Commission, or any officer designated by the Commission, may subpoena witnesses, take evidence, and require the production of documentary evidence deemed relevant or material to an investigation under the Act. The attendance of witnesses and production of documents may be required from anywhere in the United States or any Territory at any designated place of hearing.</p> <p>In addition, under Section 20(a), when the Commission learns that any provision of the Securities Act or any rule or regulation has been or is about to be violated, the Commission may require persons to file a statement in writing or under oath, as to the facts and circumstances concerning the matter under investigation.</p>	<p>Securities Act Section 22(b) provides that in the case of refusal to obey a subpoena by any person, a court may issue an order requiring the person to appear before the Commission, or an examiner designated by it, to produce or give evidence. Failure to obey such an order may be punished by contempt.</p> <p>In addition, Section 20(c) provides the U.S. district courts with jurisdiction to enforce compliance with any Commission order issued pursuant to the Securities Act.</p>	<p>Every witness in a Commission investigation testifying pursuant to a subpoena receives a copy of SEC Form 1662 - the Commission's "Supplemental Information Form." This form provides information on and including Privacy Act notices, the Fifth Amendment, the right to counsel, false statements and documents, perjury, transcript availability, going off the record and additional procedures for submitting statements to the Commission.</p> <p>When the Commission subpoenas "financial records" of a "customer" at a "financial institution," the Commission provides the required notices under the Right to Financial Privacy Act (RFPA). The Commission's Division of Enforcement has prepared an "RFPA Manual" to assist its staff when preparing such subpoenas. Division policy requires that subpoenas and certificates of</p>	<p>Subpoenas are served in accordance with the procedures contained in Rule 232 of the Commission's Rules of Practice, 17 CFR 201.232. See 17 CFR 203.8 ("[s]ervice of subpoenas in formal investigative proceedings shall be effected in the manner prescribed by Rule [of Practice] 232(c)").</p> <p>Section 203.7 of the Commission's Rules Relating to Investigations contains additional provisions describing the rights of witnesses in Commission investigations. 17 CFR 203.7.</p> <p>The Commission has delegated authority to the Director of the Division of Enforcement to institute subpoena enforcement proceedings in federal district court. 17 CFR 200.30-4(a)(10).</p> <p>Typically, the Commission authorizes the issuance of subpoenas by issuing an "Order Directing Private Investigation and Designating Officers To Take Testimony."</p>
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				<p><b>compliance must be signed by a staff member at the GS-15 or higher level.</b></p> <p><b>In order to rely on the exemption contained in RFPA Section 1113(h), it is the policy of the Division of Enforcement that Division staff must obtain the consent of the Division Director.</b></p> <p><b>Before notice to a customer can be delayed pursuant to RFPA Section 1109 or Exchange Act Section 21(h), the staff must obtain Commission consent to seek the required court order.</b></p> <p><b>Under Section 2703 of the Electronic Communications Privacy Act (ECPA), 18 U.S.C. 2703, if a governmental entity uses an administrative subpoena to seek the contents of electronic communications that have been in either electronic storage for over 180 days or in a remote computing service, prior notice to the services' subscriber or customer is required. Under Section 2705,</b></p>	<p><b>Generally, such authorizations are limited to a particular investigation. The Commission order specifically identifies each member of the staff authorized to issue a subpoena. If additional staff are subsequently added to an investigation, the order will be amended to include the names of the additional staff. Such orders are commonly referred to as "formal orders."</b></p> <p><b>The Commission issued 324, 345, 282, and 275 formal orders in fiscal years 2001, 2000, 1999, and 1998 respectively. Because the number of subpoenas can vary in any individual investigation, the number of subpoenas is a multiple of the number of formal orders.</b></p>
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				<p>there is a procedure for delaying the subscriber / customer notification upon written certification by a supervisory official. The Division of Enforcement has prepared an ECPA procedures outline for use when the Commission staff is seeking information or records from persons who provide computerized services to the public.</p>	
<p><b>Securities and Exchange Commission</b></p>	<p>Securities Exchange Act of 1934, Pub. L. No. 73-291 (as amended), Secs. 21(a) -(c), (e), and (h), 15 U.S.C. 78u(a) - (c), and (e); 17 CFR 200.30-4(a)(10); Rule of Practice 232, 17 CFR 201.232; and 17 CFR 203.7.</p>	<p>Under Exchange Act Section 21(b), any member of the Commission, or any officer designated by the Commission, may subpoena witnesses, compel their attendance, take evidence, and require the production of documentary evidence deemed relevant or material to an investigation under the Exchange Act. Such attendance and production may be required from anywhere in the United States at any designated place of hearing.</p>	<p>Section 21(c) provides that in the case of refusal to obey a subpoena by any person, any court of the United States within the jurisdiction of the investigation or proceeding may issue an order requiring that the person appear before the Commission, or a designated examiner, to produce or give evidence. Failure to obey such an order may be punished by contempt.</p> <p>Section 21(c) also provides that failure or refusal to attend and</p>	<p>Same as above description for the Securities Act.</p>	<p>Same as above description for the Securities Act</p>

		<p>In addition, when conducting an investigation under Section 21(a)(1), the Commission may require or permit any person to file with it a statement in writing, under oath or otherwise, as to all facts and circumstances concerning the matter to be investigated.</p> <p>Under Section 21(a)(2), the Commission may use its subpoena authority when conducting an investigation pursuant to a request from a foreign securities regulator.</p>	<p>justify or to answer any lawful inquiry or to produce documents in response to a subpoena is a misdemeanor punishable by fine and/or imprisonment or both.</p>		
<p><b>Securities and Exchange Commission</b></p>	<p>Public Utility Holding Company Act of 1935, Pub. L. No. 74-333 (as amended), Sec. 18, 15 U.S.C. 79r; 17 CFR 200.30-4(a)(10); Rule of Practice 232, 17 CFR 201.232; and 17 CFR 203.7.</p>	<p>Section 18(c) of the Public Utility Holding Company Act is virtually identical to Section 21(b) of the Exchange Act.</p> <p>In addition, Section 18(a) contains an authority provision similar to Section 21(a) of the Exchange Act.</p>	<p>Section 25 of the Public Utility Holding Company Act provides the U.S. district courts with jurisdiction to enforce compliance with any Commission order issued pursuant to the Act.</p> <p>Section 18(d) of the Public Utility Holding Company Act is virtually identical to Section 21(c) of the Exchange Act.</p>	<p>Same as above description for the Securities Act.</p>	<p>Same as above description for the Securities Act.</p>
<p><b>Securities and Exchange Commission</b></p>	<p>Public Utility Holding Company Act of 1935, Pub. L. No. 74-333 (as amended), Sec. 18, 15</p>	<p>Section 18(c) of the Public Utility Holding Company Act is virtually identical to Section 21(b) of the</p>	<p>Section 25 of the Public Utility Holding Company Act provides the U.S. district courts</p>	<p>Same as above description for the Securities Act.</p>	<p>Same as above description for the Securities Act.</p>



	U.S.C. 79r; 17 CFR 200.30-4(a)(10); Rule of Practice 232, 17 CFR 201.232; and 17 CFR 203.7.	Exchange Act.  In addition, Section 18(a) contains an authority provision similar to Section 21(a) of the Exchange Act.	with jurisdiction to enforce compliance with any Commission order issued pursuant to the Act.  Section 18(d) of the Public Utility Holding Company Act is virtually identical to Section 21(c) of the Exchange Act.		
Securities and Exchange Commission	Trust Indenture Act of 1939, Pub. L. No. 76-253 (as amended), Sec. 321, 15 U.S.C. 77uuu; 17 CFR 203.7; and Rule of Practice 232, 17 CFR 201.232.	The authority under Section 321(a) of the Trust Indenture Act is essentially identical to that in the Securities Act.	Section 321(a) provides that the Commission's powers to enforce the Trust Indenture Act and any rules, regulations or orders issued pursuant to the Act are the same as those in Sections 20 and 22(b) of the Securities Act.	Same as above description for the Securities Act.	Same as above description for the Securities Act except that the Commission has not delegated authority to institute subpoena enforcement actions under the Trust Indenture Act.
Securities and Exchange Commission	Investment Company Act of 1940, Pub. L. No. 76-768 (as amended), Sec. 42, 15 U.S.C. 80a-41; 17 CFR 200.30-4(a)(10); 17 CFR 203.7; and Rule of Practice 232, 17 CFR 201.232.	Section 42(b) of the Investment Company Act is virtually identical to Section 21(b) of the Exchange Act.  In addition, Section 42(a) contains an authority provision similar to but somewhat more limited than Section 21(a) of the Exchange Act.	Section 42(c) of the Investment Company Act contains enforcement provisions virtually identical to Section 21(c) of the Exchange Act.  Section 44 of the Investment Company Act provides the U.S. district courts with jurisdiction to enforce compliance with any Commission order issued pursuant to the Act.	Same as above description for the Securities Act.	Same as above description for the Securities Act.

<p><b>Securities and Exchange Commission</b></p>	<p>Investment Advisers Act of 1940, Pub. L. No. 76-768 (as amended), Sec. 209, 15 U.S.C. 80b-9; 17 CFR 200.30-4(a)(10); 17 CFR 203.7; and Rule of Practice 232, 17 CFR 201.232.</p>	<p>Section 209(b) of the Investment Advisers Act is virtually identical to Section 21(b) of the Exchange Act.</p> <p>In addition, Section 209(a) contains an authority provision similar to Section 21(a) of the Exchange Act.</p>	<p>Section 209(c) of the Investment Advisers Act contains enforcement provisions virtually identical to Section 21(c) of the Exchange Act.</p> <p>Section 214 of the Investment Advisers Act provides the U.S. district courts the jurisdiction to enforce compliance with any Commission order issued pursuant to the Act.</p>	<p>Same as above description for the Securities Act.</p>	<p>Same as above description for the Securities Act.</p>
<p><b>Securities and Exchange Commission</b></p>	<p>Rules 111(b), 180, and 232 of the Commission's Rules of Practice, 17 CFR 201.111(b), 201.180 and 201.232; and Administrative Procedure Act (APA), 5 U.S.C. 555(d) and 556(c)(2).</p>	<p>The Commission's Rules of Practice provide that the powers of a hearing officer include issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena. Rule of Practice 111(b), 17 CFR 201.111(b).</p> <p>In connection with any hearing, a party may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place.</p>	<p>Subpoenas issued by a hearing officer are enforceable in federal district court under the relevant provision of the law authorizing the proceeding. See, Securities Act Section 22(b); Exchange Act Section 21(c); Public Utility Holding Company Act Section 18(d); Investment Adviser Act Section 209(c); Investment Company Act Section 42(c); and Trust Indenture Act Section 321(a).</p> <p>Contemptuous conduct by any person before the Commission or a hearing officer during</p>	<p>Unless made on the record at a hearing, requests for issuance of a subpoena are required to be made in writing and served upon each party. Rule 232(a) of the Rules of Practice, 17 CFR 201.232(a).</p> <p>Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents that are to be produced may, under certain circumstances, request that the subpoena be quashed or modified. Such requests are to be made by application Rule 232(e)(1), 17 CFR 201.232(e)(1). If</p>	<p>The standards for issuance of subpoenas in connection with hearings are contained in Rule 232(b) of the Commission's Rules of Practice. This provision, based upon Section 555(d) of the Administrative Procedure Act, 5 U.S.C. 555(d), states: "Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require</p>

		17 CFR 201.232(a).	any proceeding is grounds for (i) exclusion of that person from such hearing, or any portion thereof; and/or (ii) summary suspension of that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding. 17 CFR 201.180(a). See generally, Rule 180 of the Commission's Rules of Practice, 17 CFR 201.180.	compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. Rule 232(e)(2), 17 CFR 201.232(e)(2).	the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.”  Additional procedures for the unavailability of a hearing officer, service, tender of required fees, applications to quash or modify, and witness fees and mileage are set forth in the Rules of Practice at 201.232(a), (c), (d), (e), and (f), respectively.
Securities and	Inspector General Act	Section 6(a)(4) of the	Under Section 6(a)(4)	The Inspector General	It is the practice of the

<p><b>Exchange Commission</b></p>	<p>of 1978, Pub. L. No. 95-452 (as amended), Sec. 6, 5 U.S.C. App. 3.</p>	<p>Inspector General Act (IG Act) provides that the Inspector General may subpoena all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Act.</p>	<p>of the IG Act, subpoenas are enforceable by order of any appropriate United States district court.</p>	<p>(IG) provides Privacy Act notices in conjunction with the issuance of a subpoena. When the IG subpoenas “financial records” of a “customer” at a “financial institution,” the IG provides the required notices under the Right to Financial Privacy Act (RFPA).</p>	<p>IG’s office that each subpoena is prepared by an attorney and reviewed and signed by the Inspector General.</p>
<p><b>Small Business Administration</b></p>					
<p><b>Small Business Administration</b></p>	<p>Inspector General (IG) subpoenas (Inspector General Act of 1978, as amended; Pub. L. 95-452; 5 U.S.C. app 3, § 6(a)(4).</p>	<p>Production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence (regardless of medium) necessary for the performance of the functions assigned under the Inspector General Act (essentially a subpoena duces tecum).</p>	<p>In case of refusal to obey, enforcement is obtained by order of any appropriate U.S. district court.</p>	<p>Notification requirements of ten days from the date of service or fourteen days from the date of mailing of notice apply when records at a financial institution are sought of customers covered by the Right to Financial Privacy Act, 12 U.S.C. §§ 3401, et seq. Customers have a right to challenge in an appropriate U.S. district court during the notice period.</p>	<p>The scope of IG subpoenas and methods of service are promulgated in 13 C.F.R. §§ 101.302-101.303. Internal standards and procedures have been issued in a SBA Office of Inspector General Manual.</p>
<p><b>Small Business Administration*</b></p>	<p>SBA Regulations (13 C.F.R. § 134.214)</p>	<p>Upon the request of a party or upon the Judge’s own initiative, the Judge may issue a subpoena requiring a witness to appear and testify or to produce particular</p>	<p>O H A h a s n o enforcement powers or remedies.</p>	<p>A request for the issuance of a subpoena must be filed and served on all parties. It must clearly identify the witness, the documents to be subpoenaed, and</p>	<p>The Standard for issuance of a subpoena is relevance to the issues to be adjudicated. A motion to limit or quash the subpoena may be filed and responded to,</p>

		documents.		<p>the relevance of the documents or testimony sought. A party obtaining a subpoena must serve the subpoena by personal delivery and file and serve a copy of the subpoena and affidavit of service with all parties within 2 days of service.</p> <p>With respect to privacy protections, the public has no access to information subject to a Protective Order, proprietary or confidential information withheld in accordance with Section 134, or information excluded from disclosure by law or regulation. 13 C.F.R. § 225.</p>	but no oral argument will be heard, unless the Judge decides otherwise.
<p><b>Small Business Administration</b></p> <p>Small Business Investment Division</p>	<p>Small Business Investment Act, Section 310 (P. L. 85-699; 15 U.S.C. 587b).</p>	<p>The Administration may investigate to determine whether a licensee or other person has engaged in any conduct constituting a violation of the Act. For the purpose of any investigation regarding such a violation, the Administration may compel the attendance of witnesses, take evidence, and require production of any books, papers, and documents, which are</p>	<p>The Administration may invoke the aid of any court of the United States within the appropriate jurisdiction in requiring the testimony of witnesses or the production of documents</p>	<p>There are currently no implementing regulations or procedures. Investigations are generally referred to the OIG.</p>	N/A

		<p>relevant to the inquiry. Attendance of witnesses and production of documents may be required from any place in the United States.</p>			
<p><b>Small Business Administration†</b></p>	<p><b>15 U.S.C. § 687a</b></p>	<p>Administration may subpoena witnesses and documents relevant to investigation of compliance with provisions for small business investment companies</p>			
<p><b>Small Business Administration†</b></p>	<p><b>15 U.S.C. § 687b</b></p>	<p>Administration may subpoena witnesses and documents relevant to investigation of compliance with provisions for small business investment companies</p>	<p>The Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey</p>		

			such order of the court may be punished by such court as a contempt thereof.		
<b>Small Business Administration†</b>	<b>15 U.S.C. §634</b>	<b>(b)(11) authorizes the Administrator to make such investigations as necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books,</b>	<b>Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter</b>		

		<p>papers, and documents which are relevant to the inquiry.</p> <p>15 U.S.C. §634 (11).</p>	<p>under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;</p> <p>15 U.S.C. §634 (11).</p>		
<b>Smithsonian Institution</b>					
<b>Smithsonian Institution</b>	<p>Holds no general subpoena authority. The Smithsonian Institution is a trust instrumentality of the United States and is not in the Executive Branch, not is it an authority of the Government. The Smithsonian Institution does not exercise any administrative subpoena authority.</p> <p>Notwithstanding, Congress has chosen to identify the Smithsonian Institution as a “designated Federal entity” under Section 8G of the</p>				



	<b>Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.</b>				
<b>Tennessee Valley Authority</b>					
<b>Tennessee Valley Authority</b>	<b>Inspector General (IG) subpoenas (Inspector General Act of 1978, as amended; Publ. L. 95-452; 5 U.S.C. app 3, § 6(a)(4).</b>	<b>Production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence (regardless of medium) necessary for the</b>	<b>In case of refusal to obey, enforcement is obtained by order of any appropriate U.S. district court.</b>	<b>Notification requirements of ten days from the date of service or fourteen days from the date of mailing of notice apply when records at a financial institution are sought of</b>	<b>Internal standards and procedures have been issue in a TVA Office of Inspector General Handbook.</b>

		performance of the functions assigned under the Inspector General Act (essentially a subpoena duces tecum).		customers covered by the Right to Financial Privacy Act. 12 U.S.C. §§3402, et seq. Customers have a right to challenge in an appropriate U.S. district court during the notice period.	
<b><u>Miscellaneous</u></b>	<b><u>Additional</u></b>	<b><u>Authorities</u></b>			
<b>Civil Rights Commission</b>					
<b>Civil Rights Commission†</b>	42 U.S.C. § 1975a(e)(2)	The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place where the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process.	The Attorney General may obtain an enforcement order in U.S. district court.		
<b>Corporation of Foreign Security Holders</b>					
<b>Corporation of Foreign Security Holders†</b>	15 U.S.C. §77dd	“The Corporation shall have power to ... to require from trustees, financial agents, or dealers in foreign securities information			

		<p>relative to the original or present holders of foreign securities and such other information as may be required, and to issue subpoenas therefor.”</p> <p>15 U.S.C. §77dd</p>			
<b>Congressional-Executive Commission on the People’s Republic of China</b>					
<b>The Congressional-Executive Commission on the People’s Republic of China†</b>	<b>22 U.S.C. § 6916</b>	<p>Subpoenas may be issued only pursuant to a two-thirds vote of members of the Commission present and voting. The subpoena may require the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, documents, and electronically recorded data.</p>			
<b>Equal Employment Opportunity Commission</b>					
<b>Equal Employment Opportunity Commission†</b>	<b>29 U.S.C. § 626</b>	<p>Subpoenas used in investigations carried out under the Age Discrimination in Employment Act.</p>			

<b>Federal Trade Commission &amp; Federal Energy Administration</b>					
<b>Federal Trade Commission &amp; Federal Energy Administration†</b>	<b>42 U.S.C. § 6299</b>	<b>Energy conservation program for consumer products other than automobiles: The Commission and the Secretary may each sign and administer subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, paper, and other documents, and may each administer oaths.</b>	<b>Enforcement available in U.S. district court.</b>		
<b>Foreign Claims Settlement Commission of the United States</b>					
<b>Foreign Claims Settlement Commission of the United States†</b>	<b>50 App. U.S.C. § 2001</b>	<b>War claims (expires, September, 2003): Authority to require a person to appear and testify or produce documents for the purpose of certain hearings, examinations, or investigations</b>	<b>May bring enforcement action in U.S. district court</b>		
<b>General Services Administration</b>					

<b>General Services Administration†</b>	<b>41 U.S.C. § 113</b>	<b>War Contractor Claims: contracting agency may require the war contractor to submit information and comply with audits as reasonably required to settle a termination claim.</b>			
<b>Inspectors General</b>					
<b>Inspectors General†</b>	<b>41 U.S.C. § 254d</b>	<b>Examination of records of a contractor</b>			
<b>National Indian Gaming Commission</b>					
<b>National Indian Gaming Commission†</b>	<b>25 U.S.C. § 2715</b>	<b>Subpoenas may be issued in any matter under consideration or investigation (by a vote of not less than two members).</b>			
<b>President</b>					
<b>President†</b>	<b>10 U.S.C. §2507</b>  <b>Data collection authority of the President related to national defense technology, etc.</b>	<b>(a) Authority.--The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any</b>	<b>(c) Penalty for noncompliance.--Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.</b>	<b>10 U.S.C. §2507(c).(d) Limitations on disclosure of information.--Information obtained under section (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President</b>	<b>10 U.S.C. §2507(d).(e) Regulations.--The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in such form and manner, may contain such classification and</b>

		<p>person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of this chapter and the regulations issued under this chapter.</p> <p>(b) Condition for use of authority.--The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.</p> <p>****</p> <p>(f) Definitions.--In this section: (1) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any</p>		<p>determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.</p>	<p>differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.</p> <p>10 U.S.C. §2507(e).</p>
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		<p>of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.</p> <p>10 U.S.C. §2507</p>			
<b>Railroad Retirement Board</b>					
<b>Railroad Retirement Board †</b>	45 U.S.C. § 362	<p>Railroad unemployment insurance: For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, the Board has the power to require the presence and testimony of witnesses, and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board, or any member, employee, or representative thereof.</p>	<p>The Board may seek enforcement in a U.S. district court, and refusal to comply may be treated as contempt of court.</p>		
<b>Surface Transportation Board</b>					

<b>Surface Transportation Board†</b>	<b>49 U.S.C. § 721</b>	<b>The Board may subpoena witnesses and records related to a proceeding of the Board.</b>	<b>Subpoena may be enforced in U.S. district court, and refusal to comply may be punished as contempt.</b>		
<b>Social Security Administration</b>					
<b>Social Security Administration†</b>	<b>42 U.S.C. § 405(b)(1)</b>	<b>Federal old-age, survivors, and disability insurance benefits: In the course of any hearing, investigation or other proceeding, the commissioner may administer oaths and affirmations, examine witnesses and receive evidence.</b>			
<b>United Nations Educational, Scientific, and Cultural Organization</b>  (International Organization)					
<b>United Nations Educational, Scientific, and Cultural Organization†</b>  (International Organization)	<b>22 U.S.C. § 287c(c)(3)(A)</b>	<b>Certification in importation of Rhodesian chromium. The Secretary may promulgate regulations to require the attendance and testimony of witnesses and the production of evidence.</b>			
<b>[Authority under</b>					



<p><b>the Export Control Act of 1949 or the Export Administration Act of 1969]</b></p>					
<p><b>The head of any department or agency exercising any function under the Export Control Act of 1949 or the Export Administration Act of 1969†</b></p>	<p><b>50 App. U.S.C. § 2411</b></p>	<p><b>War and National Defense - export regulation: may make inspection of books, records, other writings, premises or property of, and take sworn testimony of any person</b></p>	<p><b>Enforceable in U.S. district court</b></p>		
<p><b>[Trading with the Enemy Act]</b></p>					
<p><b>“The officer or agency empowered to entertain claims”†</b></p>	<p><b>50 App. U.S.C. § 35</b></p>	<p><b>Authority under the Trading with the Enemy Act of 1917 to hold hearings and issue subpoenas</b></p>			

# Appendix B:

Administrative Subpoena Authorities Held by the  
Department of Justice

Accompanying a  
Report to Congress on the  
Use of Administrative Subpoena Authorities  
by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

## Appendix B

### Administrative Subpoena Authorities Held by the Department of Justice P.L. 106-544, Section 7(a), Executive Branch Study on Administrative Subpoena Authority, Scope and Protections

\*Denotes Administrative Law Judge Authority

<i>Name of Agency or Entity</i>	<i>Source and Common Name of Authority (Including Act Name, P.L. and USC &amp; CFR cites)</i>	<i>Scope of Authority Description</i>	<i>Enforcement Mechanism Description</i>	<i>Notification Req. and Privacy Protections</i>	<i>Issuance Standards and Qualifiers or Procedures</i>
<b>Department of Justice (Antitrust Division):</b>	Civil Investigative Demand (CID) authority under the Antitrust Civil Process Act, 15 U.S.C. §§1311-1314	When the Attorney General or the Assistant Attorney General in charge of the Antitrust Division has reason to believe that any person may be in the possession, custody or control of any documentary material or have any information relevant to a civil antitrust investigation he may, prior to the institution of a proceeding, issue in writing and serve upon that person a civil investigative demand.	Whenever a person fails to comply with any CID, the DOJ may file in U.S. District Court and serve upon such person a petition for an order of such court for the enforcement of the CID. A CID recipient may file in U.S. District Court and serve upon the DOJ a petition for an order modifying or setting aside such CID. In general, the Federal Rules of Civil Procedure apply to such petitions.	CIDs may be served by any antitrust investigator, or by any U.S. marshal, at any place within the territorial jurisdiction of any court of the U.S. CID materials are exempt from FOIA and, without the consent of the CID recipient, may only be used by a duly authorized official, employee, or agent of the DOJ (or FTC) in connection with a case, grand jury, or Federal administrative or regulatory proceeding. Right to Financial Privacy Act, 12 U.S.C.	No CID may require the production of material that would be protected from disclosure under the standards applicable to subpoena issued by a court of the U.S. in aid of a grand jury investigation or the standards applicable to discovery requests under the Federal Rules of Civil Procedure. CIDs must be approved by the AG or AAG for Antitrust: approval authority may not be delegated.

				§§3401-3422, provides for notification to customers for financial records.	
<b>Department of Justice (Antitrust Division):</b>	<p>“Second Request” authority under the Hart-Scott-Rodino Antitrust Improvements Act of 1976: Section 7A of the Clayton Act, 15 U.S.C. 18a as amended by Section 630 of Pub.L. No. 106-553, 114 Stat. 2762(2000). The authority to issue second requests is found in 15 U.S.C. 18a(c). Rules implementing the Act are found at 16 C.F.R. Part 801 et seq. See 16 C.F.R. 803.20 (“Requests for additional information or documentary material”)</p>	<p>Certain mergers and acquisitions may not be consummated until the parties provide DOJ and the FTC with premerger notification and observe a waiting period. During that waiting period, either DOJ or the FTC “may require the submission of additional information or documentary material relevant to the proposed acquisition” from the parties. (This is referred to as issuing a “second request.”)</p>	<p>The premerger waiting period is extended by issuance of a second request and continues to run until after (generally 30 days after) compliance. The Antitrust Division has instituted an Internal Appeal Procedure that enables a party to contest the breadth of a second request or whether there has been compliance. See <a href="http://www.usdoj.gov/atr/public/8340.htm">http://www.usdoj.gov/atr/public/8340.htm</a>. Under 15 U.S.C. 19a(g)(2), if a party fails substantially to comply with a second request, a district court may order compliance, extend the waiting period until there has been compliance, and grant other equitable relief.</p>	<p>A party filing a premerger notification designates a person who is to receive notice of issuance of a second request. 15 U.S.C. 18a(b) provides that any information or documentary material pursuant to 15 U.S.C. 18a shall be exempt from FOIA and may be relevant to any administrative or judicial action or proceeding. If a party refuses to produce certain documents based on privilege claims, it must submit a privilege log (see 17 C.F.R. 803.3).</p>	<p>If the staff investigating a transaction concludes that it might raise competitive problems, the staff drafts a second request. The Division utilizes centralized high-level review of second requests prior to issuance, with a focus on eliminating undue burden. The Division recently announced details of its Merger Review Process Initiative. The Initiative encourages staff to be as aggressive as possible during the initial waiting period by making voluntary requests from information and through early consultation with the parties, and to use the knowledge thereby gained to tailor Second Requests as</p>

					narrowly as possible to the transaction and the goals of the investigation.
<b>Department of Justice (Child Exploitation &amp; Obscenity Section, Criminal Division):</b>	Title 18 U.S.C. 348(a)(1)(A)(i)(II), (a)(1)(C)	Authority provides the Attorney General or the Attorney General's designee authority to issue administrative subpoenas for a limited category of information in criminal investigations of specified federal kidnaping, child pornography, sex abuse and transportation for illegal sexual activity offenses, where the victim was under eighteen. The statute includes the following requirements: (1) the underlying investigation has to relate to an act or activity involving a violation of Sections 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of Title 18, United States Code, when the victim was a minor who had not attained the age of	Title 18 U.S.C. 3486(c) permits the Attorney General to invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena.	Title 18 U.S.C. 2703(c)(2) provides that a governmental entity receiving records from a provider of electronic communications service or remote computing service pursuant to an administrative subpoena requesting the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identify, and length and type of service does not have to provide notice to subscriber or customer.	See procedures set out by FBI Crimes Against Children Unit. FBI issues these subpoenas pursuant to AG delegation order.

		<p>eighteen years: (2) the subpoena can be issued only to a provider of an electronic communication service or remote computing service: (3) the provider can be required to disclose only the subscriber or customer's : (a) name;(b) address; (c) local and long distance telephone toll billing records; (2) telephone number or other subscriber identity; (e) length of service; and (f) the types of services the customer or subscriber utilized, which may be relevant to an authorized law enforcement inquiry; and (4) the authority to issue administrative subpoenas to obtain testimony is limited to requiring a custodian of records to give testimony concerning the production and authentication of such records. The Attorney General has delegated the administrative subpoena power to all</p>			
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		<p>United States Attorneys, the Assistant Attorney General in charge of the Criminal Division, and the Director of the Federal Bureau of Investigation. This authority may be redelegated to Assistant U.S. Attorneys, Criminal Division trial attorneys, and FBI Special Agents in Charge, Assistant Special Agents in Charge and Senior Supervisory Resident Agents in Charge.</p>			
<p><b>Department of Justice Justice (Commercial Litigation Branch, Civil Division):</b></p>	<p>False Claims Act (FCA), Publ. L. 99-562 §6(a) (Oct. 27, 1986), 31 U.S.C. §3733.</p>	<p>1) The Attorney General is authorized to issue a civil investigative demand (CID) for documentary material, interrogatory answers, and/or oral testimony that is relevant to “a false claims law investigation.” See 31 U.S.C. §3733(a)(1). 2) A “false claims law investigation” includes an inquiry under the FCA or any</p>	<p>1) The Attorney General may enforce a CID by filing a petition for enforcement in any judicial district in which the non-complying person resides, is found, or transacts business, see 31 U.S.C. §3733(j)(1). 2)The recipient of a CID may object by filing a petition to modify or set aside the CID in any judicial</p>	<p>1) Information obtained by a CID may not be disclosed, except to certain designated parties. These parties include: (a) any Justice Department (DOJ) attorney or investigator conducting a “false claims law investigation;” (b) any DOJ attorney requiring such information in connection with a case or proceeding; (c) Congress or any</p>	<p>1) The Attorney General must authorize each CID and may not delegate this function. See 31 U.S.C. §3733(a)(1), (a)(2)(G). 2) A CID for materials must state: (a) the alleged conduct and false claims law provision under investigation; (b) the specific class of materials to be produced; (c) the date</p>

		<p>act of Congress enacted after October 27, 1986 that prohibits false claims, bribery, or corruption involving an officer or employee of the United States. See 31 U.S.C. § 3733(I)(1)-(2).</p>	<p>district where the person resides, is found, or transacts business. See 31 U.S.C. § 3733(j)(2).</p>	<p>committee or subcommittee thereof; (d) other federal agencies upon a showing of “substantial need;” and, (e) any other officer or employee of the United States authorized under regulations to be issued by the Attorney General. See 31 U.S.C. §3733(i)(2)-(3).  2) Where a CID seeks any product of discovery, a copy of the CID must be sent to the person from whom the discovery was obtained, and the CID is not returnable for at least 20 days. See 31 U.S.C. §3722(a)(1), (a)(2)(D).  3) Upon completion of the “false claims law investigation,” and any subsequent case or proceeding, any documentary materials obtained by CID must be returned to the party producing them. See 31 U.S.C. §3733(i)(4).</p>	<p>the materials are due; and (d) the false claims law investigator to whom the materials should be provided 31 U.S.C. §3733(a)(2)(A)-(B).  3) A CID for answers must state: (a) the alleged conduct and false claims law provision under investigation; (b) the specific interrogatories to be answered; (c) the date the answers are due; and (d) the false claims law investigator to whom the answers should be provided. 31 U.S.C. §3733(a)(2),(A), (a)(2).   4) A CID for oral testimony must state: (a) the alleged conduct and false claims law provision under investigation; (b) the general nature of the testimony to be provided; (c) the place, date and time for the testimony; (d) the false claims law investigator who will</p>
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					<p>conduct the examination; (e) that the person's attendance is necessary to the investigation; and, (f) that the person may be accompanied by an attorney and any other representative. See 31 U.S.C. § 3733(a)(2)(A), (a)(2)(D).  5) The Attorney General must appoint a custodian to receive and to implement the confidentiality restrictions covering any materials, answers, or transcripts obtained pursuant to a CID. See 31 U.S.C. §3733(i)(1).</p>
<p><b>Department of Justice (Fraud Section, Criminal Division; Federal Bureau of Investigation [FBI]):</b></p>	<p>18 U.S.C. §3486, as originally enacted by the Section 248a of the Health Insurance Portability and Accountability Act of 1996, Pub.L.104-191.</p> <p>[Since 1996, Section 3486 has been subjected to a series of amendments which</p>	<p>In any criminal investigation of a "federal health care offense" (which are enumerated in 18 U.S.C. §24), the Attorney General may issue in writing and serve, a subpoena requiring production or testimony. §3486 (a)(1)(A). At any time</p>	<p>In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may move in any district court where the investigation is carried on, or of which the subpoenaed person is an inhabitant or does</p>	<p>I. No notification requirements. May obtain an ex parte order preventing the disclosure of the existence of the summons for 90 days, renewable for additional 90 day periods for reasons listed in §3486(a)(6)(B). Health</p>	<p>I. The subpoena can require: 1) production of records or other things relevant to the investigation 2) testimony of the custodian of the records or other things required to be produced concerning the production and authenticity of those</p>

	<p>expanded the reach of administrative subpoenas to other areas of law: the sexual exploitation of children, and the protective services provided by the Secret Service to the President and others. For example, in 1998, §3486 was enacted to grant the Attorney General additional administrative subpoena power, in cases involving the sexual exploitation of children. Pub. L. 105-314, §606(a)(2). Then in 2000, the provisions of §3486A were folded into §3486, which was further revised to extend administrative subpoena authority to the Secretary of the Treasury, to investigate threats against the President, the President-elect, or former Presidents, and threat against person receiving protective services from the Secret Service. Pub. L. 106-544 § 5(a),(b)(1)</p>	<p>before the return date, the person or entity subpoenaed may petition for an order modifying or quashing the summons. Motion shall be made in the U.S. District Court in which the person or entity resides or does business. §3486(a)(5).</p> <p>The Attorney General has delegated authority to the Assistant Attorney General for the Criminal Division and the United States Attorneys to issue administrative subpoenas for health care fraud offense investigations. These subpoenas may be issued by these officials or their designees on their own initiative, or in response to the request of investigative agencies, such as the FBI.</p>	<p>business, or may be found, to compel compliance with the subpoena. §3486(c).</p>	<p>information obtained under this section “may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health” or if authorized by a court of competent jurisdiction. §3486(e).</p> <p>II. Executive Order No. 13181, 65 Fed. Reg. 81321 (Dec. 30, 2000). The Executive Order, titled “To Protect the Privacy of Protected Health Information in Oversight Investigations,” provides U.S. government policy concerning protected health information discovered during the</p>	<p>things. §3486(a)(1)(B)</p> <p>II. The subpoena shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available. §3486(a)(2).</p> <p>III. The production of records relating to a Federal health offense shall not be required more than 500 miles from the place where the subpoena is served. §3486(a)(3).</p> <p>IV. Witnesses shall be paid the customary fees for witnesses in U.S. Courts. §3486(a)(4).</p> <p>V. Major cases interpreting the use of subpoenas under §3486 for the investigation of Federal Health Care Offense:</p>
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	and (c).]			<p>course of health oversight activities.</p> <p>III. The disclosure of medical records of substance abuse patients is strictly limited by operation of 42 U.S.C. §290dd-2.</p> <p>IV. Subpoenas issued under §3486 in the course of investigations of Federal health care offenses are subject to all other limitations placed on the production of evidence pursuant to compulsory process, for example:</p> <p>a) The Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u>, the Right to Financial Privacy Act (RFPA). The RFPA authorizes the use of administrative subpoenas as a method to obtain from financial institutions the financial records of the customers of those institutions. §§3402(2) and 3405. Various provisions provide for</p>	<p>In re Subpoena Duces Tecum (Bailey, 228 F.3d 341 (4<sup>th</sup> Cir. 2000)</p> <p>In re Administrative Subpoena John Doe, 253 F.3d 256(6<sup>th</sup> Cir. 20001).</p> <p>FBI requests for issuance by U.S. Attorneys' Office are governed by the general guidelines on investigation found in:</p> <ol style="list-style-type: none"> <li>1. Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (March 21, 1989).</li> <li>2. Internal FBI regulations found in the Manual of Investigative Operations and Guidelines (MIOG), Part II, 10-8.2(1), "Access to Transactional Information: Telephone Toll</li> </ol>
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				<p>notification to the customer and limit disclosure of the financial information, except where prohibited by this or another federal statute.</p> <p>b) 5 U.S.C. §552a (Privacy Act): No disclosure is permitted without the prior written consent of the person to whom the record pertains, unless permitted by one of twelve exceptions; regulations are found at 28 C.F.R. Part 16, Subpart D.</p> <p>c) 5 U.S.C. §552(b) (Freedom of Information Act exemptions). Regulations at 28 C.F.R. Part 16, Subpart A.</p> <p>d) Protection of Cable Subscriber Privacy, 47 U.S.C. §55.</p> <p>e) Wrongful Disclosure of Video Tape Rental or Sale Records, 18 U.S.C. §2710.</p>	<p>Records, Subscriber Listing Information.”</p> <p>Very useful for obtaining documents during health care fraud investigations.</p>
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				f) 42 U.S.C. §2000aa-11(a) (“Guidelines for Federal offices and employees”), when documents are in the possession of third parties. Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”).	
<b>Department of Justice (Fraud Section, Criminal Division):</b>	15 U.S.C. 78dd-2  Foreign Corrupt Practices Act (FCPA) (prohibited foreign trade practices by domestic concerns)	For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence	In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney		The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.  15 U.S.C. §78dd-2(d)(4).  All process in any such case may be served in the judicial district in which such person resides or may be found.  15 U.S.C. §78dd-2(d)(3)

		<p>may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.</p> <p>15 U.S.C. §78dd-2(d)(2).</p>	<p>General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.</p> <p>15 U.S.C. §78dd-2(d)(3).</p>		
<p><b>Department of Justice (Fraud Section, Criminal Division):</b></p>	<p>15 U.S.C. 78dd-3</p> <p>Foreign Corrupt Practices Act (prohibited foreign trade practices by persons other than issuers or domestic concerns)</p>	<p>For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The</p>	<p>In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an</p>		<p>All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.</p> <p>15 U.S.C. 78dd-3(d)(5).</p>

		<p>attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.</p> <p>15 U.S.C. 78dd-3(d)(2).</p>	<p>order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.</p> <p>15 U.S.C. 78dd-3(d)(3).</p>		
<p><b>Department of Justice (Organized Crime and Racketeering Section, Criminal Division):</b></p>	<p>Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. §1968</p>	<p>“Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding, issue a written demand “requiring such person to produce such material for</p>	<p>The Attorney General “may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business,” a petition to enforce the civil investigative demand. 18 U.S.C. §1968(g).</p> <p>None.</p>	<p>Issuance of a Civil Investigative Demand must be approved by the Organized Crime and Racketeering Section and either the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General or any employee designated by the Attorney General, 18 U.S.C. §§ 1961(10) and 1968. “No such demand shall - (1) contain any requirement</p>	

		examination.” 18 U.S.C. §1968(a).		which would e held to be unreasonable if contained in a subpoena duces tecum” ... or “require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum.” 18 U.S.C. § 1968(c).	
<b>Department of Justice (Drug Enforcement Administration [DEA]):</b>	21 U.S.C. §876(a)	21 U.S.C. 876(a) provides that: “[i]n an investigation relating to his functions under this subchapter with respect to controlled substances, listed chemicals, tableting machines, or encapsulating machines, the Attorney General may subpoena witnesses, compel the attendance and testimony of witnesses and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds	To enforce an administrative subpoena served under 21 U.S.C. §876, the Attorney General “May invoke the aid of any court of the United States...The court may issue an order requiring the subpoenaed persons to appear before the Attorney General to produce records, if so ordered, or to give testimony...Any failure to obey the order of the court may be punished by the court as a contempt thereof.” 21 U.S.C. §876(c).	The DEA Agents Manual (Am) explains that certain types of information otherwise subject to DEA’s administrative subpoena power are protected from disclosure. The AM contains a detailed explanation of the Right to Financial Privacy Act (RFPA), which limits the disclosure of financial information by financial institutions, Under the RFPA, DEA may use an administrative subpoena to obtain the name, address, account numbers and types of accounts of a customer of a financial institution without providing	The Attorney General can issue administrative subpoenas to obtain testimony or materials that he finds “relevant or material to” and investigation, 21 U.S.C. §876. The AM states that the subpoena powers provided in the Controlled Substances Act “will be used judiciously and with appropriate restraint.” AM §6614.23. The AM also states that subpoenas should be used primarily for obtaining information or documents from business entities. The AM directs employees



		<p>relevant material to the investigation. The subpoena may be used to compel the attendance and testimony of witnesses, and require the protection of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant material to the investigation.” The Attorney General has delegated all functions vested in him by Controlled Substances ACT (CSA) to the DEA Administrator, 28 C.F.R. §0.100, Subpart R. DEA’s Administrator has redelegated his authority to issue administrative subpoenas to the following DEA personnel: Chief Inspector; The Deputy Chief Inspector and Associate Deputy Chief Inspector of DEA’s Office of</p>		<p>notice to the customer. In order to obtain any other information, however, DEA must notify the customer by personal service or by mailing a copy of the subpoena to his last known address. The customer is given ten days from personal service or fourteen days from mailing to contest the action. The only means of avoiding prior notification is by obtaining a court order delaying notification for an initial 90 days, with extensions in 90-day increments. The delay order may be obtained where there is a “reasonable belief” that notification would 1) endanger the life or physical safety of any person  2) result in flight from prosecution  3) result in the destruction or tampering with evidence  4) result in the intimidation of a potential witness</p>	<p>-serving an administrative subpoena to have due regard for the convenience of the person or entity served, and, insofar as possible, to permit compliance in a manner preferable to them.</p>
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		<p>Professional Responsibility; Inspector; Special Agents in Charge; Associate Special Agents in Charge; Associate Special Agents in Charge; Resident Agents in Charge: and Diversion Program Managers, 28 C.F.R. §0.100, Appendix to Subpart R.</p> <p>The courts have consistently upheld the validity of the DEA's administrative subpoenas. See United States v. Phibbs, 999 F.2d 1053 (6<sup>th</sup> Cir. 1993) (Government need not secure judicial warrant before service of DEA administrative subpoenas); United States v. Harrington, 761 F.2d 1482 (1<sup>th</sup> Cir. 1985) (subpoenas issued by DEA between indictment and trial in drug-related prosecution were legal where subpoenas issued to third parties during</p>		<p>5) unduly delay a trial or other judicial proceeding, or 6) otherwise seriously jeopardize and investigation or official proceeding. Federal laws governing access to stored wire and electronic communications also provide protections to the public. Under 18 U.S.C. §2703(c)(2), a provider of electronic communications service or remote computing service can disclose only limited information without notice to the subscriber in response to administrative subpoena served by a governmental entity. Such information consists of the customer's name, address, local and long distance telephone connection records or records of session times and durations, length of service and types of service utilized, telephone or instrument number or other</p>	
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		<p>continuing investigation and were not running to indicted individuals); United States v. Mountain States Telephone and Telegraph Company, 516 F. Supp. 225 (D. Wyo. 1981) (issuance of subpoena by Special Agent in Charge of DEA office was legitimate exercise of authority provided to him); United States v. Hossbach, 518 F. Supp. 759 (E.d. Pa. 1980) (use by DEA of administrative subpoenas in conducting criminal investigation was valid.)</p>		<p>subscriber number or identify, and means and source of payment for such service (including any credit card or bank account number) of a subscriber. Other records pertaining to the subscriber, including audit trails/logs, web sites visited and identities of email correspondents, can only be obtained by search warrant or court order. With prior notice to the subscriber. DEA can also use an administrative subpoena to obtain unopened e-mail (in storage more than 180 days) or opened email still on the provider's system. The notice may be delayed for 90 days under the same criteria listed above for information protected by the RFPA. Unopened e-mail storage 180 days or less can only be obtained by serving a search warrant.</p>	
<b>Department of</b>	18 U.S.C. §3486,	The Attorney General	The Attorney General	No notification	The subpoena issued

<p><b>Justice (Federal Bureau of Investigation [FBI]):</b></p>	<p>Presidential Threat Protection Act of 2000, Pub. L. No. 106-544, 114 Stat. 2717, 1718 (2000).</p>	<p>is authorized to issue administrative subpoenas for a federal offense involving the sexual exploitation or abuse of children. §3486(a)(1)(A)(i)(II).</p> <p>The Attorney General delegated his authority to “issue and cause to be served administrative subpoenas” to the Director, FBI, by Order No. 2421-2000, dated 4/05/2001. The Order provided that the Director may redelegate his authority to Special Agents in Charge (SACs), Assistant Special Agents in Charge (ASACs), and Senior Supervisory Resident Agents (SSRAs), as the Director “deems appropriate.” The redelegation occurred on 5/31/2001.</p>	<p>may request an order from the district court in the district in which the investigation occurs or in which the subpoenaed person resides to compel compliance with the subpoena. Failure to comply with the court order may be punished by the court as contempt. §3486(c).</p>	<p>requirements. See 18 U.S.C. §2703(c)(2).</p> <p>May obtain an ex parte order preventing the disclosure of the existence of the summons for 90 days, renewable for additional 90 day periods for reasons listed in §3486(a)(6)(B) and (C).</p> <p>Privacy protection required under other statutes and regulations:</p> <p>5 U.S.C. §552a (Privacy Act): No disclosure is permitted without the prior written consent of the person to whom the record pertains, unless permitted by one of twelve exceptions; regulations are found at 28 C.F.R. Part 16, Subpart D.</p> <p>5 U.S.C. §552(b) (Freedom of Information Act exemptions). Regulations at 28 C.F.R. Part 16, Subpart</p>	<p>under this statute allows production of records, other relevant items, or telephone toll records. Or, in the alternative, the custodian of those records or other relevant items may be subpoenaed to address their production and authenticity.</p> <p>The subpoena may require: (1) the production of records or other things relevant to the investigation and the testimony of the custodian of the things to be produced about their production and authenticity, §3486(a)(1)(B); or (2) when directed to a provider of electronic communication service or remote computing service, the subpoena may require that the provider disclose only: the name, address, local and long distance telephone toll billing records, telephone</p>
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				<p>A.</p> <p>42 U.S.C. §2000aa-11(a) (“Guidelines for Federal officers and employees”), when documents are in the possession of third parties. Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”).</p> <p>20 U.S.C. § 1232g(b) (the Family Educational Rights and Privacy Act of 1974 (FERPA) (the Buckley Amendment). Regulations are found at 34 C.F.R. Part 99. The Buckley Amendment permits a federal government entity (e.g., the FBI) to obtain education records, as defined in and protected by the statute (other than unprotected directory information) from an educational institution that receives federal funds. The parents and the student must be notified in advance that</p>	<p>number or other subscriber number or identity, and the length of service of a subscriber to or customer of such service, and the types of services the subscriber or customer utilized which may be relevant to a law enforcement inquiry, §3486(a)(1)(C)(i); or require the custodian of records for that provider to testify as to the production and authentication of the records or information §3486(a)(1)(C)(ii). Use is governed by the general guidelines on investigation found in:</p> <ol style="list-style-type: none"> <li>1. Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigation (March 21, 1989).</li> <li>2) Internal FBI regulations found in the Manual of Investigative Operations and</li> </ol>
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				<p>the educational agency or institution will comply with the subpoena.  §1232g(b)(2)(B). A court (or other issuing agency) may order nondisclosure to any person of the contents of or the existence of the subpoena or nondisclosure of the information furnished “for good cause shown,”  §1232g(b)(1)(J).</p>	<p>Guidelines (MIOG), Part II, 10-8.2(1), “Access to Transactional Information: Telephone Toll Records, Subscriber Listing Information;” MIOG, part I, 7-20, “Administrative Subpoenas in Child Abuse and Child Sexual Exploitation Cases” (publication of section 7- 20 is pending revision reflecting amendments to 18 U.S.C. §3486(a) by Pub.L. No. 106-544).</p> <p>Statute prohibits production of records beyond a distance of 500 miles from the place where the subpoena was served. §3486(a)(3).</p> <p>45 C.F.R. § 164.512(f)  This regulation provides the minimum circumstances under which law enforcement can obtain medical records from health care</p>
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					providers by administrative subpoena if the requested information is: specific and limited in scope, relevant and material to a legitimate law enforcement inquiry, and if de-identified information cannot be used. If state law is more stringent, state law applies.
<b>Department of Justice (Federal Bureau of Investigation [FBI]):</b>	21 U.S.C. §876, Comprehensive Drug Abuse Prevention and Control Act of 1970, commonly called the “Controlled Substances Act,” Pub. L. No. 91-513, Title II, 84 Stat. 1242, 1272 (1970).	The Attorney General “may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation.” §876(a). By Order No. 968-82, dated 1/28/82, reprinted at 47 Fed. Reg. 4989-01 (2/3/82), the Attorney General	The Attorney General may request an order from the district court in the district in which the investigation occurs or the subpoenaed person resides to compel compliance with the subpoena. Failure to comply with the court order may be punished by the court as contempt. §876(c).	12 U.S.C. §3401 <u>et seq.</u> , the Right to Financial Privacy Act (RFPA). [ The RFPA authorizes the use of administrative subpoenas as a method to obtain from financial institutions the financial records of the customers of those institutions. §§3402(2) and 3405. Various provisions provide for notification to the customer and limit disclosure of financial information, except where permitted by this or another federal statute.]	Relevance or materiality to the investigation is required for issuance of the subpoena. §876(a). The subpoena may require attendance of witnesses and production of records at any designated place of hearing from any place in any state or from any place or territory subject to United States jurisdiction. §876(a).  42 U.S.C. §2000aa-11(a) (“Guidelines for Federal officers and employees”), when

		<p>authorized the Director, FBI, to investigate criminal law violations and granted him authority concurrent with that of the Administrator, Drug Enforcement Administration (DEA). See 28 C.F.R. §0.85(a). The Director, FBI, has redelegated his authority to issue administrative subpoenas to all Special Agents in Charge (SACs), Assistant Special Agents in Charge (ASACs), and Supervisory Senior Resident Agents (SSRAs) (28 C.F.R. App. To Subpart R, sec. 4) and to supervisors of drug investigation squads (pending publication in the Federal Reg. by DEA).</p>		<p>18 U.S.C. §2701 <u>et seq.</u>, the Electronic Communications Privacy Act (ECPA), as amended by Pub. Law No. 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001. [ECPA, in relevant part, authorizes a governmental entity (e.g., the FBI) to require a provider of a remote computing service to disclose to that entity, the contents of any wire or electronic communication in a remote computing service by use of an administrative subpoena if prior notice is given to the subscriber or customer. §2703(b)(1)(B)(i). Delayed notice is available under §2705. ECPA also authorizes a governmental entity (i.e., the FBI) to require a provider of electronic</p>	<p>documents are in the possession of third parties. Regulations at 28 C.F.R. Part 59 (“Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties”).</p> <p>Use governed by the general guidelines on investigation found in:</p> <ol style="list-style-type: none"> <li>1. Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (March 21, 1989).</li> <li>2. Internal FBI regulations found in the Manual of Investigative Operations and Guidelines (MIOG), Part I, 281-7 through 281-7.4 (“Administrative Subpoenas”); Part II, 10-8.1, “Contents of Electronic Communications in Electronic Storage and Part II, 10-8.2(1), “Access to</li> </ol>
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				<p>communication service or remote computing service to disclose to that entity the name, address, local and long distance telephone connection records or records of session times and durations, telephone or instrument numbers or other subscriber number or identity, and length of service of a subscriber to or customer of such services and the types of service the subscriber or customer used, as well as means and source of payment for such service, including any credit card or bank account number. §2703(c)(2). No notice to the customer is required. §2703(c)(3), formerly, §2703(c)(1)(C).]</p> <p>20 U.S.C. §1232g(b) (the Family Educational Rights and Privacy Act of 1974 (FERPA) (the Buckley Amendment). Regulations are found at 34 C.F.R. Part 99. [The Buckley</p>	<p>Transactional Information: Telephone Toll Records, Subscriber Listing Information,”</p> <p>Necessary to fulfill responsibilities under 28 C.F.R. §0.85(a) to investigate violations of the controlled substance laws.</p>
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				<p>Amendment permits a federal government entity (e.g., the FBI) to obtain education records, as defined in and protected by the statute (other than unprotected directory information) from an educational institution that receives federal funds. The parents and the student must be notified in advance that the educational agency or institution will comply with the subpoena.</p> <p>§1232g(b)(2)(B). A court (or other issuing agency) may order nondisclosure to any person of the contents of or the existence of the subpoena or nondisclosure of the information furnished “for good cause shown.”</p> <p>§1232g(b)(1)(J).]</p>	
<p><b>Department of Justice (Immigration and Naturalization Service [INS]):</b></p>	<p>Immigration and Nationality Act (INA) §235(d)(4); 8 U.S.C. §1225(d)(4)</p>	<p>“The Attorney General and any immigration officer shall have power to require by subpoena the attendance and</p>	<p>“Any U.S. district court within the jurisdiction of which the investigations or inquiries are being conducted... may, in</p>	<p>12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”)</p>	<p>1) Documents to be produced must be described with definiteness and reasonable time to produce must be</p>

		<p>testimony of witnesses before immigration officers and the production of books, papers, and documents related to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.”</p> <p>[ The Attorney General and Immigration officers may require by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents related to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the</p>	<p>the event of neglect or refusal to testify before an immigration officer, issue an order, requiring such persons to appear before an immigration officer, produce books, paper, and documents, if demanded, and testify, and any failure to obey such order of the court may be punished by the court as contempt thereof.”</p>		<p>allowed;</p> <p>2) Interrogation of subpoenaed person to be confined to scope of proceedings involved;</p> <p>3) Prerequisite for issuance-reasonable basis for belief that INA violation occurred. Sources: INS Operating Instructions (“OI”) 287.4; Investigations Handbook §3-3.9.</p>
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		enforcement of this Act and the administration of the Service. ]			
<b>Department of Justice (Immigration and Naturalization Service [INS]):</b>	INA §274A(e)(2)(C); 8 U.S.C. § 1324a(e)(2)(C); 8 C.F.R. § 274a2(b)(2)(B)(ii)  This section also provides for issuance of subpoenas by ALJs in formal proceedings initiated by the Service. Cf. Also 274B(f)(2).	“In conducting investigations and hearings under this subsection, immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).”	“In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph... an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.”	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”).	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed; 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved. 3) Consultation with U.S. Attorney or INS Attorney advised before seeking subpoena issuance. Sources: OI 287.4; Special Agents Field Manual, 33.30(a)(1).
<b>Department of Justice (Immigration and Naturalization Service [INS]):</b>	INA § 274C(d)(1)(C); 8 U.S.C. §1324c(d)(1)(C); 8 CFR §270.2(C)	“In conducting investigations and hearings under this subsection, immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place	“In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph... an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”).	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed; 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved;

		prior to the filing of a complaint in a case under paragraph (2).”	order may be punished by such court as a contempt thereof.”		3) Prerequisite for issuance-reasonable basis for belief that INA violation occurred. Sources: INS Operating Instructions (“OI”) 287.4; Investigations Handbook §3-3.9.
<b>Department of Justice (Immigration and Naturalization Service [INS]):</b>	INA §287(a); 8 U.S.C. § 1357(a); 8 C.F.R. §287.4.	“Under any regulations prescribed by the Attorney General, an officer or employee of the Service may ... execute and serve any order, warrant, subpoena, subpoena, summons, or other process issued under the authority of the United States.”	“The officer requesting the subpoena shall request the U.S. Attorney for the district in which the subpoena was issued to report negligence or refusal to appear and testify to the U.S. district Court and to request such court to issue an order requiring the witness to appear and to testify and to produce the books, paper or documents designated in the subpoena.”	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”)	The subpoena “shall command the person or entity to which it is address to attend and to give testimony at a time or place specified... shall also command the person or entity to which it is addressed to produce the books, papers, or documents specified in the subpoena... may direct the taking of a deposition before an officer of the Service.” 8 CFR §287.4(b)(1),(2). Regulation also lists official authorized to issue subpoenas.** **Officials Authorized to issue subpoenas: District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief

					Patrol Agents, Officers-in Charge, Patrol Agents in Charge, Assistant Directors for Investigations, Supervisory Criminal Investigators (Anti-Smuggling), Regional Directors, Service Center Directors, Assistant Directors for Examinations.
<b>Department of Justice (Immigration and Naturalization Service [INS]):</b>	INA §335(b); 8 U.S.C. §1446(b); 8 C.F.R. §§336.2(d)(1), 335.11	“The Attorney General shall designate employees of the Service to conduct examinations upon applications for naturalization. For such purposes any such employee so designated is hereby authorized to... require by subpoena the attendance and testimony of witnesses, including applicant, before such employee so designated and the production of relevant books, papers, and documents...”	“Any district court of the United States may, “in the event of neglect or refusal to respond to a subpoena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded and testify; and any failure to obey such order of the court may be punished by the court	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act:)	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed: 2) Interrogation of subpoenaed person to be confined to scope of proceedings involved. Sources: OI 287.4.

			as contempt thereof.”		
<b>Department of Justice (Immigration and Naturalization Service [INS]):</b>	INA §336(d); 8 U.S.C. 1447(d)	“The immigration officer shall, if the applicant requests it at the time of filing the request for the hearing, issue a subpoena for the witnesses named by such applicant to appear upon the day set for the hearing, but in case such witnesses cannot be produced upon the hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe.”	Such subpoenas may be enforced in the same manner as subpoenas under section 335(b) (see above provision)	12 U.S.C. §3401 <u>et seq.</u> (“The Right to Financial Privacy Act”)	1) Documents to be produced must be described with definiteness and reasonable time to produce must be allowed;  2) Interrogation of subpoenaed person to be confined to scope of proceedings involved. Sources: OI 287.4.
<b>Department of Justice (Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer [EOIR]):*</b>	INA, 8 U.S.C. §1324a(e)(2)(b); 8 U.S.C. §1324b(f)(2); 8 U.S.C. §1324c(d)(1)(B); 28 C.F.R. §68.25; 28 C.F.R. §68.28(a)(4).  Administrative Hearing Subpoenas.	Upon application of a party or by the Administrative Law Judge’s (ALJ) order, the ALJ may compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.	An Administrative Law Judge may apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena. 28 C.F.R. §68.25(e).	None.	A party must make a showing of general relevance of the evidence or testimony sought in the subpoena. The subpoena is used to obtain evidence or testimony in a determination of whether a violation under the Immigration Act has occurred.

<p><b>Department of Justice (Executive Office for Immigration Review, Office of the Chief Immigration Judge [EOIR] ):</b></p>	<p>INA, 8 U.S.C. §1229(b)(1); 8 C.F.R. §3.35(b)(1).</p> <p>Administrative Hearing Subpoenas.</p>	<p>“Upon being satisfied that a witness will not appear and testify or produce documentary evidence that is essential, the Immigration Judge shall issue a subpoena..” 8 C.F.R. §3.35(b)(3)</p>	<p>“If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the Immigration Judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and to testify and to produce the [documents] designated in the subpoena.” 8 C.F.R. §3.35(b)(6)</p>	<p>None.</p>	<p>A party must make a showing of general relevance of the testimony or other evidence sought. The subpoena is used to obtain evidence or testimony in the adjudication of an application for relief under the Immigration and Nationality Act.</p>
<p><b>Department of Justice (Office of Inspector General):</b></p>	<p>Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, Section 6(a)(4). (authority limited in regard to subpoena of certain sensitive information under id. At Section 8E.)</p>	<p>“Production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the</p>	<p>“In the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United states district court.” Id.</p>	<p>Right to Financial Privacy Act, 12 U.S.C. §340 <u>et seq.</u></p> <p>Fair Credit Reporting Act, 15 U.S.C. §1681.</p> <p>Access to Tax Return Information, 26 U.S.C.</p>	<p>“The Inspector General acts under the “authority, direction and control” of the Attorney General with respect to issuance of subpoenas, which require access to sensitive information</p>



		<p>functions assigned by [the IG Act]... procedures other than subpoena shall be used by the Inspector General to obtain documents and information from Federal agencies.” Id.</p>		<p>§6103.  Individually Identifiable Health Information, 45 C.F.R. §§160, 164 (not yet in effect)  Substance Abuse and Mental Health Information 42 C.F.R. Part 2  Electronic Communication Privacy Act 18 U.S.C. §2701  Cable Subscriber Privacy Protection 47 U.S.C. §551  Family Education Privacy Right Act 20 U.S.C. §1232g(b)(2)(B)  Video Tape Rental or Sale Information 18 U.S.C. §2710</p>	<p>concerning—  (A) ongoing civil or criminal investigations or proceedings; (B) undercover operations; (C) the identity of confidential sources, including protected witnesses; (D) intelligence or counterintelligence matters; or (E) other matters, the disclosure of which would constitute a serious threat to national security. (2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Attorney General the United determines that such prohibition is</p>
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					<p>necessary to prevent this disclosure of any information described under paragraph (1) or to prevent the significant impairment of interests of the States. (3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs and Judiciary of the Senate and Committees on Governmental Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.” 5 U.S.C. App. 3, Section 8E.</p>
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# Appendix C:

Administrative Subpoena Authorities Held by  
the Department of Treasury

Accompanying a  
Report to Congress on the  
Use of Administrative Subpoena Authorities  
by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

## Appendix C

### Administrative Subpoena Authorities Held by the Department of Treasury P.L. 106-544, Section 7(a), Executive Branch Study on Administrative Subpoena Authority, Scope and Protections

\* Denotes Administrative Law Judge authority

<i>Name of Component or other Entity</i>	<i>Source and Common Name of Authority (Including Act Name, P.L. and USC &amp; CFR titles)</i>	<i>Scope of Authority Description</i>	<i>Enforcement Mechanism Description</i>	<i>Notification Req. and Privacy Protections</i>	<i>Issuance Standards and Qualifiers or Procedures</i>
<b>Department of the Treasury (Bureau of Alcohol, Tobacco, and Firearms [ATF]):</b>	27 U.S.C. §202 (Federal Alcohol Administration Act) 49 Stat. 977, renumbered Pub.L. 100-690	“power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.”  15 U.S.C. §49, as incorporated by reference in 27 U.S.C. §202(g)	Agency Order of Writ of Mandamus issued by U.S. District court. See 15 U.S.C. §49.	None.	Relevance to any matter under investigation.
<b>Treasury Department (Bureau of Alcohol, Tobacco, and Firearms [ATF]):</b>	26 U.S.C. §7602 Internal Revenue Code Pub.L. 94-455 Pub.L. 97-248 Pub.L. 105-206  27 C.F.R. § 70.24 <u>et</u>	“(a) Authority to summon, etc. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the	(a) In general. Whenever any person summoned under 26 U.S.C. 7602 neglects or refuses to obey such summons, or to produce books, papers,	(c) Notice of contact of third parties. (1) General notice. An officer or employee of the Internal Revenue Service may not contact any person	Relevance or materiality to an inquiry into the tax liability of any person.

	<p><u>seq.</u></p>	<p>liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; (2) To summon the person liable for tax or required to perform the act, or any officer or of the internal revenue laws.” employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and</p>	<p>records, or other data, or to give testimony, as required, application may be made to the judge of the district court or to a U.S. magistrate for the district within which the person so summoned resides or is found for an attachment against him as for a contempt.(b) Persons who may apply for an attachment. Appropriate ATF officers are authorized to apply for an attachment as provided in paragraph (a) of this section. The authority to apply for an attachment for the enforcement of summons may not be redelegated.</p> <p>27 C.F.R. § 70.24</p>	<p>other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.</p> <p>(2) Notice of specific contacts. The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.</p> <p>(3) Exceptions. This subsection shall not apply.</p> <p>(A) to any contact which the taxpayer has authorized;</p> <p>(B) if the Secretary determines for good cause shown that such</p>	
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		<p>place named in the summons and produce such books, papers, records, or other data and to give such testimony, under oath, as may be relevant or material to such inquiry; and (3) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. (b) Purpose may include inquiry into offense. The purposes for which the Secretary may take any action described in paragraph (1),(2), or (3) of subsection(a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.”</p>		<p>notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or (C) with respect to any pending criminal investigation. 26 U.S.C. §7602(c) and (a) When the Bureau summons the records of persons defined by 26 U.S.C. 7609(a)(3) as “third party recordkeepers”,the person about whom information is being gathered must be notified in advance, except when: (1) The summons is served on the person about whom information is being gathered, or any officer or employee of such person, or (2) The summons is served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or (3) The summons does not identify the person with respect to whose</p>	
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				<p>liability the summons is issued (a "John Doe" summons issued under the provisions of 26 U.S.C. 7609(f)), or (4) The appropriate ATF officer petitions, and the court determines, on the basis of the facts and circumstances reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records. (b) Within 3 days of the day on which the summons was served, the notice required by paragraph (a) of this section a summons as to which notice is require under paragraph (a) of this section shall be served upon the person entitled to notice, or</p>	
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				<p>mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, left with the person summoned. No examination of any records required to be produced under a summons as to which notice is required under paragraph (a) of this section may be made: (1) Before the close of the 23<sup>rd</sup> day after the day notice with respect to the summons is given in the manner provided in this paragraph, or (2) Where a proceeding under paragraph (c) of this section was begun within the 20-day period referred to in that paragraph and the requirements of paragraph (c) of this section have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person</p>	
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				<p>beginning the proceeding to quash.  (c) If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20<sup>th</sup> day following the day such notice was served on or mailed, by certified or registered mail, to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitation are suspended under 26 U.S.C. 7609(e). Title 26 U.S.C. 7609 does not restrict the authority under 26 U.S.C. 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination.”</p> <p>27 C.F.R. § 70.25</p>	
<b>Treasury</b>	26 U.S.C. §5274	“power to require by	Agency Order of Writ	None	Relevance to any

<b>Department (ATF):</b>	(Internal Revenue Code); Pub.L. 94-455; 27 C.F.R. §70.24 <u>et seq.</u>	subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.”  15 U.S.C. § 49, as incorporated by reference in 26 U.S.C. § 5274	of Mandamus issued by U.S. District court. See 15 U.S.C. §49.		matter under investigation
<b>Treasury Department (Office of Comptroller of the Currency):</b>	12 U.S.C. §1818(n)	The agency or any designated representative shall have the power to issue, revoke, quash or modify subpoenas and subpoenas duces tecum	The agency or any party to any proceeding under 12 USC 1818 may apply to the US Dist. Ct. where the witness resides or carries on business for enforcement of the Subpoena	Right to Financial Privacy Act 12 USC 3401 <u>et seq.</u>	Same as standard set forth in <u>US v. Morton Salt</u> , 388 U.S. 632 (1950).
<b>Treasury Department (Office of Comptroller of the Currency):</b>	12 U.S.C. §481	Gives examiners the authority to administer oaths and access documents during an examination.		None	Any institution supervised by the OCC
<b>Treasury Department (Office of Comptroller of the Currency):*</b>	12 CFR 19.34 Administrative Hearing Subpoenas	Upon application of a party the ALJ may issue a subpoena or subpoena duces tecum requiring the attendance of a witness	The subpoenaing party or any aggrieved party may seek enforcement pursuant to 12 CFR 19.26(c) which provides for	Right to Financial Privacy Act 12 USC 3401 <u>et seq.</u>	A party must make a showing of general relevance and reasonableness of scope of the testimony or other evidence

		at the hearing or the production of documentary or physical evidence at the hearing	application to the appropriate US Dist. Ct. for an order requiring compliance		sought
<b>Treasury Department (Office of Comptroller of the Currency):</b>	12 CFR 19.170 and 19.171 Administrative Discovery Depositions	A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding and where there is a need for the deposition	Enforcement shall be in accordance with the procedures set forth in 12 CFR 19.27(d) which provides for application to the US Dist. Ct. for an order requiring compliance	A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding, stating the time and place for taking the deposition and the name and address of the person to be deposed.	
<b>Treasury Department (Office of Comptroller of the Currency)*:</b>	12 CFR 19.26 Administrative Document Subpoenas to Non-Parties	Any party may apply to the Administrative Law Judge for the issuance of a document subpoena to any person who is not a party to the proceeding	Apply to the appropriate US Dist. Ct. for an order requiring compliance	Right to Financial Privacy Act 12 USC 3401 <u>et seq.</u>	The application to the ALJ must contain a proposed subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought
<b>Treasury Department (Office of Comptroller of the Currency)*:</b>	12 CFR 19.27 Administrative Deposition of Witness Unavailable for Hearing	A party desiring to preserve the testimony of a witness who will be unavailable for hearing may apply to the ALJ for issuance of a subpoena including a subpoena duces tecum	Apply to the appropriate US Dist. Ct. for an order requiring compliance with the portions of the subpoena that the ALJ has ordered enforced	A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding, stating the time and place for taking the deposition	The ALJ may issue a deposition subpoena upon a showing that: (1) the witness will be unavailable to attend or may be prevented from attending the hearing because of age, sickness or infirmity or

				and the name and address of the person to be deposed.	will otherwise be unavailable; (2) the testimony is reasonably expected to be material; and (3) taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding
<b>Treasury Department (Customs):</b>	Tariff Act of 1930, P.L. No. 91-271; 19 U.S.C. §1509; 19 C.F.R. §163.7		Summons, enforceable in Court	Third Party summons: Requires that the person to whom the records pertain has an opportunity to stay compliance with the summons by giving notice in writing to the person summoned not to comply and mailing by registered or certified mail. Notice need not be given if summons issued to determine existence of records if a Court order is obtained stating that notice may lead to an attempt to conceal, destroy or alter records. Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u>	Special-Agent-In-Charge is responsible for any such ongoing investigation and will determine the propriety of the service of Customs Summons. Any exceptions to this determination will be coordinated by the Assistant Commissioner (Investigations) and any other relevant Assistant Commissioners in consultation with Chief Counsel.

<p><b>Treasury Department (Customs):</b></p>	<p>Controlled Substances Enforcement, P.L. No. 91-513, 21 U.S.C. §967</p>	<p>Authorizes the Secretary of the Treasury to subpoena witnesses and records relevant to the enforcement of 18 U.S.C. §545 (smuggling), with respect to controlled substances (as defined in 21 U.S.C. §802)</p>	<p>Controlled Substances Enforcement Subpoena, enforceable in Court</p>	<p>Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u></p>	<p>Must be signed by one of the following: Assistant Commissioner (Investigations), Deputy Assistant Commissioner (Investigations), Director, Strategic Investigations Division Customs Attaches, Senior Customs Representatives, Special-Agents-In-Charge, Resident-Agents-In-Charge. If company or individual refuses to comply, Chief Counsel should be contacted. Can be redelegated by Special-Agency-In-Charge or the Resident-Agency-In-Charge.</p>
<p><b>Treasury Department (Customs):</b></p>	<p>International Emergency Economic Powers Act (IEEPA) 50 U.S.C. §1701 <u>et seq.</u>; 31 C.F.R. Part 171</p>	<p>Inherent in IEEPA is Customs ability to demand any records relating to a possible violation of the statute. "In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of</p>	<p>Summons, enforceable in Court</p>	<p>Right to Financial Privacy Act, 12 U.S.C. § 3401 <u>et seq.</u></p>	<p>Must be signed by one of the following: Assistant commissioner (Investigations), Deputy Assistant commissioner (Investigations), Director, Strategic Investigations Division Customs Attaches, Senior Customs</p>

		<p>account, records, contracts, letters, memoranda, or other papers, in the custom or control of such person.” 50 U.S.C. § 1702(a)(2). Courts have ruled that “the requirement that one engaged in handling commodities under government regulation by required to keep records would be rendered futile and nugatory if there was no right of inspector of such records by the proper government representatives.”</p> <p>Wilson v. United States, 221 U.S. 361(1911).</p>			<p>Representatives, Special-Agents-In-Charge, Resident-Agents-In-Charge. If company or individual refuses to comply, Chief Counsel should be contacted. Cannot be redelegated.</p>
<p><b>Treasury Department (Customs):</b></p>	<p>Bank Secrecy Act, P.L. No. 97-258, 31 U.S.C. §5318; 31 C.F.R. §103.71-77</p>	<p>For any investigation for the purpose of civil enforcement of violations of the Currency and Foreign Transactions Reporting Act, U.S.C. §§5311-24, 12 U.S.C. §1829b, 12 U.S.C. §1951et seq., or section 411 of the National Housing Act:</p> <p>1) Examine any books, papers, records or other</p>	<p>Summons of Financial Institutions and Their Officers, enforceable in Court</p>	<p>Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, shall not be liable to any person under any law or regulation for disclosure or for failure to notify of such</p>	<p>Deputy Commissioner, Assistant Commissioners, and Special-Agent-In-Charge</p>

		<p>data of domestic financial institutions relevant to the recordkeeping and reporting requirements of 31 U.S.C. §§5311 <u>et seq.</u>; 2) summon a financial institution, an officer or employee of a financial institution, or any person having possession, custody, or care of the reports and records to give testimony under oath.</p>		<p>disclosure.</p> <p>Unless authorized by Secretary or delegate in writing, information obtained from this summons authority shall not be disclosed Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u></p>	
<p><b>Treasury Department (Customs):</b></p>	<p>Arms Export Control Act, P.L. No. 90-629, 22 U.S.C. §2778 (Statute states that Customs shall have same authority as stated in 50 U.S.C. §2411(a)(c) (through the Export Administration Regulations [62 Fed. Reg. 12714, March 25, 1996] (EAR) codified at 15 C.F.R. Parts 730-774, which have been continued in effect after expiration of the promulgating statutory authority, (Export Administration Act, 50 U.S.C. §2401 <u>et seq.</u></p>	<p>Customs may obtain information and make such inspector of the books, records, and other writings premises, or property related to and AECA violation.</p>	<p>Summons, enforceable in Court</p>	<p>Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u></p>	<p>Must be signed by one of the following: Assistant Commissioner (Investigations), Deputy Assistant Commissioner (Investigations), Director, Strategic Investigations Division Customs Attaches, Senior Customs Representatives, Special Agents-In-Charge, Resident-Agents-In-Charge. If company or individual refuses to comply, Chief Counsel should be contacted. Cannot be redelegated.</p>



	(EAA), by Executive Order of the President. See Notice of Continuation of Executive Order No. 12924, August 212, 2001 66 Fed. Reg. 44025)).				
<b>Treasury Department (Office of Foreign Asset Control [OFAC]):</b>	Trading with the Enemy Act (TWEA) 50 U.S.C. app §1 et seq	Investigate any transactions in which a foreign person or state subject to economic sanctions has an interest	Presumably U.S. District Court contempt proceedings (none have been judicially enforced in recent history)	None	None
<b>Treasury Department (Office of Foreign Asset Control [OFAC]):</b>	International Emergency Economic Powers Act 50 U.S.C. § 1601 <u>et seq.</u>	Investigate any transactions in which a foreign person or state subject to economic sanctions has an interest	Presumably U.S. District Court contempt proceedings (none have been judicially enforced in recent history)	None	None
<b>Treasury Department (Financial Crimes Enforcement Network[FinCen]) :</b>	31 U.S.C. §5318 (the Bank Secrecy Act), and 31 CFR §§103.71-103.77.	Section 6(a)(4) of the Inspector General Act of 1978, The Secretary of the Treasury may summon a financial institution, an officer or employee of a financial institution (including a former officer of employee)f, or any person having	The Attorney General may request an order from a federal district court to comply. Failure to comply with the order may be punishable by contempt. No notification requirements.	Summons must be issued for the purpose of civil enforcement investigations of violations of the Bank Secrecy Act or regulation thereunder. N/A	

		<p>possession, custody, or care of the reports and records in connection with investigations for the purpose of civil enforcement investigations of the Bank Secrecy Act or any regulation thereunder.</p> <p>NOTE: This authority has been delegated by regulation to, among other agencies, the Office of Financial Enforcement, an office department that no longer exists within the Treasury Department. The functions of this office have been subsumed by the Financial Crimes Enforcement Network ("FinCEN"). While FinCEN has the authority to issue summonses, it does not do so. The Internal Revenue Service issues summonses, with FinCEN approval, when it needs information in connection with a Title 31 Bank Secrecy Act</p>			
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		examination of certain financial institutions.			
<b>Treasury Department (Office of Inspector General):</b>	Inspector General Act of 1978, as amended, 5 U.S.C.A. app. §3, Section 6(a)(4)	“production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by [the IG Act]...procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies.	“in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court”	Right to Financial Privacy Act, 12 U.S.C. Section 3401 <u>et seq.</u>	Decision to issue IG subpoena is reviewed by auditor’s or investigator’s supervisors, by IG Counsel, and by the IG. Alternative means to obtain information are tried first, and scope of subpoena is made as narrow as possible, consistent with case needs.
<b>Treasury Department (IRS):</b>	Internal Revenue Code  26 USC §7602(a); §6420(e)(2); §6421(g)(2); §6427(j)(2)	Authority to summons books, records or other data, and to obtain testimony that may be relevant or material to the investigation for the purpose of ascertaining the correctness of a tax return, making a tax return, determining the liability of any person for a tax, or collecting a tax liability.	Judicial enforcement; 26 USC 7604; 7609(f), (g) & (h); 7210; but see 7609(b) and 7612(b)(4)	26 USC 7602(c); 7609(a); 7611(a), (b); 7612(c)(2); 6103(a); 6503(j)	26 USC 7602(a)(2); US v. Powell, 379 US 48 (1964), “may be relevant”; 26 USC 7602(b), inquiry into “any offense”; 26 USC 7602(d), 7603, 7605, 7609, 7611, 7612, 6503(j)
<b>Treasury</b>	Money and Finance 31	Authority to summon	Judicial Enforcement	Subject to Right to	Criminal Investigation

<b>Department (IRS):</b>	USC §5318	books, papers, records, or other data, and to obtain testimony as may be relevant in connection with investigations for the purpose of civil enforcement of 31 U.S.C. 5311, <u>et seq.</u>	31 USC 5318(e) Subject to Right to	Financial Privacy Act 12 USC 3401-3422	limited to use of Title 31 summons in relation to processing civil forfeitures in relation to Title 31 violation.
<b>Treasury Department (United States Secret Service [USSS]):</b>	Presidential Threat Protection Act of 2000, P.L. 106-544; 18 USC 3486 (Administrative Subpoenas/Protective Threats)	Section 3486 (a)(1)(A)(ii) authorizes the Secretary of Treasury to issue an administrative subpoena if the Director of the Secret Service determines that a threat against a Secret Service protectee is imminent.	Subsection (9)(c) provides for DOJ enforcement by requesting an order requiring a subpoenaed person or entity to appear. Failure to appear may result in a contempt order.	Subsection (a)(5) permits the recipient of an administrative subpoena to seek to modify the scope of the administrative demand, or modify any a court nondisclosure order acquired by the government.	Determination of imminent threat against a Secret Service protectee or conduct constituting an offense enumerated under 18 USC 871 (Threat Investigations Involving the President and Successors to the Presidency) and 18 USC 879 Threat Investigations Involving former Presidents and other Secret Service Protectees).
<b>Treasury Department (Office of Thrift Supervision):</b>	Section 10(g)(2) of the Home Owners' Loan Act (HOLA), 12 U.S.C. §1467a(g)(2) [investigative subpoenas]  and  Section 5(d)(1)(B) of	The Office of Thrift Supervision (OTS) authority to issue administrative subpoenas in investigative proceedings arises under section 10(g)(2), of the Home Owners' Loan Act (HOLA), 12	OTS's administrative subpoenas are enforced through a civil action brought by OTS in United States District Court. See e.g., 12 U.S.C. 1818(n).	All OTS investigative proceedings and formal examination are private and the record of such proceedings, including subpoenas issued by OTS, are confidential. See 12 CFR 512.3. Further, the provisions of the	OTS administrative subpoenas are issued incident to investigative proceedings and formal examinations. Accordingly, their issuance must be in compliance with lawful authority,

	<p>the HOLA, 12 U.S.C. §1464(d)(1)(B); Section 7(j)(15) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. §1818(n); and section 19(c) of the FDIA, 12 U.S.C. 1820(c). [formal examination proceedings]</p>	<p>U.S.C. 1467a(g)(2), and to issue administrative subpoenas in formal examination proceedings with respect to savings associations and their affiliates arises under section 5(d)(1)(B) of the HOLA, 12 U.S.C. 1464(d)(1)(B), section 7(j)(15) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818(n), and section 10(c) of the FDIA, 12 U.S.C. 1820(c).</p>		<p>Right to Financial Privacy Act, 12 U.S.C. §3410 <i>et seq.</i>, apply to OTS administrative subpoenas. There is no requirement that OTS provide notification to the subject of a subpoena prior to the issuance of the subpoena.</p>	<p>related to the subject of the investigation or formal examination and intended to obtain information that is relevant and material to the investigation or examination.</p>
<p><b>Treasury Department Inspector General for Tax Administration [TIGTA]):</b></p>	<p>Inspector General Act of 1978, 5 U.S.C. app. §3</p>	<p>Section 6(a)(4) of the Inspector General Act permits IG to require by subpoena the production of documents or information necessary in the performance of the functions assigned by the Act.</p>	<p>Subpoena may be enforced by order by appropriate district court. (I.G. Act §6(a)(4)). Current procedure is to ask DOJ to seek enforcement of subpoena, if necessary.</p>	<p>Right to Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422, for financial records provides for notification to customer</p>	<p>Administrative subpoena cannot be served on federal agencies. Administrative subpoena cannot be used for testimony. Electronic communications in electronic storage accessed pursuant to 18 U.S.C. §2703</p>