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# House Standing Committees' Rules on Legislative Activities: Analysis of Rules in Effect in the 114<sup>th</sup> Congress

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## Summary

Rule XI, clause 2(a)(1) directs each standing committee to adopt “written rules governing its procedure.” This paragraph continues: “Such rules . . . (B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House . . .” Rule XI, clause 1(a)(1)(A) in addition states: “The Rules of the House are the rules of its committees and subcommittees so far as applicable.” Finally, Rule XI, clause 1(a)(1)(B) subordinates subcommittees to the committee of which they are a part: “Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.”

Many provisions of House rules applicable to committee procedures appear in Rule XI, which also includes procedures specifically applicable to the Committee on Ethics. Rule X contains the legislative and oversight jurisdiction of standing committees, several clauses on committee operations, and a clause specifically addressing the jurisdiction and operation of the Permanent Select Committee on Intelligence. Rule XII concerns the referral of legislation and related matters. In addition to calendars, Rule XIII addresses the filing and content of committee reports.

Each House standing committee implements these rules, and select provisions of other House rules, in adopting its rules. Variety as well as consistency in committee rules is analyzed in this report as the rules relate to legislative activities, principally hearings, oversight, and markups. Administrative provisions in House and committee rules are not analyzed. Provisions of committee rules on legislative activities are clustered by topic, rather than by House rule number.

In adopting their rules for the 113<sup>th</sup> Congress, committees in some instances adopted House rules unchanged, and in other instances adapted House rules to their own needs where they had discretion to do so. Committee rules change incrementally from one Congress to the next, with a committee typically making several amendments to its rules from the preceding Congress. Variations in key committee rules are highlighted in five tables:

- referring measures or matters to subcommittees—whether the chair may or must refer legislation to a subcommittee, the time frame within which a decision must be made, and where authority to discharge a subcommittee resides;
- scheduling hearings and meetings—committees’ regular meeting day and time, authority to schedule additional meetings, and authority to cancel meetings;
- hearings—quorum requirements, extending witness questioning time, and order of questioning witnesses;
- subpoenas—committee authority, chair authority, ranking minority member authority, and notification to committee members of issuance of a subpoena; and
- record votes—obtaining a record vote, and postponing further proceedings when a record vote is requested.

See CRS Report RS20794, *The Committee System in the U.S. Congress*, by Judy Schneider, for an explanation of the types of committees. See also CRS Report R40233, *House Ad Hoc Select Committees with Legislative Authority: An Analysis*, by Michael L. Koempel; and CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by Elizabeth Rybicki.

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## Introduction

The primary legislative function of standing committees in the House of Representatives is to evaluate the thousands of bills and resolutions that Members introduce during each two-year Congress, which are normally referred upon introduction to the appropriate committee or committees.<sup>1</sup> This evaluation process typically begins with an initial screening in which the majority-party committee leaders and staff, perhaps in conjunction with majority-party leadership, identify the relatively small number of measures referred to a committee that may merit more consideration. A committee or one of its subcommittees might conduct one or more days of public hearings to receive testimony on the policy issues in legislation selected for action and the merits of legislation proposed to address it.<sup>2</sup>

Hearings might also be a part of a committee's oversight and investigations. The House depends on its committees to undertake oversight and investigations as another principal part of the legislative authority granted Congress under the Constitution, and to inform the House on the need and options for further legislative action.

If a committee wants to recommend that the House take action on legislation, hearings are followed by one or more markup meetings at which committee members propose and vote on amendments to a measure (or the draft of a measure). These meetings are called "markups" because committee members "mark up" the legislation before them as they debate and decide what amendments to recommend to the House. Finally, the committee votes to approve the bill or resolution with the amendments agreed to in the markup and to report the measure to the House for chamber consideration, with the recommended amendments.<sup>3</sup>

This report examines in text and tables how committees implemented House rules in their individual committee rules for the 114<sup>th</sup> Congress. The variety as well as consistency in committee rules is analyzed as these rules relate to legislative activities, principally hearings, oversight, and markups.<sup>4</sup> Administrative provisions in House and committee rules are not

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<sup>1</sup> See, *The Committee System in the U.S. Congress*, by Judy Schneider. See also CRS Report RS20465, *House Committee Organization and Process: A Brief Overview*, by Judy Schneider.

<sup>2</sup> Hearings are not necessarily held on the specific legislative vehicle that may be marked up in committee. Hearings might be held on policy issues, draft legislative proposals, or previously introduced legislation, with a legislative vehicle for markup developed subsequently. Hearings are not normally held on noncontroversial legislation, such as the naming of public buildings. See several CRS reports by Christopher M. Davis on House committee hearings, beginning with CRS Report 98-488, *House Committee Hearings: Preparation*, by Christopher M. Davis.

<sup>3</sup> Markup procedures and considerations are summarized in CRS Report RL30244, *The Committee Markup Process in the House of Representatives*, by Judy Schneider. Ms. Schneider has also written fact sheets on specific aspects of the markup process, available on the CRS website. Markup procedures and considerations, along with scripts used in committees, are detailed in CRS Report R41083, *House Committee Markups: Manual of Procedures and Procedural Strategies*, by Michael L. Koempel and Judy Schneider.

<sup>4</sup> Rules in law, made pursuant to Congress's rulemaking authority, that affect committee procedures are not analyzed in this report. Selections from laws that establish congressional procedures appear in *U.S. Congress, House, Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress*, H.Doc. 113-181, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2015), §§1127 and 1129-1130, pp. 1037-1304. (Hereinafter *House Rules and Manual*.) Available at <https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=HMAN>. Additional statutory provisions apply to Congress that do not appear in the *House Rules and Manual*.

Party rules and decisions also affect the organization and procedures of House committees. Republican Conference rules are available at <https://www.gop.gov/114th-rules>. Democratic Caucus rules are not available on a generally accessible website. The House majority leader has also announced legislative protocols that affect the content of (continued...)

analyzed in this report. Provisions of committee rules applicable to legislative activities are clustered by topic, rather than by House rule number.

## What Rules Apply in Committees?

The rules of the House of Representatives are not consistently specific concerning the procedures that committees are to follow. There is detail in House rules on questioning of witnesses at a committee hearing, for example, but there is little guidance in House rules on the conduct of a markup.<sup>5</sup> The House, however, requires its committees to adopt rules.

Rule XI, clause 2(a)(1) directs each standing committee to adopt “written rules governing its procedure.” This paragraph continues: “Such rules ... (B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House....” Rule XI, clause 1(a)(1)(A) in addition states: “The Rules of the House are the rules of its committees and subcommittees so far as applicable.” Finally, Rule XI, clause 1(a)(1)(B) subordinates subcommittees to the committee of which they are a part: “Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.”<sup>6</sup>

## Rules of Direct Relevance to Committees

Many House rules applicable to committee procedures are contained in Rule XI, which includes at clause 3 a statement on the authority and specific procedures of the Committee on Ethics.

There are three other House rules that are specifically relevant to committees. Rule X contains the legislative and oversight jurisdiction of each standing committee, several clauses on committee procedures and operations, and a clause specifically addressing the jurisdiction and operation of the Permanent Select Committee on Intelligence. Rule XII concerns the referral of legislation and other matters. Rule XIII addresses the filing and content of committee reports, and addresses privileged reports, with individual provisions applicable to privileged reports of the Committee

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legislation for which floor consideration is requested. See the majority leader’s website at <http://www.majorityleader.gov/protocols>. Party rules are not analyzed in this report.

Finally, when the House adopts its rules at the beginning of each Congress, it typically adopts a number of special orders that have the duration of that Congress and then expire. These special orders might affect committees and are typically included in the rules resolution, which is often numbered H.Res. 5. The chair of the Rules Committee also inserts a summary of the rules resolution, including any special orders it contains, in the Congressional Record in the course of debate on the rules resolution. For the 114th Congress, see “Rules of the House,” House debate, Congressional Record, daily edition, vol. 161 (January 6, 2015), pp. H7-H27. Other announcements, standing orders, and resolutions affecting committees, such as the Speaker’s announced policies that include guidelines on committee staff access to the House floor, may also appear in House proceedings in the opening-day Congressional Record. These special and standing orders, announcements, and resolutions are not analyzed in this report.

See also CRS Report RL30787, *Parliamentary Reference Sources: House of Representatives*, by Richard S. Beth and Megan S. Lynch.

<sup>5</sup> Discussion of the rules applicable to committee markups, including relevant parliamentarian’s notes in *Jefferson’s Manual*, appear below at “House Rules and Committee Markups.”

<sup>6</sup> A brief elaboration on committee rules appears in Wm. Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2011), ch. 11, §15, p. 270. (Hereinafter *House Practice*.) Available at <https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=GPO&browsePath=House+Practice%2F112th+Congress&isCollapsed=false&leafLevelBrowse=false&isDocumentResults=true&ycord=0>.

on Rules. (Clause 1 of this rule names the legislative calendars of the House (Union, House, Private, and Discharge Calendars), and clause 7 applies to committee reporting of resolutions of inquiry.<sup>7</sup>)

This report analyzes House Rules X, XI, XII, and XIII, and relevant provisions of other House rules, such as Rule XXI, applicable to committees' legislative activities. It analyzes committees' rules for the 114<sup>th</sup> Congress based on and implementing these House rules.

## Importance of Procedure in Committee

House rules and precedents and committee rules are important to the majority and the minority, whether that is a *party* majority or minority or a *policy* majority or minority, and to committee leaders of both parties and to individual committee members. The rules allow the party majority to set committees' agendas and conduct hearings of their design, and normally allow the party majority to reach a conclusion in markup when it has the votes for its legislative policy. The rules allow the minority to present its views in hearings and markups and to seek changes in a legislative text being marked up. Adherence to established rules allows all members of a committee to understand that they have been treated fairly, and that they were able to represent their district and constituents and their political point of view, even if the positions they favored did not garner the support of a majority of the committee's members.

In addition, majority-party leaders expect their committee chairs to acquit themselves positively. Having conducted hearings and a markup with adherence to House rules and precedents and committee rules, a committee presents its leadership with a clean parliamentary record in anticipation of floor action. Alternatively, although a committee vote to report a measure largely wipes clean the parliamentary record that was created during committee consideration of a measure, decisions and rulings during the markup process could have compromised the majority-party leadership's strategy. The Rules Committee, acting at the reporting committee's or the leadership's behest, might believe it is compelled to include in a special rule waivers of rules and other provisions that could add procedural issues to the policy debate.

If a committee does not acquit itself well procedurally, it might erode the majority-party leadership's and the minority's trust in the committee's leadership. The majority-party leadership could assign leading roles on future legislation important to the majority to other committees or to the leadership itself. The minority of the committee, if it feels that it has been treated unfairly, could become intransigent and challenge procedurally future actions of the majority, both in committee and on the floor.

## Committee Rules

A committee adopts its rules at its first meeting, soon after a new Congress convenes and committee members are elected. House committees are required by Rule XI, clause 2(a)(1) to adopt their own internal rules of procedure in an open committee meeting.<sup>8</sup> These rules must incorporate the provisions of Rule XI, clause 2, which are numerous, "to the extent applicable."<sup>9</sup>

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<sup>7</sup> A resolution of inquiry is a simple resolution requesting information from the President or an executive department or agency. If a committee has not reported a resolution of inquiry within 14 days of its introduction, a motion to discharge the committee is privileged on the House floor.

<sup>8</sup> House Rule XI, cl. 2(a)(1)(A) allows all or part of the meeting to be closed by a record vote taken in open session with a quorum present.

<sup>9</sup> House Rule XI, cl. 2(a)(1)(C).



Committee rules must be published in the *Congressional Record* and made publicly available in electronic form not later than 30 days after the election of the committee chair at the beginning of a new Congress.<sup>10</sup>

As already noted, Rule XI, clause 1(a)(1) also states: “The Rules of the House are the rules of its committees and subcommittees so far as applicable....” Committee rules generally restate the many requirements of Rule XI, but also modify or add new provisions consistent with the intent or meaning of Rule XI and other House rules.<sup>11</sup> The effect of Rule XI is that committees have not only direction on hearing and markup procedure but also discretion in creating their own rules, procedures, and customary practices.

Neither House nor committee rules are self-enforcing, and it is left to each committee to enforce House rules and precedents and committee rules governing hearings and the process of debate, amendment, and reporting in a markup. A committee member must make a point of order if he or she believes that a House or committee rule is being violated.

A committee typically adopts the committee rules that were in effect in the previous Congress, with any changes agreed to being, usually, incremental. A committee’s rules develop over time, fit the jurisdiction, practices, and culture of a committee, and favor the majority, leaving little reason for wholesale change, even when the House majority changes. A committee’s chair might consider potential changes in light of the major policy issues the chair anticipates the committee to consider in that Congress and the political environment in which they will be debated, including the committee’s party ratio and the ideological makeup of the majority-party members. A chair might also consider his or her party’s leadership expectations for how committees will operate, for example, an enhanced or diminished role for subcommittees or the ability to report key legislation aligned with party political objectives. Among the aspects of committee rules that a committee member or staff member might examine to understand a committee’s procedures are the following:

- the role and authority of the committee’s chair in scheduling meetings, referring legislation to and discharging it from subcommittees, issuing subpoenas, and taking other actions;
- the role and authority of the ranking minority member, for example, whether the chair may take specific actions without any involvement of the ranking minority member, after “notice” to that member, after “consultation” with that member, or with the “concurrence” of that member;
- the role and authority of the committee vis-à-vis the chair—whether specific actions by the committee may be taken only “by majority vote”;
- the role and authority of the minority party, for example, whether the presence of one or more members of the minority party will be required for a quorum for specific business; and
- the implementation of changes to House rules affecting committees, such as the change in the 112<sup>th</sup> Congress (2011-2013), which required committee chairs to make available to committee members and the public at least 24 hours in advance of the markup the text of legislation to be marked up.<sup>12</sup>

<sup>10</sup> House Rule XI, cl. 2(a)(2).

<sup>11</sup> Some committees also repeat in their rules the text of some applicable House rules, while others simply reference some House rules. When committee rules are silent on a particular matter, applicable House rules prevail.

<sup>12</sup> See also CRS Report RL34679, *House Committee Chairs: Considerations, Decisions, and Actions as One Congress* (continued...)

## Subcommittees

As already noted, Rule XI, clause 1(a)(1)(B) states: “Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.” A number of committees repeat this provision or a variation on it in their own rules.

Some provisions of Rule XI and other rules governing committee activities apply specifically to subcommittees (e.g., subpoenas), although other provisions of these rules do not (e.g., committee reports). Subcommittees do not have the power to report legislation directly to the House without specific authority granted by the House to do so. Within the parameters of House rules, committees in their own rules may grant authority to or withhold it from their subcommittees.<sup>13</sup>

Some committees' rules and practices provide extensive guidance concerning the prerogatives of subcommittees, while other committees' rules do not. Some committees grant a degree of autonomy and authority to their subcommittees, but the Committee on Small Business formally limits its subcommittees to the conduct of hearings. A rule of the Foreign Affairs Committee retains a number of legislative topics for the committee's consideration, but another rule of the committee disallows committee consideration of a matter in the absence of a subcommittee's recommendation, except in “extraordinary circumstances” to be determined by the chair in consultation with the ranking minority member. A committee's rules do not likely reflect all practices in a committee or within the committee's subcommittees.

Some committees' rules require measures referred to the committee to be referred to a subcommittee, although other committees' rules leave the decision to refer a measure to subcommittee to the committee chair's discretion (see **Table 1**). Several committees' rules state explicitly that the subcommittee service of a measure's author may not be a factor in referring a measure to a specific subcommittee.

The rules of a number of committees restrict subcommittees' scheduling. (See, below, “Scheduling Subcommittee Hearings and Meetings,” under “Scheduling Committees' Meetings and Hearings.”)

A few committees provide funding or staff to subcommittees, while most committees require subcommittees to obtain funding and staff from the committee chair or ranking minority member to carry out their responsibilities. The Small Business Committee in its rules states that separate staff is not assigned to subcommittees.

## Number of Subcommittees

Rule X, clause 5(d) limits most committees to 5 subcommittees. If a committee establishes an oversight subcommittee, however, the limit is increased to 6 subcommittees. This rule contains different limits for 2 committees: the Appropriations Committee may have not more than 13 subcommittees,<sup>14</sup> and the Oversight and Government Reform Committee may have not more than 7 subcommittees.<sup>15</sup>

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*Ends and a New Congress Begins*, by Judy Schneider and Michael L. Koempel.

<sup>13</sup> See CRS Report 98-544, *Subcommittees in the House of Representatives*, by Judy Schneider.

<sup>14</sup> The Appropriations Committee's rules give authority to establish the number and jurisdiction of subcommittees to the committee's majority caucus.

<sup>15</sup> Special orders, most often contained in the rules resolution adopted at the beginning of a Congress, may provide (continued...)

Rule X, clause 2(b)(2) requires standing committees of more than 20 members, other than the Appropriations Committee, to establish an oversight subcommittee or to require its subcommittees to conduct oversight.<sup>16</sup> The rule nonetheless requires any subcommittee with legislative jurisdiction to carry out oversight.

## **Other Committee Subunits than Subcommittees**

Nine committees in their rules allow explicitly for the creation of ad hoc task forces and other committee subunits. These rules may grant or deny the subunits authority to report legislation to the full committee.<sup>17</sup> Several of these rules contain detail on the creation and organization of these subunits.<sup>18</sup> The Ethics Committee's rules contain special provisions applicable to investigative and adjudicatory subcommittees, reflecting ethics procedures in House rules. The Budget Committee's rules mention "task forces" in several places, but the committee does not have a rule on task forces.

## **Subcommittee Ratios and Ex Officio Membership**

Committee rules, except Appropriations' and Ethics', name subcommittees.<sup>19</sup>

Four committees have rules requiring only that subcommittee ratios reflect full committee party ratios. Five committees' rules go further and in addition list ratios for their subcommittees. Two committees have different rules on ratios: the rules of the Energy and Commerce Committee and the Homeland Security Committee require subcommittees to reflect the committee party ratio but to have at least two more majority-party members than minority-party members.

House rules provide for equal party representation on the Ethics Committee; House rules also require equal representation on the committee's investigative and adjudicatory subcommittees.<sup>20</sup> Ethics Committee rules require equal representation on all other subcommittees.

Under most committees' rules, the chair and ranking minority member of the full committee may serve as "regular" or "assigned" members of one or more of the committee's subcommittees.

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exemptions allowing named committees to have additional subcommittees for the duration of one Congress. See, for example, H.Res. 5 (114<sup>th</sup> Cong.), adopted January 6, 2015. Section 3(j) of this resolution allows four named committees to have a specific number of additional subcommittees. The House on occasion also creates subcommittees to add to a committee's subcommittees. See, for example, H.Res. 461 (114<sup>th</sup> Cong.), adopted October 7, 2015, establishing a select investigative panel as a part of the Energy and Commerce Committee, subsequently referred to as the Select Investigative Panel on Infant Lives; and H.Res. 35 (110<sup>th</sup> Cong.), adopted January 9, 2007, which created the Select Intelligence Oversight Panel of the Committee on Appropriations. In both instances, the Speaker and minority leader were allowed to appoint subcommittee members, and they could make their selections from the House membership, not solely the parent committee's membership.

<sup>16</sup> A number of committees' rules specifically require their subcommittees to conduct oversight.

<sup>17</sup> Committees that specifically allow subunits that are not subcommittees to be assigned legislative authority are the Committees on Agriculture, Energy and Commerce, and Natural Resources.

<sup>18</sup> House Rule X, cl. 5(b)(2)(C) defines a subcommittee as a committee subunit established for longer than six months. Some committees' rules on creating non-subcommittee subunits explicitly limit their existence to under six months' duration. Committee rules containing some degree of detail on the creation of non-subcommittee subunits are the Committees on Appropriations, Armed Services, Homeland Security, Natural Resources, Oversight and Government Reform, and Transportation and Infrastructure.

<sup>19</sup> The Committees on the Budget and on House Administration do not have rules on subcommittees.

<sup>20</sup> House Rule X, cl. 5(a)(3)(A) and House Rule XI, cl. 3(m)(1)(A) and (B), respectively.

Under these rules, they may also serve as ex officio members of all other subcommittees.<sup>21</sup> In their rules, committees may address whether ex officio members of subcommittees may vote, be counted when establishing a quorum, or affect the ratio of majority to minority members.

- Six committees allow ex officio members to vote on matters before a subcommittee;
- Nine committees prohibit ex officio members from voting on subcommittees;
- Four committees allow ex officio members to be counted when determining a quorum;<sup>22</sup>
- Eight committees prevent ex officio members from being counted for this purpose;<sup>23</sup>
- Three committees count ex officio members of subcommittees when determining the ratio of majority to minority members;
- Three committees do not count ex officio members for this purpose;
- One committee does not address these matters related to ex officio subcommittee service; and
- Five committees did not explicitly address the issue of ex officio membership of subcommittees.<sup>24</sup>

### **Allowing Other Committee Members to Participate**

Nine committees allow other members of the committee to sit with a subcommittee on which the committee member does not serve. Six allow committee members to join subcommittee hearings and meetings;<sup>25</sup> three allow committee members to join only subcommittee hearings.<sup>26</sup> For hearings, these committees allow committee members to ask questions of witnesses—by committee rule, with the permission of the subcommittee by vote, with permission of the subcommittee by unanimous consent, with the agreement of the subcommittee chair in consultation with the subcommittee ranking minority member, or with the chair's permission.

Seven committees' rules proscribe committee members who are sitting with a subcommittee from voting, being counted for a quorum, or raising a point of order. Two committees' rules in addition disallow committee members from offering amendments at markups.

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<sup>21</sup> A rule of the Financial Services Committee, in addition, permits the committee chair to designate a former committee chair as chair emeritus; this committee member may serve ex officio on all subcommittees but may vote or be counted for a quorum only on subcommittees of which the chair emeritus is an assigned member. Pursuant to House Rule X, cl. 11(a)(2), the Speaker and minority leader serve ex officio as members of the Intelligence Committee, but have no vote and may not be counted for a quorum.

<sup>22</sup> The Ways and Means Committee's chair and ranking minority member may be counted for a quorum if a quorum of assigned members is not present, but their absence may not be calculated in determining the presence of a quorum.

<sup>23</sup> The rules of the Homeland Security, Oversight and Government Reform, and Science, Space, and Technology Committees prohibit ex officio members from counting toward a quorum, except for the purpose of taking testimony.

<sup>24</sup> Those committees are the Ethics (for "noninvestigative and nonadjudicatory subcommittees"), Rules, and Veterans' Affairs Committees. The Committees on the Budget and on House Administration do not address subcommittees in their rules.

<sup>25</sup> The Committees on Agriculture, Ethics, Natural Resources, Science, Space, and Technology, Transportation and Infrastructure, and Veterans' Affairs.

<sup>26</sup> The Committees on Armed Services, Education and the Workforce, and Small Business.

## Temporary Assignments to Subcommittees

Under some committees' rules, committee members might also be temporarily assigned to a subcommittee. The Education and the Workforce Committee allows its chair to make temporary assignments to subcommittees for field hearings so that a quorum may be made or to allow a member not on a subcommittee to participate in a hearing.<sup>27</sup> The Oversight and Government Reform Committee also allows its chair to make temporary assignments to subcommittees for field hearings so that a quorum may be made. The rule disallows a member with a temporary assignment to vote. Several committees' rules state that a subcommittee vacancy does not interrupt the work of the subcommittee. The Agriculture Committee's rules state that the committee chair may set the dates of a subcommittee's hearings and meetings during a vacancy of the subcommittee chairmanship.

## Allowing Representatives Not on a Committee To Participate in a Subcommittee Hearing

Four committees have rules applicable to participation on the committee of Representatives who are not committee members. The Foreign Affairs and Veterans' Affairs Committees allow Representatives who are *not* committee members to sit with subcommittees at hearings by unanimous consent of the subcommittee. The Member may question witnesses after all subcommittee members have done so. The Small Business Committee requires a Representative who would like to participate in a hearing to notify the chair and ranking minority member 24 hours in advance of the hearing. The Science, Space, and Technology Committee allows Representatives not on the committee to ask questions of witnesses at hearings with the permission of the chair.

## Subcommittee Reporting to Its Parent Committee

Several committees' rules contain a specific provision requiring a subcommittee chair to report promptly or to notify the committee or the committee's chair and ranking minority member of the subcommittee's action on a matter. In addition, a rule of the Agriculture Committee states that the majority staff director must notify all committee members of a subcommittee reporting. A rule of the Education and the Workforce Committee allows a majority of a subcommittee to force the subcommittee chair to file a bill or other matter favorably reported by the subcommittee.

A rule of the Homeland Security Committee treats a tie vote in subcommittee on a motion to report or forward a measure to the full committee as a vote to order a measure reported without recommendation. A rule of the Foreign Affairs Committee requires a majority of a subcommittee to be "actually present" to report a measure or recommendation to the full committee.

The Education and the Workforce Committee requires a subcommittee to provide a section-by-section analysis of a reported bill. The chair may also direct the subcommittee to provide a Ramseyer-type analysis (a comparative analysis showing proposed changes to existing law). The Transportation and Infrastructure Committee's rules require, where practicable, both of these analyses to accompany a subcommittee-reported measure. The Science, Space, and Technology Committee explicitly allows the chair to direct a subcommittee on the form of a report to the

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<sup>27</sup> For a succinct explanation of field hearings, see CRS Report RS20928, *Field Hearings: Fact Sheet on Purposes, Rules, Regulations, and Guidelines*, by Valerie Heitshusen and R. Eric Petersen.

committee. Several committees' rules direct subcommittees to provide the committee with records of roll-call votes and other documentation.

The Ways and Means Committee requires four analyses to accompany a measure reported by a subcommittee: a Ramseyer-type analysis, a section-by-section analysis, a section-by-section justification, and a draft statement of the measure's budget effects consistent with the requirements for committee-reported measures.

## Layover Rules

In addition, some committees' rules contain a layover period before the committee may consider subcommittee recommendations. The Agriculture Committee has a two-day layover requirement that may be waived by the chair or a committee majority. The Ways and Means Committee also has a two-day layover rule, but the rule does not contain a waiver provision. The Armed Services Committee has a three-day layover that may be waived by a committee majority vote. The two-day layover rule of the Natural Resources Committee prohibits committee consideration before every committee member who requests it has a copy of the subcommittee-reported measure. The committee by majority vote may waive this requirement.

The Education and the Workforce and Transportation and Infrastructure Committees have 48-hour layover rules that begin to toll once all committee members receive the reported measure or matter. The chair of the Transportation Committee may waive the layover rule. The Science, Space, and Technology Committee also has a 48-hour layover rule. The rule in addition requires printed hearings to be made available to committee members, although the chair in consultation with the ranking minority member may waive that provision.

## Explanation of Table 1. Committee Referral of Measures or Matters to Subcommittee, House Committee Rules, 114<sup>th</sup> Congress

**Table 1** compares committee rules in the 114<sup>th</sup> Congress across the 21 standing House committees on referring measures or matters to subcommittees. Committees are listed in alphabetical order in the left column, except for the Permanent Select Committee on Intelligence, which appears last. The first two rows of the headings contain key terms describing committees' rules, as explained immediately below. A check in a box indicates that a committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject, although a footnote may appear in an otherwise empty box to explain a committee rule different from the choices exercised by other committees. Certain checks are also footnoted to offer additional detail on a particular committee's rule. In some cases, a single footnote is used to offer additional detail on a rule that appears in more than one committee's rules.

The following list explains the headings in **Table 1**:

- Chair Must/May Refer to Subcommittee—indicates whether a chair *must* refer measures or matters to the subcommittee(s) of jurisdiction or whether the chair *may* decide to retain a measure or matter for consideration by the committee.
- Time Allowed before Referral—indicates whether committee rules require that a chair decide to refer or retain legislation within two weeks of receipt by the committee, or if the referring or retention may simply be done “expeditiously.”
- Chair May Refer to \_\_\_\_ Subcommittee(s)—indicates whether committee rules explicitly grant a chair authority to refer legislation to one or more than one

- (“several”) subcommittees; authority to refer to several subcommittees includes the authority to refer to one subcommittee.
- Authority to Reassign or Discharge—refers to whether authority to reassign measures or matters, or discharge a subcommittee of its consideration of a measure or matter, rests with a chair or with the majority of a committee. A check in both boxes indicates that both the chair and the committee have this authority.

Committee rules pertaining to scheduling hearings and meetings of subcommittees appear below at “Scheduling Subcommittee Hearings and Meetings,” under “Scheduling Committees’ Meetings and Hearings.”

**Table 1. Committee Referral of Measures or Matters to Subcommittee, House Committee Rules, 114<sup>th</sup> Congress**

Chair's Discretion in Referral to Subcommittee, and Who May Reassign or Discharge Measures or Matters from Subcommittees

Committee	Chair Must/May Refer to Subcommittee		Time Allowed before Referral		Chair May Refer to _____ Subcommittee(s)		Authority to Reassign or Discharge	
	Must	May	Expediently	Two Weeks	One	Several	Chair	Committee
Agriculture	✓ <sup>a</sup>			✓		✓ <sup>b,c</sup>	<sup>d</sup>	✓
Appropriations	✓ <sup>e</sup>			✓				
Armed Services		✓			✓		<sup>d</sup>	
<i>Budget</i>								
Education and the Workforce		✓ <sup>f</sup>		<sup>g</sup>	✓			✓
Energy and Commerce	✓ <sup>h</sup>			✓		✓ <sup>c,i</sup>		
Ethics		✓ <sup>j</sup>						✓
Financial Services		✓				✓ <sup>c</sup>	✓	
Foreign Affairs	✓ <sup>k</sup>			✓		✓ <sup>c,l</sup>		
Homeland Security		✓		✓		✓ <sup>c</sup>	✓	
<i>House Administration</i>								
Judiciary		✓ <sup>m</sup>						
Natural Resources		✓ <sup>n</sup>		✓	<sup>o</sup>	✓ <sup>c</sup>	✓ <sup>p</sup>	✓
Oversight and Government Reform	✓		✓			✓	✓	
Rules		✓ <sup>q</sup>			✓ <sup>c</sup>			✓
Science, Space, and Technology		✓ <sup>r</sup>	✓			✓		
Small Business	<sup>s</sup>							



Committee	Chair Must/May Refer to Subcommittee		Time Allowed before Referral		Chair May Refer to _____ Subcommittee(s)		Authority to Reassign or Discharge	
	Must	May	Expediently	Two Weeks	One	Several	Chair	Committee
Transportation and Infrastructure		✓ <sup>t</sup>		✓		✓ <sup>c</sup>		✓
Veterans' Affairs		✓				✓ <sup>c</sup>		
Ways and Means		✓ <sup>u,v</sup>	✓ <sup>w</sup>		✓			✓ <sup>x</sup>
Intelligence		y						

**Source:** Prepared by the Congressional Research Service based on a review of House committee rules, 114<sup>th</sup> Congress.

**Notes:** Committees in *italics* do not reference subcommittees in their rules.

- a. Bills, resolutions, and other matters referred to the committee relating to foreign agriculture, foreign food or commodity assistance, and foreign trade and marketing issues are considered by the committee. However, in the absence of a committee vote retaining such a measure by the full committee, the chair may refer it to subcommittee. The chair must consult with the ranking minority member before retaining any other measure or matter for consideration by the full committee.
- b. Unless the committee decides otherwise, the chair may refer bills, resolutions, and other matters that may be in the jurisdiction of more than one subcommittee to one or more subcommittees or to an ad hoc task force, as the chair deems appropriate, and may refer these items jointly or exclusively, again as the chair deems appropriate.
- c. In referring any measure or matter to a subcommittee, the chair may specify a date by which the subcommittee must report to the full committee.
- d. Requires approval by a majority vote of the committee.
- e. Unless, by majority vote of the majority-party members of the full committee, consideration is to be by the full committee.
- f. The chair must consult with the subcommittee chairs regarding referral to an appropriate subcommittee. Referral to a subcommittee may not be made until three days have elapsed after written notification to all subcommittee chairs, at which time the proposed referral is made, unless one or more subcommittee chairs gives written notice to the chair of the full committee and to the chair of each subcommittee that he or she intends to question the proposed referral at the next regularly scheduled meeting of the committee, or at a special meeting of the committee called for that purpose, at which time referral is made by the majority-party members of the committee.
- g. The chair must provide notice of referral, if any, to the appropriate subcommittee within three weeks.
- h. Referral to subcommittee occurs unless action is taken by the full committee on the measure or matter within those two weeks, or the committee by a majority vote chooses to retain the measure or matter for the full committee's consideration.
- i. The chair may refer a measure to an ad hoc panel, appointed by the chair, with the committee's approval.
- j. In addition to non-investigatory and non-adjudicatory work, the committee creates investigative and adjudicatory subcommittees in executing its ethics investigative authority, with extensive House and committee rules governing these subcommittees' procedures.
- k. A committee rule lists over 15 legislative subjects, with a number of additional subtopics, that are considered by the full committee and not by the committee's subcommittees.

- l. The chair refers a measure to a subcommittee of primary jurisdiction, but may also refer it to additional subcommittees. The rule also states that additional subcommittees must take action or be discharged within two weeks of the approval of legislation by the subcommittee of primary jurisdiction, unless the chair orders otherwise.
- m. The committee retains copyright legislation and other matters that the chair determines should be handled by the full committee.
- n. A rule specifies certain environmental measures and international cooperative measures that are retained by the full committee, allows the committee to retain other measures for full-committee consideration, and provides for full committee consideration of measures discharged from subcommittee.
- o. With the approval of a majority of the majority-party committee members, the chair may refer a measure to an ad hoc subcommittee.
- p. Provided members of the committee receive one week's written notice of the recall, and a majority of the committee members do not object.
- q. No special order ("special rule") providing for the consideration of any bill or resolution may be referred to a subcommittee of the committee.
- r. A subcommittee chair may request referral of a specific matter to the chair's subcommittee if the chair believes the subcommittee's jurisdiction so warrants.
- s. The committee's rules state that all legislation is retained by the full committee, and that "No action will be required of a Subcommittee before legislation is considered for report [sic] by the Committee." Subcommittees, however, may hold hearings on any bill referred to the committee.
- t. A decision by the chair to retain a measure or matter for the full committee must be made after consultation with the committee's majority-party members.
- u. Revenue measures not listed in subcommittees' jurisdictional statements in the committee's rules are retained for full committee consideration.
- v. A subcommittee must, within three legislative days of the referral, acknowledge the referral.
- w. The rule uses the language "in a timely manner."
- x. After a measure has been pending in a subcommittee for a "reasonable period of time," the chair of the full committee may make a request in writing to the subcommittee that the subcommittee forthwith report the measure with its recommendations to the full committee. If, within seven legislative days after the chair's written request, the subcommittee has not reported the measure, a motion is in order in the full committee to discharge the subcommittee from further consideration of the measure. If the motion is approved by a majority vote of the full committee, the measure may thereafter be considered only by the full committee.
- y. The committee's rule states that subcommittees "shall deal with such legislation and oversight ... *as the Committee may direct.*" (*Emphasis added.*)

## Scheduling Committees' Meetings and Hearings

Committees meet pursuant to House and individual committee rules regarding notice, the availability of documents, open-meeting requirements, and quorums (see “Quorum Requirements” below). Rule XI, clause 2(i) prohibits committees from meeting while the House and Senate are in a joint session or during a recess when a joint meeting is in progress.

Rule XI, clause 2(m)(1)(A) authorizes committees to meet and hold hearings, whether the House is in session or has recessed or adjourned, providing the meeting is in the United States. Rule XI, clause 6 allows business to be carried over to a successive session of Congress, normally to the second session from the first session.

### Meeting Days

Rule XI, clause 2(b) requires standing committees to establish regular meeting days not less frequently than monthly for the consideration of committee business. Clause 2(b) also provides that a committee is to meet on its regular meeting day to consider legislation pending before the committee or for transacting other committee business if notice is given as provided in clause 2(g)(3). Nearly every committee has given the chair the authority to cancel a meeting at his or her discretion. Clause 2(c) grants the chair authority to call additional meetings, which make up the majority of committee meetings and might be held several times a month. A committee may also adopt rules pertaining to additional meetings. (See, below, “Notice and Documents.”) Committees' rules implementing these House rules are analyzed in **Table 2**.

Although there is no requirement that committees meet on their regular meeting day, an established day might provide a determined minority an opportunity to seek to force a meeting. Clause 2(c) also establishes a procedure by which committee members, including minority members, may request or call additional meetings. (See, below, “Members' Initiative to Meet to Consider a Measure.”)

### Vice Chair Presiding

Rule XI, clause 2(d) directs committee chairs to designate vice chairs of their committee and its subcommittees, and authorizes a vice chair to preside in the absence of a chair. A committee or subcommittee member appointed as a vice chair does not have to be the most senior member. In the absence of both a chair and vice chair, the ranking majority member present is authorized to preside.

## Explanation of Table 2. Meetings of Committees, House Committee Rules, 114<sup>th</sup> Congress

**Table 2** compares committee rules in the 114<sup>th</sup> Congress across the 21 standing House committees for regularly scheduled meetings, scheduling additional meetings, and cancelling meetings. Committees are listed in alphabetical order in the left column, except for the Permanent Select Committee on Intelligence, which appears last. The first three rows of the headings contain key terms describing committees' rules, as explained immediately below. A check in a box indicates that that committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject, although a footnote may appear in an otherwise empty box to explain a committee rule different from the choices exercised by other committees. Certain checks are footnoted to offer additional detail on a particular committee's

rule. In some cases, a single footnote is used to offer additional detail on a rule that appears in more than one committee's rules.

The following list explains the headings in **Table 2**:

- **Day**—refers to the day of the week a committee rule establishes as the committee's regular meeting day. The numbers in the third row of the headings indicate, for example, the first Tuesday of the month, second Tuesday of the month, and so on. Committees with a check in every box for one weekday are scheduled to meet weekly. Committees' rules may formally dispense with the regular meeting if the House is not in session.
- **Time**—for committees that specify a meeting time in their rules.
- **Additional**—refers to the authority that rests with the chair in a committee's rules to call additional meetings.<sup>28</sup>
- **Cancel**—refers to committee rules that allow a chair to cancel meetings at his or her discretion. The committees indicated in the second column have rules that state the chair should determine that there is no business to be considered in canceling a scheduled meeting.

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<sup>28</sup> See, below, "Notice and Documents."

**Table 2. Meetings of Committees, House Committee Rules, 114<sup>th</sup> Congress**

Day and Time of Regular Meetings, Who May Authorize Additional Meetings, and How Meetings May Be Cancelled

Committee	Day												Time	Additional	Cancel	
	Tuesday				Wednesday				Thursday					Chair	Chair	
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>			On own authority	If no business
Agriculture					✓ <sup>a</sup>									✓ <sup>b</sup>		
Appropriations					✓ <sup>c</sup>									✓		
Armed Services					✓ <sup>c</sup>	✓	✓	✓					10 a.m.	✓	✓ <sup>d</sup>	
Budget						✓ <sup>c,e</sup>							11 a.m.	✓ <sup>f</sup>		
Education and the Workforce						✓ <sup>c</sup>							10 a.m.	✓		
Energy and Commerce				✓ <sup>c,g</sup>									10 a.m.	✓	✓ <sup>b</sup>	
Ethics		✓ <sup>c</sup>												✓		✓
Financial Services	✓ <sup>c</sup>													✓	✓	
Foreign Affairs	✓ <sup>c</sup>													✓		✓
Homeland Security					✓ <sup>h</sup>								10 a.m.	✓	✓	
House Administration						✓ <sup>i</sup>								✓	✓	
Judiciary					✓ <sup>c</sup>	✓	✓	✓						✓	✓	
Natural Resources					✓ <sup>c,j</sup>								10 a.m.	✓		
Oversight and Government Reform										✓			10 a.m.	✓	✓	
Rules	k												5 p.m.	✓ <sup>l</sup>	✓	

Committee	Day												Time	Additional	Cancel	
	Tuesday				Wednesday				Thursday					Chair	Chair	
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>			On own authority	If no business
Science, Space, and Technology									✓ <sub>m</sub>					✓	✓	
Small Business						✓ <sub>c</sub>								✓	✓	
Transportation and Infrastructure					✓ <sub>n</sub>									✓	✓	
Veterans' Affairs						✓							10 a.m.	✓ <sub>l</sub>	✓	
Ways and Means						✓								✓	o	
Intelligence									✓ <sub>p</sub>							

**Source:** Prepared by the Congressional Research Service based on a review of House committee rules, 114<sup>th</sup> Congress.

- a. The chair must provide an agenda “as far in advance as possible.” Matters may be placed on the agenda by the chair or by a committee majority.
- b. The chair must consult with the ranking minority member.
- c. If the House is in session on a regular meeting day.
- d. This decision “may be reversed” by a written request of a majority of members of the committee.
- e. Committee meetings are cancelled when they conflict with meetings of either party’s caucus or conference.
- f. If the House is not in session, the public electronic notice of meetings is given three days in advance. If the House is in session, notice is 24 hours in advance.
- g. “If the House is not in session on that day and the Committee has not met during such month, the Committee shall meet at the earliest practicable opportunity when the House is again in session.”
- h. The committee’s rule provides that the committee meets the “first Wednesday that the House is in Session each month, unless otherwise directed by the Chairman.”
- i. “If the House is not in session on the second Wednesday of a month, the regular meeting date shall be the third Wednesday of the month.”
- j. After consultation with the ranking minority member, the chair may reschedule a meeting that conflicts with a party caucus or conference meeting.
- k. “The Committee shall regularly meet at 5:00 P.M. on the first day on which votes are scheduled of each week when the House is in session.”
- l. The chair may call emergency meetings, with the chair having “made an effort” to consult the ranking minority member.
- m. “If the House is not in session on that day, then the Committee shall meet on the next Thursday of such month on which the House is in session, or at another practicable time as determined by the Chairman.”
- n. If the House is not in session on the regular meeting day, the chair may determine the regular meeting day for that month.
- o. “The Committee shall not meet on the regularly scheduled meeting day if there is no business to be considered.”
- p. Unless otherwise directed by the chair.

## Members' Initiative to Meet to Consider a Measure

If a chair has not called a meeting on a measure or matter, Rule XI, clause 2(c)(2) allows a majority of a committee's membership to convene a meeting. Under this rule, any three members of a committee in a letter to the chair may request a meeting of the committee to consider a specific measure or matter. The chair has three calendar days to call the requested meeting, which must be scheduled within seven calendar days after the request is filed. If the chair does not act, a majority of committee members may file a written notice in the committee offices ordering the meeting to occur and specifying the time of the meeting and the subject matter. If a majority files the notice, the committee clerk is then required to inform all committee members of the meeting, which will be held at the time identified in the notice.

Many committees repeat or reference this rule in their own rules.

This authority may be employed as a tactic by the minority, or by members having a minority policy viewpoint, in seeking action on a measure or matter. Such a tactic is unlikely to be successful if the chair has the backing of his or her party's members on the committee, but it might prove suasive in obtaining an assurance from the chair to schedule the desired business at a future date. A chair might also act if he or she believes that his own party's members are sympathetic to action on the subject at issue.

## Notice and Documents

Rule XI, clause 2(c)(1) authorizes committees to adopt procedures for scheduling "additional and special" meetings; many committee meetings are scheduled pursuant to these committee rules. Under this authorization, committees minimally adopt "notice requirements" in their rules to inform committee members of a meeting a certain number of hours or days in advance of a meeting and of the agenda for the meeting.<sup>29</sup>

In implementing House rules, committees distinguish between *meetings*, including markups, and *hearings* in their rules' notice requirements.<sup>30</sup> Rule XI, clause 2(g)(3) states that "a committee meeting may not commence earlier than the third day on which members have notice thereof."<sup>31</sup> This time is a minimum requirement; committees may adopt a rule requiring notice of more than three days.<sup>32</sup>

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<sup>29</sup> House Rule XI, cl. 3(f) directs the Ethics Committee to adopt rules providing that the chair establish meeting agendas, but not precluding the ranking minority member from placing "any item" on the agenda.

<sup>30</sup> This distinction is not consistently followed in committees' rules. In committee rules and in this report, "meetings" is sometimes used when a rule or practice applies to both meetings and hearings.

<sup>31</sup> For example, a meeting to be held on a Thursday must be noticed at any time on the preceding Tuesday. Although the House rule does not exempt weekend days or holidays from tolling of the notice, the House Financial Services Committee requires a three-day notice, but does not count Saturdays, Sundays, or holidays unless the House is in session on those days. The Judiciary Committee similarly exempts weekend days and holidays from tolling of the notice.

A rule of the Small Business Committee sets a target of a 72-hour notice "to the extent possible."

A rule of the Ethics Committee provides that notices should precede meetings by seven days, but the committee chair is authorized to waive this time period "for good cause." A rule of the Foreign Affairs Committee mirrors these two provisions. Notice is to precede a meeting by one week, but the chair, after consulting the ranking minority member, may hold the meeting earlier.

A rule of the Homeland Security Committee states that meetings requiring notice may include briefings.

<sup>32</sup> The Energy and Commerce Committee has a nuanced notice requirement for *meetings*, depending on the day of the week and whether the House is in session. If the House is in session and the chair wishes the committee to meet on a (continued...)

Rule XI, clause 2(g)(3) also requires a committee chair to publicly announce the date, place, and subject matter of a *hearing* at least one week in advance of the hearing.<sup>33</sup>

Pursuant to this same subparagraph (3), should a chair determine that there is “good cause” to shorten the notice for a meeting or hearing, he or she may do so either by obtaining the concurrence of the ranking minority member or by obtaining a majority vote of the committee, a quorum being present. A few committees’ rules specifically allow only one of these options. A number of committees provide for waivers of their rules on distributing agendas and other documents, or alternate schedules for doing so, when notice is shortened.

A notice of a meeting or hearing is to appear “promptly” in the Daily Digest of the *Congressional Record* and to be published electronically.<sup>34</sup>

## Role of Ranking Minority Member

The notice requirement in a committee’s rules might spell out a role for the ranking minority member, such as his or her concurrence in the chair’s initiative or a requirement that the chair consult with or notify the ranking minority member. Committees might also allow for emergency meetings to be scheduled at the chair’s discretion, such as the Rules Committee; or at the chair’s initiative with the concurrence of the ranking minority member, such as the Judiciary Committee; or after the chair’s consultation with or notification to the ranking minority member, such as the Veterans’ Affairs Committee. Under their rules, committees by vote might also make scheduling decisions. Some committees have specific scheduling requirements applicable to their subcommittees, as discussed immediately below.

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(...continued)

Tuesday, Wednesday, or Thursday, notice occurs 36 hours prior to the meeting, excepting Saturdays, Sundays, and holidays unless the House is in session on those days. If the House is in session and the chair wishes the committee to meet on a day other than Tuesday, Wednesday, or Thursday, notice occurs 3 days prior to the meeting, excepting Saturdays, Sundays, and holidays unless the House is in session on those days. If the House will not be in session and the chair wishes the committee to meet, notice occurs 72 hours prior to the meeting.

The agenda for a meeting must be provided to each member 36 hours before a meeting. The bill or other matter to be considered at a meeting must be available to members three days before a meeting; a substitute for introduced legislation must be available 24 hours before a meeting. The bill or other matter available three days before a meeting must be accompanied by an explanation summarizing the major provisions of the legislation, relating the bill to current law, and summarizing the need for the legislation.

Notice and other requirements of the rule may be waived by majority vote or by the chair with the concurrence of the ranking minority member.

<sup>33</sup> Hearings on the President’s budget by the Appropriations Committee conducted pursuant to House Rule X, cl. 4(a)(1) are exempted by Rule XI, cl. 2(g)(7) from this requirement and from other requirements in clause 2(g).

The Small Business Committee’s rule states that, to the extent feasible, the seven days “shall be counted from 168 hours before the time of the Committee’s hearing,” with a goal of providing witness lists at the same time. The Budget Committee counts the duration of one week from the date of the announcement to the day preceding the hearing.

<sup>34</sup> A rule of the Foreign Affairs Committee allows items to be added to an agenda by the chair with the concurrence of the ranking minority member or by a favorable vote of two-thirds of the committee. Another rule of the committee generally requires the chair to consult the ranking minority member on the committee’s business. A rule of the Budget Committee allows the chair or the members of the committee by majority vote, a quorum being present, to place items on the agenda. A rule of the Armed Services Committee states that legislation may be called up for a hearing or a markup only by the chair of the committee or a subcommittee or by a majority of the committee or a subcommittee.



## Electronic Notification

Committees have turned by practice to electronic notification in addition to or instead of written notification.<sup>35</sup> Although some committees' rules do not make a distinction, committee chairs may clarify what a committee's practice will be, in the course of approval of the committee's rules or in a later committee meeting. If a committee is not of one understanding, a member could make a point of order of insufficient notice based on a violation of a committee's rules.

## Notice Documents for Meetings

Committee rules might also list specific documents to be made available with the notice. For example, in order to avoid reading in its entirety a bill or resolution to be marked up, committees must supply a copy of a listed measure.<sup>36</sup> With electronic notification, a committee might provide an electronic link to the measure to be marked up rather than a copy of it. Rule XI, clause 2(g)(4) specifies that the text of legislation to be marked up<sup>37</sup> must be available at least 24 hours in advance of the markup and must be publicly available in electronic form. If a meeting is held sooner than 24 hours, with the concurrence of the ranking minority member or by a majority vote of the committee as provided in Rule XI, clause 2(g)(3)(B), the legislative text must accompany the announcement.<sup>38</sup>

Committees have added interpretative provisions or requirements to the notice requirements of House rules. A rule of the House Administration Committee states that advance availability also

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<sup>35</sup> Some committees' rules specify "or in electronic form," but the Intelligence Committee lists three options: "facsimile transmission, regular mail, or electronic mail."

<sup>36</sup> In addition to texts of legislation, some committees require other documents to be distributed for meetings. The Financial Services Committee, for example, requires notice to be accompanied by the bill or other matter to be considered and by an explanation summarizing the major provisions of the legislation, relating the bill to current law, and summarizing the need for the legislation. The committee's notice requirements may be waived by the chair with the concurrence of the ranking minority member or by the committee by a two-thirds vote.

A rule of the Natural Resources Committee also requires a memorandum, to the extent practicable, prepared by majority staff summarizing the major provisions of the legislation, relating the bill to current law, and summarizing the need for the legislation. A memorandum is to be available to committee members 48 hours prior to a meeting.

A Rule of the Oversight and Government Reform Committee requires a memo on the purpose of a meeting to be distributed three days prior to a meeting.

A rule of the Intelligence Committee requires a briefing of committee members by committee staff prior to a meeting. A committee member may also request a list of documents in the committee's possession pertinent to the meeting. The committee staff director is to provide the chair with recommendations of documents to be presented to the committee at its meeting.

<sup>37</sup> When this provision was added to House rules in the 112<sup>th</sup> Congress, the chair of the Rules Committee inserted in the *Congressional Record* a section-by-section analysis of rules changes that explained the new provision: "This provision is intended to ensure that members have the text of the measure or matter in sufficient time to review the measure and draft any amendments. Accordingly, if the committee is considering a committee print, or the Chair of a committee intends to use an amendment in the nature of a substitute as the base text for purposes of further amendment, circulation of that text will satisfy this requirement." Representative David Dreier, "Section-by-Section Analysis of H.Res. 5," House debate, *Congressional Record*, vol. 157, part 1 (January 5, 2011), p. 86.

<sup>38</sup> The Rules Committee is exempted in House Rule XI, clause 2(g)(3) from the provisions of that subparagraph and subparagraph 4. The rules of the Rules Committee provide that there will be a 48-hour notice for regular meetings and the provision 24 hours before the meeting for consideration of a special rule: copies of the bill or resolution under consideration for a rule, committee reports thereon, and any letters requesting a special rule. (A rule of the Rules Committee states that a special rule has been "formally requested" when the chair of the committee of primary jurisdiction has in writing requested the chair of the Rules Committee to schedule a hearing on a special rule and has provided the committee with the measure as reported and the committee report on the measure.) If it is an emergency meeting, the same documents should be provided "to the extent feasible."

applies to resolutions and regulations to be considered by the committee. A rule of the Budget Committee provides that the markup text is the chair's mark (or other material that will be considered by the committee) for a concurrent resolution on the budget. This rule also allows the chair with the concurrence of the ranking minority member to waive the 24-hour requirement for bills and resolutions.

The Appropriations Committee's notice rule requires texts, including those of reports, to be made available three days in advance, excluding weekend days and holidays unless the House is in session. The chair and ranking minority member may concur to waive this requirement.

A rule of the Homeland Security Committee requires markup texts to be made available 48 hours in advance and a substitute for an amendment in the nature of a substitute, to be available 24 hours in advance. A rule of the Veterans' Affairs Committee also requires markup texts to be made available 48 hours in advance, and requires all amendments to be provided 24 hours in advance. Amendments not so submitted are not in order, although the requirement may be waived by unanimous consent.

The Science, Space, and Technology Committee also makes markup texts available 48 hours in advance and requests that amendments be submitted to the chair and ranking minority member at least 24 hours in advance of a meeting. The rule indicates that the chair may oppose any amendment not submitted in advance.

A rule of the Judiciary Committee also requires markup texts to be made available 48 hours in advance and, by committee rule rather than practice, requests that amendments be submitted to the chair and ranking minority member at least 24 hours in advance of a meeting, to which the chair may give priority in a markup. The Education and the Workforce Committee and the Oversight and Government Reform Committee have the same rule applicable to amendments. The Education and the Workforce Committee also requires reports that will be considered to be available to committee members 48 hours in advance of a meeting.

A rule of the Small Business Committee makes the provision of markup texts 48 hours in advance a target, but indicates the committee rule is to provide the texts 24 hours in advance.

A rule of the Agriculture Committee allows chairs of the committee and its subcommittees to request amendments and motions to be submitted 24 hours in advance and asks the cooperation of members.

Rule XI, clause 1(a)(2)(A)(ii) allows a privileged, nondebatable motion in committee to dispense with the first (full) reading of a measure on the agenda if printed copies of the measure are available. Committees typically interpret the availability criterion to be met by distributing the measure (or link to the measure) with the meeting notice.

### **Additional Documents for Hearings**

A committee might also have a rule on documents to be made available to committee members prior to a hearing. For example, a rule of the Natural Resources Committee requires that, in addition to a tentative witness list made available as soon as practicable, the majority staff make publicly available to the extent practicable a memorandum explaining the subject matter of the hearing, including relevant legislative reports and other necessary material. The rule continues that the chair make available to committee members department and agency reports on the subject matter "as they are received." The Transportation and Infrastructure Committee's rule is similar.

The Small Business Committee rule requires the chair 48 hours in advance to provide a memorandum to committee members on the subject matter of the hearing and to also provide related reports from departments and agencies. These reports may be withheld by the chair in

consultation with the ranking minority member. A rule of the Agriculture Committee also requires, to the extent practicable upon the announcement of a hearing, a summary of the subject matter, including legislative reports and relevant department and agency reports, to be distributed to committee members.

A rule of the Energy and Commerce Committee requires a memorandum on the purpose of a hearing and the list of witnesses be distributed to members 48 hours prior to the hearing. The Education and the Workforce and Homeland Security Committees also require their witness lists to be available 48 hours prior to a hearing. The Oversight and Government Reform Committee's rule requires a memorandum on the purpose of a hearing, a list of witnesses, and the reasons for witnesses' appearance to be distributed to committee members 3 days prior to a hearing.

A rule of the Financial Services Committee prohibits a witness list to be modified less than 24 hours before a hearing, unless the ranking minority member concurs in the change.

(See also, below, "Advance Testimony and "Truth in Testimony"" under "Hearings Procedures.")

A defective notice provides opponents with an opportunity to employ procedural roadblocks to a chair's desired action and schedule.<sup>39</sup>

## Scheduling Subcommittee Hearings and Meetings

Committees' rules vary greatly in how they address scheduling of subcommittees' hearings and meetings. Most committees, however, express at least a desire to avoid subcommittee hearings and meetings that conflict with the schedules of other subcommittees or, in particular, the parent committee.<sup>40</sup> Some committees' rules do more than exhort subcommittees to coordinate:

- six committees' rules indicate that subcommittees may not meet when the full committee is meeting;<sup>41</sup>
- one committee's rules, those of Education and the Workforce, provide that the full committee chair designate dates on which specific subcommittees could meet; and
- six committees' rules require the full committee chair to approve scheduling of subcommittee meetings.<sup>42</sup>

The rules of a number of committees that do not require the committee chair's approval to schedule a subcommittee hearing or meeting provide for consultation by a subcommittee chair with the committee chair before a subcommittee meeting is scheduled, and may require additional consultation as follows:

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<sup>39</sup> A defective hearing notice is specifically covered in House Rule XI, cl. 2(g)(6).

<sup>40</sup> A rule of the Foreign Affairs Committee requires the chair and subcommittee chairs to meet at least monthly on the "agenda and activities" of the subcommittees.

<sup>41</sup> The Committees on Financial Services, Foreign Affairs, Oversight and Government Reform, Rules, Science, Space, and Technology, and Small Business. A rule of the Ways and Means Committee states that subcommittee meetings "shall not conflict" with committee meetings, to the extent practicable. Other committees have similar rules exhorting subcommittee chairs not to schedule meetings in conflict with committee meetings. A rule of the Appropriations Committee disallows its subcommittees from meeting when the House is reading an appropriations measure for amendment under the five-minute rule.

<sup>42</sup> The Committees on Energy and Commerce, Financial Services, Homeland Security, Oversight and Government Reform, Science, Space, and Technology, and Small Business.

- seven committees require the consultations by a subcommittee chair with the full committee chair and all subcommittee chairs;<sup>43</sup>
- one committee, Agriculture, requires the full committee and the subcommittee chair to consult with other subcommittee chairs and relevant ranking minority members;<sup>44</sup> another committee, Foreign Affairs, delegates this breadth of consultation to the subcommittee chair;
- one committee, Armed Services, requires a subcommittee chair to consult the committee chair, other subcommittee chairs, and the subcommittee ranking minority member; and
- two committees' rules require a subcommittee chair to consult with the full committee chair.<sup>45</sup>

One committee's rules, those of the Oversight and Government Reform Committee, require a subcommittee chair to notify the full committee chair two weeks in advance of a hearing and to provide details on witnesses. An Ethics subcommittee meets at the discretion of its chair.

### **Scheduling Subcommittee Field Hearings and Hearings during House Recesses or Adjournments**

To schedule a field hearing, the Agriculture Committee requires a subcommittee chair to consult the committee chair, other subcommittee chairs, and the subcommittee's ranking minority member. To schedule a field hearing, or any hearing or meeting during a recess or adjournment of the House, the Education and the Workforce Committee requires the committee chair's authorization. Such subcommittee meetings are also subject to a 14-day notice rule. A subcommittee chair on the Foreign Affairs Committee must consult the subcommittee's ranking minority member to schedule a field hearing or to schedule a hearing in Washington, DC, before the first House vote or after the last House vote of the legislative week. The Small Business Committee permits subcommittees to hold field hearings, the scheduling of which is overlapping.<sup>46</sup>

### **Open and Closed Meetings**

Pursuant to Rule XI, clause 2(g)(1), committee and subcommittee *meetings*, including markups, must be open to the public and to media coverage.<sup>47</sup> To hold an executive, or closed, markup session, a committee or subcommittee must vote in open session, with a majority present and by recorded vote, to close a meeting on "all or part of the remainder of the meeting on *that day*." (*Emphasis added.*) A motion to close a committee meeting is not debatable.<sup>48</sup> The rule states that a meeting may be closed only for one of four reasons:

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<sup>43</sup> The Committees on Appropriations, Education and the Workforce, Judiciary, Science, Space, and Technology, Transportation and Infrastructure, Veterans' Affairs, and Ways and Means.

<sup>44</sup> If a subcommittee chairmanship is vacant, the committee's rules allow the committee chair to set the subcommittee's hearings and meetings. The rules also authorize the committee chair to appoint a temporary subcommittee chair.

<sup>45</sup> The Committees on Natural Resources and Rules.

<sup>46</sup> For a succinct explanation of field hearings, see CRS Report RS20928, *Field Hearings: Fact Sheet on Purposes, Rules, Regulations, and Guidelines*, by Valerie Heitshusen and R. Eric Petersen.

<sup>47</sup> The Ethics Committee is exempted from the provisions of this paragraph.

<sup>48</sup> *House Practice*, ch. 11, §20, p. 277. There are also specific rules or exceptions applicable to one or more committees. For example, House Rule XI, cl. 3(h) requires the Ethics Committee to have a committee rule closing most meetings (continued...)

- “disclosure of matters to be considered would endanger national security”;
- “disclosure of matters to be considered ... would compromise sensitive law enforcement information”;
- “disclosure of matters to be considered ... would tend to defame, degrade, or incriminate any person”; or
- “disclosure of matters to be considered ... otherwise would violate a law or rule of the House.”<sup>49</sup>

Rule XI, clause 2(g)(1) also lists persons permitted at an executive session as members of the committee and others “as the committee may authorize”: other Members, including the Delegates and Resident Commissioner, not on the committee; congressional staff; and departmental representatives. Several committees’ rules contain additional detail to this House rule; for example, the Armed Services Committee specifies staff who may attend a closed hearing or meeting.

Rule XI, clause 2(g)(2) applies the same requirements to *hearings*, with a different procedure applicable to the third reason listed above. First, if it is asserted by a committee member that testimony may “tend to defame, degrade, or incriminate any person” or by a witness that evidence may “tend to defame, degrade, or incriminate the witness,” the committee by a majority vote makes a determination in executive session under Rule XI, clause 2(k)(5) of that assertion, the number of members required under committee rules for the receipt of testimony being present. If the vote determines that the testimony would tend to defame, degrade, or incriminate any person, the testimony must be received in executive session.<sup>50</sup> If the committee determines, a majority being present, that the testimony will not tend to defame, degrade, or incriminate any person, then the testimony must be received in open session. (See also “Closing a Hearing Based on a Witness’s Testimony,” below, under “Hearings Procedures.”)

In implementing House Rule X, cl. 11(d)(2) in its rules, the Intelligence Committee allows a vote to close a hearing so long as one member of the minority is present and votes. The committee’s rules also state that briefings are closed to the public.

A Member, Delegate, or the Resident Commissioner may not be excluded from a hearing as an observer or nonparticipant unless the House by a majority vote closes one or more hearings to the membership (Rule XI, clause 2(g)(2)(C)). (See, above, “Subcommittee Ratios and Ex Officio Membership” under “Subcommittees.”)

A committee by the same procedure may also vote to close a hearing for one additional day, although the Committees on Appropriations, Armed Services, and Intelligence may vote to close up to five “additional, consecutive” days of hearings.<sup>51</sup>

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(...continued)

“unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public...” See also Rule X, cl. 11(d)(2), excepting in part the Intelligence Committee from the operation of this rule.

<sup>49</sup> House Rule XI, cl. 2(g)(6) disallows a point of order against a reported measure on the ground that hearings were not conducted in accordance with clause 2(g). If, however, such a point of order was timely made in committee and improperly disposed of, a committee member may be able later to make such a point of order.

<sup>50</sup> A rule of the Armed Services Committee requires a majority to be present to vote to return to open session after a vote has occurred to receive evidence or testimony in closed session.

<sup>51</sup> House Rule XI, cl. 2(g)(2)(D). In addition, House Rule XI, cl. 2(g)(7) exempts from the operation of clause 2(g) hearings by the Committee on Appropriations on the President’s budget pursuant to the directive in Rule X, cl. 4(a)(1). (continued...)

There are generally three nondebatable motions available to close a committee's business: (1) a motion to close; (2) a motion to close pending discussion; and (3) a motion to close proceedings for an additional day.

There may be unanimity among committee members on the need for an executive session. However, tactical use could be made of any of these motions to delay proceedings, to identify differences among committee members, or for another purpose.

Rule XI, clause 2(k)(7) allows testimony received in an executive committee session to be released only by a vote of the committee, a majority being present. (See also "Record Keeping and Public Access," below.)

## **Media Coverage**

In response to campaigns for openness and changes in technology, House rules have been regularly amended over several decades to increase public access to hearings and meetings. Media access has been an important component of public access.<sup>52</sup>

Rule XI, clause 4 regulates audio and visual coverage of open committee meetings and hearings and establishes procedures to be followed in the conduct of such coverage. Committees are directed to adopt rules implementing provisions in this clause, which most committees accomplish by referencing the clause or by duplicating it in their rules. Some features of this rule include—

- radio and television recordings made under the authority of this rule provision are not to be used for partisan political campaign purposes;
- individuals at meetings where audio and visual coverage is allowed are to conduct themselves with "dignity, propriety, courtesy, and decorum" so as not to "distort the objects and purposes" of the meeting or to "cast discredit" on the House, committee, or members;<sup>53</sup>
- meetings open to the public are open to audio and visual coverage;
- generally, not fewer than two television cameras and two still cameras must be allowed;
- live coverage must be presented without commercial sponsorship;
- television cameras may not obstruct the line of vision between any witness and any committee member;
- equipment may be installed only before a meeting commences and removed only after it concludes;
- television media may install additional lighting, but other supplemental lighting is not allowed;
- photographers may not occupy the space between the witness table and committee members during a meeting;

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(...continued)

Those hearings may be closed pursuant to the provisions of that rule. An Appropriations Committee rule, however, provides that these hearings be printed and furnished to each Member, Delegate, and the Resident Commissioner.

<sup>52</sup> For an examination of some of the House rules pertaining to public access, see, below, "Committee Records."

<sup>53</sup> Subparagraphs a, b, and c of clause 4 contain additional purposes of the rules governing audio and visual coverage.



- media representatives must be accredited by the appropriate congressional correspondents committee; and
- allocation of television media positions and of photographers' positions is made in accordance with guidelines of the appropriate congressional correspondents committees.

## Quorum Requirements

Committee quorum rules are most often expressed as a portion of a committee's (or subcommittee's) membership or as a specific number.<sup>54</sup> A point of order would lie in committee against a committee or subcommittee proceeding in the absence of a quorum. A chair beginning or continuing a hearing, or, especially, a markup with a quorum but with a majority of minority members, could allow challenges to be mounted by the hearing's or markup's opponents.<sup>55</sup> The failure of a committee to have a majority present to report a measure or matter, as required by House rule, will likely necessitate the committee reassembling with the proper quorum to vote again on the motion to report.

## Meetings

Rule XI, clause 2(h)(3) sets the minimum quorum for committees (except the Appropriations, Budget, and Ways and Means Committees) to conduct business at not less than one-third of a committee's members and allows committees in their rules to set a higher quorum.<sup>56</sup> Most committees have explicitly or implicitly adopted the House rule as their quorum rule for business meetings such as markups, although the Education and the Workforce Committee, Ethics Committee, and Natural Resources Committee require a majority to amend the committee's rules, and the Transportation and Infrastructure Committee requires a majority for approval of five specific business items. A rule of the Natural Resources Committee contains a procedure for conducting a call of the roll when the committee needs to ascertain the presence of a quorum.

The Budget, Ethics,<sup>57</sup> Rules, Veterans' Affairs, and Ways and Means Committees require a majority of their members to conduct business.

Pursuant to Rule XI, clause 2(h)(1), however, a majority of any committee must be "actually present" to *report* a measure or recommendation. Pursuant to Rule XI, clause 2(g)(1), a majority must also be present to close a business meeting, as explained above (see "Open and Closed Meetings"), or, pursuant to Rule XI, clause 2(k)(7), to release testimony received in executive session. Pursuant to Rule XI, clause 2(m)(3), a majority must be present to authorize and issue a subpoena, unless, as allowed by this rule, a committee has in its rules delegated this authority to its chair.<sup>58</sup> (See, below, "Subpoenas.")

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<sup>54</sup> See CRS Report 98-870, *Quorum Requirements in the House: Committee and Chamber*, by Christopher M. Davis.

<sup>55</sup> A few committees have rules requiring meetings to begin "promptly" at the announced meeting time.

<sup>56</sup> If a committee adjourns for lack of a quorum, a majority of committee members may not call for a meeting of the committee on the same day without the consent of the chair. *House Rules and Manual*, §793, p. 556.

<sup>57</sup> The Ethics Committee sets a different quorum in its rules for an adjudicatory subcommittee, which is a majority of the subcommittee plus one.

<sup>58</sup> This paragraph also requires an Ethics Committee subcommittee to authorize and issue a subpoena "only by an affirmative vote of a majority of its members."

## Hearings

All committees but one have adopted the House quorum rule of two members to take testimony and receive evidence (Rule XI, clause 2(h)(2)). The Rules Committee has a quorum requirement of five members to receive testimony on requests for special rules and three members to receive testimony on measures or matters within the original jurisdiction of the committee.<sup>59</sup>

Several committees require or encourage the participation of minority-party members in achieving a quorum for a hearing. The Small Business Committees requires the presence of a minority-party member, although the requirement may be waived after a waiting period.<sup>60</sup> The Ways and Means and Foreign Affairs Committees have rules that encourage the presence of minority-party members. The Intelligence Committee's rules require that at least one member present to receive testimony be a member of the *majority* party.

A rule of the Homeland Security Committee requires consultation between the majority and minority staff on the scheduling of meetings and hearings to “ensure that a quorum ... will include at least one Minority Member of the Committee.”

## Additional Observations

Quorums that are no greater than required by House rules tend to favor the majority, whose Members generally have more committee assignments than minority Members have. Such quorums also allow committees to proceed with business with less risk of being unable to assemble or keep a quorum.

Requiring or encouraging minority-member participation in a hearing favors the minority, and might be seen as contributing to comity among the membership of a committee. A refusal by any minority member of a committee to attend a hearing could also be a tactic available to the minority if it disputes the subject, witnesses, or other attributes of a hearing.

## Opening Statements

Committee rules, supplemented by committee practices and ad hoc unanimous consent agreements, typically allow and regulate opening statements—short, initial statements made orally or submitted in writing by committee members on the business for which a chair has called a meeting or hearing. A committee's rules adopted at the beginning of a Congress may preclude oral opening statements or restrict them, often to oral statements made only by the chair and ranking minority member of the committee or a subcommittee. Some committees' practices also allow the relevant subcommittee chair and ranking minority member to make oral opening statements at full-committee markups, and allow a full committee's chair and ranking minority member, who serve *ex officio* on some or all subcommittees, to make oral opening statements at subcommittee meetings.

Rules, practices, or unanimous consent agreements normally require equivalency in treatment between the majority and minority in oral opening statements where a committee allows some discretion to a chair in permitting opening statements. By committee rule or practice or by

<sup>59</sup> For a succinct explanation of hearings on special rules, see CRS Report 98-313, *House Rules Committee Hearings on Special Rules*, by Megan S. Lynch.

<sup>60</sup> For a committee meeting at a location other than the Small Business Committee's House office building hearing room, the presence of the chair composes a quorum.



unanimous consent, other committee members are allowed to submit opening statements in writing for the record; these statements are not read aloud.

Committee rules or practices may restrict oral opening statements to five minutes. Committees that allow more members than the chair and ranking minority member to make oral opening statements may restrict opening statements to less time, for example, three minutes or one minute, as the rules of Energy and Commerce Committee provide in certain circumstances. Committees as an alternative might also cap the total time for opening statements, as the rules of the Financial Services Committee and the Science, Space, and Technology Committee do. The Science Committee, nonetheless, makes five minutes available to the ex officio members of its subcommittees if such a member requests it.

The Education and the Workforce Committee by rule disallows oral opening statements. If, however, the chair wishes to make an oral statement, the ranking minority member is also entitled to make one. A rule of the Natural Resources Committee is similar, but extends the prerogative of an oral opening statement to the vice chair as well. If the vice chair chooses to make an oral statement, the ranking minority member may designate a minority member to also speak.

A rule of the Homeland Security Committee allows the chair with the concurrence of the ranking minority member to permit opening statements in addition to their own.

At the commencement of a hearing, a chair must announce the “subject” of a hearing (Rule XI, clause 2(k)(1)). Chairs may incorporate this requirement into their own opening statements. (See also, above, “Notice and Documents” under “Scheduling Committees’ Meetings and Hearings.”)

## Hearings Procedures<sup>61</sup>

A standing committee is authorized in House rules to “hold such hearings as it considers necessary.” (Rule XI, clause 2(m)(1)(A).) At the commencement of a hearing, a chair must announce the “subject” of the hearing (Rule XI, clause 2(k)(1)).<sup>62</sup> (See also, above, “Notice and Documents” under “Scheduling Committees’ Meetings and Hearings.”)

Pursuant to Rule XI, clause 2(k)(4), a chair is charged with keeping order in a hearing, and empowered to punish “breaches of order and decorum.” A chair’s enforcement may be directed at the actions of anyone in the hearing room, including the “professional ethics” of a witness’s counsel. The chair may punish breaches of order and decorum by censure and by exclusion of the individual from the hearing. The committee may cite an individual to the House for contempt. (See also, above, “Media Coverage” under “Scheduling Committees’ Meetings and Hearings.”)

Pursuant to Rule XI, clause 2(m)(2), the chair of a committee or a member designated by the chair may administer oaths to witnesses.

As explained above, Rule XI, clause 2(h)(2) requires a quorum of two members to receive testimony. (See “Hearings,” under “Quorum Requirements.”)

Hearings rules specifically related to witnesses, including presenting testimony in executive session, are discussed below (see “Witnesses”). Additional discussion of conducting a hearing in

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<sup>61</sup> For rules pertaining to hearings conducted by the Intelligence Committee, see House Rule X, cl. 11; for those pertaining to the Ethics Committee, see Rule XI, cl. 3.

<sup>62</sup> See CRS Report 98-317, *Types of Committee Hearings*, by Valerie Heitshusen; and CRS Report 98-488, *House Committee Hearings: Preparation*, by Christopher M. Davis. Mr. Davis is the author of several CRS reports on aspects of House committee hearings.

executive session appears above (see “Open and Closed Meetings” under “Scheduling Committees’ Meetings and Hearings.”).

See generally the discussion above of rules applicable to meetings and hearings (“Scheduling Committees’ Meetings and Hearings.”)

## Explanation of Table 3. Hearings, House Committee Rules, 114<sup>th</sup> Congress

**Table 3** summarizes committee-by-committee several components of committees’ rules in the 114<sup>th</sup> Congress related to hearings. These components are the quorum needed for hearings, how time allocated for questioning witnesses may be extended, and the order of recognition to question witnesses—across the 21 standing House committees. Committees are listed in alphabetical order in the left column, with the Permanent Select Committee on Intelligence listed last. The first four rows of the headings contain key terms describing committees’ rules, as explained immediately below. A check in a box indicates that that committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject in its rules, although a footnote may appear in an otherwise empty box to explain a committee rule different from the choices exercised by other committees. Certain checks are footnoted to offer additional detail on a particular committee’s rule. In some cases, a single footnote is used to offer additional detail on a rule that appears in more than one committee’s rules.

The following list explains the headings in **Table 3**:

- Quorum (Two)—indicates that a committee has a rule requiring at least two members to be present in order to receive testimony.<sup>63</sup>
  - One Minority Member—indicates whether an “effort” must be made to have a minority member at a hearing or whether a minority member “must” be in attendance for a hearing to proceed.
- Extended Time to Question Witnesses—indicates how extended time for questioning witnesses may be obtained:<sup>64</sup>
  - Chair—the chair may grant a member additional time for questioning a witness:
    - Ranking Minority Member (RMM)—the chair must “Consult” with the RMM before granting additional time for questioning witnesses or the RMM must “Concur” in the chair’s request.
    - Time—indicates the maximum amount of time that the chair may extend the questioning of witnesses: “1 Hour” or “½ Hour” for additional questioning of witnesses.
    - Equal—indicates that committee rules state that, should extended time for questioning witnesses be granted, the time must be divided equally between the majority and minority, reflecting a provision of House rules..
    - Staff Questioning—some committee rules allow time for questioning of witnesses to be extended for designated staff members of each party.

<sup>63</sup> See “Hearings” under “Quorum Requirements.”

<sup>64</sup> *Extended Time* is explained below at “Questioning Witnesses.”

- Order of Recognition for Questioning Witnesses—refers to how committee rules specify members will be recognized for questioning a witness:<sup>65</sup>
  - Seniority at Start—members present *at the start* of a hearing will be recognized in order of seniority.
  - Arrival Order—members arriving *after the start* of a hearing will be recognized in order of arrival.
  - Alternate—the chair alternates between members of the majority and minority parties when recognizing members for questioning witnesses.
  - Consider Ratio—the chair “may” or “shall” consider the ratio of majority to minority members when recognizing members for questioning witnesses.
  - Chair/RMM—the chair and RMM are by rule recognized to question witnesses before other members are recognized.

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<sup>65</sup> Recognition of committee members to question witnesses is explained below at “Questioning Witnesses.”

**Table 3. Hearings, House Committee Rules, 114<sup>th</sup> Congress**

Quorum Needed for Hearings, How Time To Question Witnesses May Be Extended, and Order of Recognition To Question Witnesses

	Quorum (Two)			Extended Time to Question Witnesses						Order of Recognition for Questioning Witnesses					
		One Minority Member		Chair						Seniority at Start	Arrival Order	Alternate	Consider Ratio		Chair/RMM
		Effort	Must	RMM		Time		Equal	Staff Questioning				May	Shall	First
				Consult	Concur	1 hour	½ hour								
Agriculture	✓				✓ <sup>a</sup>	✓		✓							
Appropriations	✓														
Armed Services	✓				b				✓	✓			✓	✓	
Budget	✓				✓ <sup>c</sup>		✓	✓	✓ <sup>d</sup>	✓	✓		✓		✓
Education and the Workforce	✓					✓ <sup>e</sup>		✓	✓ <sup>e,f</sup>			✓ <sup>g</sup>		✓	✓
Energy and Commerce	✓				✓ <sup>h</sup>		✓	✓	✓ <sup>d</sup>	✓	✓	✓			
Ethics <sup>h</sup>	i														
Financial Services	✓					✓ <sup>e</sup>		✓							
Foreign Affairs	✓	✓			✓ <sup>j</sup>	✓		✓	✓ <sup>d</sup>		✓			✓	
Homeland Security	✓	✓ <sup>k</sup>		✓ <sup>c</sup>		✓		✓	✓ <sup>l</sup>	✓	✓	✓			✓
House Administration	✓					m						✓		✓	✓
Judiciary	✓														
Natural Resources	✓					✓ <sup>n</sup>		✓				✓		✓	✓
Oversight and Government Reform	✓					✓ <sup>e,c,o</sup>		✓	✓ <sup>c,e</sup>	✓	✓	✓			

	Quorum (Two)		Extended Time to Question Witnesses							Order of Recognition for Questioning Witnesses					
	One Minority Member		Chair							Seniority at Start	Arrival Order	Alternate	Consider Ratio		Chair/RMM
	Effort	Must	RMM		Time		Equal	Staff Questioning	May				Shall	First	
			Consult	Concur	1 hour	½ hour									
Rules	p														
Science, Space and Technology	✓					✓ <sub>q</sub>		✓	q ✓			✓			
Small Business	✓		✓ <sub>r</sub>			✓ <sub>q,s</sub>		✓	✓ <sub>q</sub>	✓	✓	✓	✓		✓
Transportation and Infrastructure	✓				✓ <sub>h</sub>	✓ <sub>t</sub>		✓	✓ <sub>u</sub>			✓		✓	✓
Veterans' Affairs	✓			✓			✓ <sub>j</sub>	✓	✓ <sub>v</sub>	w	✓	✓		✓	✓
Ways and Means	✓	✓								✓	✓		✓		✓
Intelligence <sup>h</sup>	✓ <sub>x</sub>								✓ <sub>y</sub>						

**Source:** Prepared by the Congressional Research Service based on a review of House committee rules, 114<sup>th</sup> Congress.

- a. The rule does not designate who initiates the proposal for extended questioning time. The rule states: “The Chairman and Ranking Minority Member may designate an equal number of Members from each party to question a witness.... ”
- b. A committee rule allows a chair to “depart” from the committee’s rules on use of the 5-minute rule and on the order of recognizing members at a hearing so long as the departure is announced prior to the hearing or to the opening statements of the witnesses and applies equally to each party’s members..
- c. The committee may by motion also authorize extended time to question witnesses.
- d. The chair and ranking minority member, or the committee by motion, may extend questioning by 30 minutes.
- e. The chair has the authority to allow extended questioning.
- f. In an investigative hearing or executive session, questioning is restricted to the majority and minority counsels.
- g. Discretion to vary from this rule is granted to the chair.
- h. The committee has a unique set of rules as a result of the nature of its work, available at <http://ethics.house.gov/about/committee-rules>.
- i. For the committee or an investigative subcommittee, the quorum for taking testimony is two members unless otherwise authorized by the House of Representatives. For an adjudicatory subcommittee, the quorum for taking testimony is a majority plus one of the members of the adjudicatory subcommittee.
- j. Extended questioning begins after each committee member who wishes five minutes to question witnesses has had his or her time.

- k. A committee rule requires consultation between the majority and minority staffs on scheduling hearings and meetings to “ensure that a quorum ... will include at least one Minority Member of the Committee.”
- l. The chair, upon consulting the ranking minority member, or by motion of the committee, may extend questioning by 60 minutes.
- m. The committee’s rule provides: “The 5-minute period for questioning a witness by any one member can be extended as provided by House Rules.”
- n. A motion is in order to allow designated majority and minority party members to question a witness for a specified period to be equally divided between the majority and minority parties.
- o. A committee rule specifically allows the chair to determine the allocation of time for the majority and the ranking minority member for the minority. The rule also guarantees committee members who do not participate in the extended questioning to have five minutes to question a witness.
- p. A quorum consists of three members of the committee to receive testimony on measures or matters within the original jurisdiction of the committee and five members to receive testimony on requests for special rules. A quorum for a subcommittee consists of two members to receive testimony.
- q. The committee may by motion authorize the chair, upon consultation with the ranking minority member, to extend time to question witnesses.
- r. “The Chair of the Committee or Subcommittee shall exercise reasonable comity by waiting for the Ranking Minority Member even if a quorum is present before striking the gavel to commence the hearing.” And, “For hearings held by a Committee or a Subcommittee in a location other than the Committee’s hearing room in Washington, DC, a quorum shall be deemed to present if the Chair of the Committee or Subcommittee is present.”
- s. To extend a committee member’s time to question a witness, the chair may offer a motion.
- t. A committee rule explicitly allows members who did not participate in the extended question time to question a witness for five minutes after the extended question time.
- u. The chair and ranking minority member, or the committee by motion, may extend questioning by 60 minutes.
- v. The chair, upon consulting the ranking minority member, may extend questioning for a specified time period.
- w. A committee rule allows the chair to announce another arrangement at the beginning of a hearing.
- x. At least one member constituting the quorum must be a member of the *majority*.
- y. The chair, upon consulting the ranking minority member, may extend questioning by 60 minutes.

## Witnesses

In practice, the chair of a committee (or subcommittee) determines most or all witnesses to be invited to a hearing, and issues invitations over his or her signature.<sup>66</sup> The chair also plans the order of witnesses' appearance, panels, time allocations, and other matters.<sup>67</sup> Under any agreement between the chair and ranking minority member on minority witnesses, the chair invites the minority's witnesses as well.

The Ways and Means Committee has a unique rule that oral and written testimony and statements will be accepted only from persons who are U.S. citizens or from entities organized under the laws of the United States (or the states or the District of Columbia), although the chair may make exceptions. In addition, the committee may accept a written statement from a non-citizen if it is submitted by written request by a Member of Congress.

Prior to a witness delivering testimony, the chair introduces the witness. A chair may also allow a committee member to briefly introduce a witness from the member's state or district.<sup>68</sup>

A witness is entitled to a copy of a committee's rules upon request. A witness is entitled to be accompanied by counsel "for the purpose of [advice] concerning [his or her] constitutional rights." (Rule XI, clause 2(k)(2) and (3), respectively.) A witness may also submit a "brief and pertinent" written sworn statement for inclusion in the record. Whether to accept such a statement, and the determination of its pertinence, is within the sole discretion of the committee (clause 2(k)(8)). Finally, a witness may obtain a transcript of his or her testimony given in public session,<sup>69</sup> but the witness may obtain a transcript of testimony given in executive session only "when authorized by the committee." (Rule XI, clause 2(k)(9).)

Pursuant to Rule XI, clause 2(m)(2), the chair of a committee, or a member designated by the chair, may administer oaths to witnesses.

The Committee on House Administration, in its role regulating spending by committee and Member offices, has indicated that reimbursement of travel expenses incurred by a witness is considered an "extraordinary measure" and will only be made when authorized by a committee chair. When being reimbursed by a committee, a witness travels at the government rate. If a witness resides outside of the United States, including its territories and possessions, reimbursement may be made to the witness for transportation expenses to and from the United States.<sup>70</sup>

The Committee on Foreign Affairs has a rule that allows witnesses to present testimony other than in person. The rule states that, if a witness is presenting testimony other than in person, the chair of the full committee or subcommittee must notify the relevant ranking minority member no later than 48 hours beforehand. Witnesses testifying remotely may not present their testimony in

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<sup>66</sup> A rule of the Intelligence Committee requires witnesses to be given "adequate" notice to appear. Another committee rule indicates that the committee "will consider" requests to testify.

<sup>67</sup> The Agriculture Committee provides invitation and planning authority to its chairs, but allows a committee or subcommittee majority to "determine otherwise."

<sup>68</sup> Rules of the Education and Workforce and Natural Resources Committees specifically extend this courtesy to its members.

<sup>69</sup> Some committees' rules explicitly provide an opportunity for witnesses to make what are essentially proofreading corrections to the transcript of their testimony.

<sup>70</sup> U.S. House of Representatives, Committee on House Administration, *Committee Handbook*, available at <http://cha.house.gov/handbooks/committee-handbook>. The House Administration Committee exercises specific authority over the pay of witnesses under House Rule XI, cl. 5.

an audio-only medium without concurrence of the chair and ranking minority member. The relevant chair must make reasonable efforts to verify the identity of any witness participating remotely. Another rule of the committee anticipates that some witnesses may need a translator, but the rule requires the witness to identify the translator in conjunction with the submission of advance testimony.

The chair of the Intelligence Committee has discretion under the committee's rules to withhold the name of a witness until a hearing or indefinitely.

## Advance Testimony and "Truth in Testimony"

Rule XI, clause 2(g)(5) directs committees, to the extent practicable, to require witnesses to submit advance written statements of their testimony and to confine their oral presentation to a brief summary of their written testimony. Several committees in the 114<sup>th</sup> Congress reiterated this language in their rules.<sup>71</sup> Committees customarily allow witnesses five minutes to summarize their testimony. (See "Questioning Witnesses," immediately below.)

In addition, many committees specify in their rules that testimony must be received 24 or 48 hours in advance. The Agriculture, Energy and Commerce, Natural Resources, and Transportation and Infrastructure Committees' rules, on the other hand, express time as "two working days," and the Financial Services and Foreign Affairs Committees provide for "two business days." The Appropriations Committee's rules are silent on this matter.

The Financial Services specifically requires a witness who wishes to present information in an electronic format to transmit the information one business day prior to a hearing.

Some committees specifically authorize the chair, the chair after consultation with the ranking minority member, or the committee by majority vote to waive advance testimony requirements.<sup>72</sup> Some committees provide waivers of various rules when there is less notice than one week.

Most committees require that witnesses submit a sufficient number of copies of their advance statements for committee members, and some committees require electronic files to be submitted as well. Some committees set a goal or target for distribution of advance testimony to committee or subcommittee members, typically 24 hours in advance of a hearing.

Pursuant to clause 2(g)(5), under a provision applicable to a witness who is not a government employee, a witness must submit a curriculum vitae and a disclosure of "any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing."<sup>73</sup> House rules require

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<sup>71</sup> Other committees' rules contain additional detail. Rules of the Committees on Natural Resources and on Science, Space, and Technology specify that the summary may last up to five minutes. Additional time may be granted by the chair under the Natural Resources Committee's rules after consultation with the ranking minority member. The Agriculture Committee's rules explicitly gave discretion to the chair to set the time allowed a witness, unless a majority of the committee determines otherwise.

<sup>72</sup> House Rule XI, cl. 2(g)(7) exempts from the provisions of clause 2(g) hearings held by the Committee on Appropriations on the President's budget pursuant to the directive in Rule X, cl. 4(a)(1).

<sup>73</sup> A subparagraph of this rule further explains that disclosure must include "the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and ... the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government."

A rule of the Foreign Affairs Committee in addition requires disclosure if a witness in an "active registrant" under the Foreign Agents Registration Act (FARA). A rule of the Ways and Means Committee requires witnesses and individuals (continued...)



that these witness disclosures, popularly known as “truth in testimony,” be made available in electronic form “not later than one day after the witness appears” before a committee. A witness’s private information is to be redacted from publication.

While a number of committees state in their rules that advance statements and truth-in-testimony information “shall” be submitted, seven committees further indicate that failing to comply with submission deadlines *could* or *would* result in a witness being denied the opportunity to testify. The Homeland Security and Ways and Means Committees’ rules state that failure to comply with advance testimony requirements could result in a witness being denied the opportunity to testify in person.<sup>74</sup> The Homeland Security Committee’s rules state that the failure could result in the witness’s written statement being excluded from the hearing record.

The Natural Resources Committee’s rules indicate that failure to comply with the truth-in-testimony requirement could result in disallowing either oral testimony or written testimony or both. A rule of the Transportation and Infrastructure Committee could result in disallowing oral or written testimony or both for failure to submit advance testimony. The Small Business Committee’s rules indicate that failure to comply with either requirement could result in disallowing oral or written testimony or both.

The Armed Services Committee allows a chair, with the concurrence of the appropriate ranking minority member, to exclude a witness if the witness’s testimony has not been timely submitted.<sup>75</sup> A rule of the Foreign Affairs Committee allows a witness who is not a federal official to seek waiver of advance submission of testimony through a written explanation. In the absence of the explanation, the witness is “released” from testifying unless a majority of the committee votes to accept the witness’s testimony.

## Questioning Witnesses

Rule XI, clause 2(j)(2) provides a principal and two alternative committee procedures for questioning witnesses. The principal procedure is to allow each committee member five minutes to question a witness or panel of witnesses until each member has had five minutes’ time for questioning. Under this paragraph, a committee may also adopt a rule or motion that allows a specified number of committee members longer than five minutes to question a witness, with time allocated equally between the majority and minority and not in total to exceed an hour. This paragraph also allows committees to adopt a rule or motion permitting committee staff to question a witness, with time allocated equally between the majority and minority and not in total to exceed an hour. This additional time for questioning by committee members or staff is referred to as “extended questioning” or “extended time for questioning.”

Committees also use unanimous consent to achieve additional variations on how members or staff question witnesses. In addition, a committee member, once recognized, might also yield to another committee member to allow that individual to jump ahead of other members in asking questions or to have more than one opportunity to question a witness or panel of witnesses.

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(...continued)

submitting statements must disclose “clients, persons or organizations on whose behalf the witness appears.”

<sup>74</sup> The rules of the Ways and Means Committee further state that written statements need to conform to committee formatting requirements, and that failure to conform could result in a statement being rejected for inclusion in the printed hearing record.

<sup>75</sup> A rule of the Armed Services Committee also requires witness statements to be distributed to committee or subcommittee members 24 hours in advance. In the event the statement contains classified information, the statement is made available to members 24 hours in advance in a committee room.

In practice, witnesses make brief oral statements—customarily five minutes—prior to questioning. These oral statements are intended to provide a summary of their written statements. Most committees provide for this practice in their rules.<sup>76</sup>

All committees have explicitly or implicitly adopted the House rule allowing committee members five minutes each to question witnesses, and nearly all committees with a rule include the provision that five minutes for each member is allowed until all members have had one opportunity to question witnesses.<sup>77</sup> While in practice many committees do not limit the chair and ranking minority member to five minutes for questioning witnesses, only the Armed Services Committee explicitly exempts these committee leaders from the time limit.

### **Subsequent Rounds of Questioning and Extended Questioning**

Committee rules on subsequent rounds of questioning and on extended times for questioning vary. The rules for the Agriculture, Armed Services, and Foreign Affairs Committees describe additional rounds of questioning. The Agriculture Committee's rules state that the chair of the committee or a subcommittee may allow for additional rounds after giving consideration to the importance of the subject matter and the length of time available. The rules for the Armed Services Committee give the chair of the committee or subcommittee discretion over additional rounds of questioning. The rules of the Foreign Affairs Committee suggest that rounds of questioning continue.

With regard to extended time for questioning witnesses, committees' rules allow the chair to consult with the ranking minority member to permit a period of extended questioning for members or for staff, or require the chair to obtain the concurrence of the ranking minority member, or permit the committee by motion to make a decision on extended questioning. A number of committees include two or more of these options in their rules. A few committees in their rules reference the House rule, and a few committees' rules make no provision for extended questioning of witnesses.

### **Recognition to Question Witnesses**

The order in which committee members are recognized to speak is addressed in many committees' rules. Ten committees explicitly give precedence to chairs and ranking minority members. Seven committees' rules require recognition by seniority of the members present when the chair convenes a hearing. Nine committees' rules base their recognition after a hearing commences on order of arrival.

Ten committees' rules explicitly require that the chair to alternate recognition to question witnesses between the majority and minority, but some of these same committees' and other committees' rules require the chair to take into consideration the ratio of majority to minority

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<sup>76</sup> Variations, however, appear in committees' rules. A Natural Resources Committee rule allows the chair after consultation with the ranking minority member to extend time for a witness's summary of his or her testimony to more than five minutes. Another rule allows the chair, with the committee's approval, to waive oral testimony of any witness who submitted written testimony. A rule of the Science, Space, and Technology Committee allows the chair to extend the time for a witness to summarize his or her testimony. Rules of the Agriculture and Foreign Affairs Committees give discretion to the chair to set a time limit.

<sup>77</sup> A rule of the Veterans' Affairs Committee allows the chair to seek unanimous consent to waive the five-minute rule for a member. A rule of the Oversight and Government Reform Committee requires questions to witnesses to be relevant to a hearing's subject matter. The chair is authorized to rule on the relevance of questions. The Committees on Natural Resources and Transportation and Infrastructure have similar rules.

members in recognizing members. Most of these rules state or suggest that the chair should consider the majority-minority ratio on the committee in order to not disadvantage the majority.

New committee members on a large committee can be advantaged or disadvantaged by committee recognition rules.

## Questions for the Record

At hearings, committee members may ask permission to submit questions for the record to one or more witnesses, or the chair may make an announcement concerning questions for the record. A rule of the Energy and Commerce Committee provides a process for questions for the record for all hearings. A provision in the rule requires members to submit questions to the committee chair within 10 business days. The rule of the Homeland Security also requires questions for the record to be submitted in 10 business days. A rule of the Science, Space, and Technology Committee limits committee members to two weeks from the date of a hearing to submit questions for the record. A rule of the Natural Resources Committee requires materials submitted for inclusion in a hearing record to address the hearing's subject matter and to be submitted to the clerk within ten business days of the last hearing day.<sup>78</sup>

## Minority Witnesses

Rule XI, clause 2(j)(1) provides the minority a right to call witnesses of its own choosing. If a committee has held a hearing, a majority of minority committee members may request of a chair, before completion of the hearing, a day of committee hearings to call their witnesses to receive testimony on the same subject matter. The chair must comply with the request, but he or she is not constrained in setting the day or time of the hearing.<sup>79</sup> Nearly all committees repeat this House rule in their own rules.

In practice, a committee majority and minority normally negotiate to include minority witnesses as individual witnesses or on panels, obviating the minority's need to resort to their right under House rules. The majority and minority normally find cooperation to be beneficial to each side. The majority through cooperation can prevent its schedule from being changed. The minority normally finds it preferable to have its perspective represented at a regularly scheduled hearing than clustered at a perhaps inconvenient time and to be able to present another perspective to contrast with those of majority witnesses.<sup>80</sup> When the House and the presidency are controlled by different parties, a committee majority sometimes seeks to count administration witnesses as minority witnesses, which the minority resists.

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<sup>78</sup> A rule of the Foreign Affairs Committee limits the "extraneous material" that will be included in the committee's printed hearings, except as agreed to by the chair and ranking minority member of the committee or of the relevant subcommittee.

<sup>79</sup> By rule, the chair of the Financial Services Committee must obtain the concurrence of the ranking minority member in determining the date, time, and location of this hearing.

<sup>80</sup> A rule of the Education and the Workforce Committee states: "The minority party may waive this right by calling at least one witness during a Committee hearing...." A rule of the Small Business Committee limits the size of panels of non-governmental witnesses to four, with the ranking minority member entitled to select one witness. These provisions are waived for hearings in conjunction with Small Business Week, with the chair and ranking minority member consulting on arrangements. For further explanation of the House rule, see CRS Report RS22637, *House Committee Hearings: The "Minority Witness Rule"*, by Christopher M. Davis.

## Closing a Hearing Based on a Witness's Testimony

Rule XI, clause 2(g)(2) applies the same requirements on open and closed committee sessions to hearings as it applies to committee business meetings<sup>81</sup> (discussed above at “Open and Closed Meetings” under “Scheduling Committees’ Meetings and Hearings”), with a difference concerning testimony that might defame a person: If it is asserted *by a committee member* that testimony may “tend to defame, degrade, or incriminate *any person*” (*emphasis added*) or *by a witness* that evidence may “tend to defame, degrade, or incriminate *the witness*” (*emphasis added*), the committee makes a determination in executive session under Rule XI, clause 2(k)(5) of that assertion by a majority vote, the number of members required under committee rules for the receipt of testimony being present. If the vote determines that the testimony would tend to defame, degrade, or incriminate any person, the testimony must be received in executive session. If the committee determines, a majority being present, that the testimony will not tend to defame, degrade, or incriminate any person, then the testimony must be received in open session.

Clause 2(k)(5) also requires that a committee allow a witness to voluntarily appear, and that a committee must receive and dispose of requests from a witness to subpoena additional witnesses.

Clause 2(k)(7) protects testimony received in executive session. Only by a vote of the committee, a majority being present, may such testimony be released to the public. A witness may also submit a “brief and pertinent” written sworn statement for inclusion in the record. Whether to accept such a statement, and the determination of its pertinence, is within the sole discretion of the committee (clause 2(k)(8)).

## Subpoenas

Rule XI, clause 2(m)(1) and (3) authorizes committees and subcommittees to issue subpoenas for the attendance of witnesses and the production of documents.<sup>82</sup> Clause 2(m)(3) requires authorization by a committee or subcommittee, “a majority being present.”<sup>83</sup> (See also “Meetings” under “Quorum Requirements”, above.) Unless otherwise provided in their rules, a quorum of one-third is required to debate a subpoena, under Rule XI, clause 2(h)(3).

Rule XI, clause 2(m)(3) also allows committees to adopt rules to delegate the authorization and issuance of subpoenas to a committee’s chair “under such rules and under such limitations as the committee may prescribe.” Many committees in their rules have delegated authority to issue subpoenas to their chair, but have imposed requirements for consultation or notification on chairs that vary from committee to committee. This same subparagraph requires subpoenas to be signed by the chair or a member designated by the committee.

Rule XI, clause 2(m)(3)(B) allows a committee or subcommittee to designate another return than at a meeting or hearing. Clause 2(m)(3)(C) allows enforcement of a subpoena only as authorized or directed by the House.

If a committee meets to consider a subpoena, it meets in a markup session, and members may offer amendments and motions, make points of order, and engage the procedures and procedural

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<sup>81</sup> Provisions of paragraph (g) exempt the Ethics Committee from several requirements of this paragraph.

<sup>82</sup> House Rule XI, cl. 2(k)(5) and (6) allows a committee to receive and dispose of requests to subpoena additional witnesses, as requested by a witness or by others, including committee members.

<sup>83</sup> House Rule XI, clause 2(m)(3)(A)(ii), however, requires a majority of members of a subcommittee of the Ethics Committee to vote to authorize and issue a subpoena.

strategy that could occur in a markup of legislation. The House Office of General Counsel maintains standard forms related to subpoenas to assist committees, although some committees, such as Oversight and Government Reform, have long experience with subpoenaing witnesses and documents from federal government officials and agencies and from outside of government.

## Explanation of Table 4. Authorizing Subpoenas, House Committee Rules, 114<sup>th</sup> Congress

**Table 4** compares committee rules in the 114<sup>th</sup> Congress on whose authority a subpoena may be authorized and issued and on notifying all members of a committee that a subpoena has been issued. Committees are listed in alphabetical order in the left column, with the Permanent Select Committee on Intelligence appearing last. The first three rows of the headings contain key terms describing committees' rules, as explained immediately below. A check in a box indicates that that committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject, although a footnote may appear in an otherwise empty box to explain a committee rule different from the choices exercised by other committees. Certain checks are footnoted to offer additional detail on a particular committee's rule. In some cases, a single footnote is used to offer additional detail on a rule that appears in more than one committee's rules.

The following list explains the headings in **Table 4**:

- Committee/Subcommittee by Majority Vote—a committee or subcommittee may issue a subpoena by a majority vote.
- Chair—indicates under what conditions a chair may issue a subpoena:
  - On Own Initiative—a chair may use his or her discretion in authorizing subpoenas, subject to any conditions in the committee's rules.
  - Ranking Minority Member—indicates the role of a ranking minority member in allowing the chair to issue a subpoena:
    - Concur—the ranking minority member must concur with the chair before a subpoena is issued.
    - Consulted—the chair must consult with the ranking minority member before issuing the subpoena.
  - Three Days—a chair may issue a subpoena only when the House has adjourned for more than three days.
- Notification to Committee (as soon as practicable)—a chair shall notify the committee as soon as practicable that a subpoena has been issued.

**Table 4. Authorizing Subpoenas, House Committee Rules, 114<sup>th</sup> Congress**

By Committee Decision or by Chair's Authority, and Notification to the Committee

Committee	Committee/Subcommittee by Majority Vote	Chair				Authorized To Issue Subpoena			Notification to Committee (as soon as practicable)
		On Own Initiative	Ranking Minority Member		Three Days	Chair	Member Designated by Chair	Member Designated by Committee	
			Concurs	Is Consulted					
Agriculture	✓ <sub>a,b</sub>	✓		✓ <sub>c</sub>		✓		✓	
Appropriations	✓ <sub>d</sub>					✓		✓	
Armed Services	✓ <sub>e</sub>					✓		✓	
Budget	✓ <sub>d,f</sub>					✓	✓		
Education and the Workforce	b	✓		✓ <sub>g</sub>		✓			✓ <sub>h</sub>
Energy and Commerce	b	✓		✓ <sub>i</sub>		✓			✓ <sub>j</sub>
Ethics	✓ <sub>k</sub>					l			
Financial Services	b	✓		✓ <sub>m</sub>		✓		✓	
Foreign Affairs	✓	✓		✓		✓		✓	
Homeland Security	b	✓	n	✓ <sub>g</sub>		✓			✓ <sub>j</sub>
House Administration	✓ <sub>d,f</sub>					✓		✓	
Judiciary	✓	✓		✓ <sub>o</sub>		✓		✓	
Natural Resources	✓	✓			✓	✓		✓	

Committee	Committee/Subcommittee by Majority Vote	Chair				Authorized To Issue Subpoena			Notification to Committee (as soon as practicable)
		On Own Initiative	Ranking Minority Member		Three Days	Chair	Member Designated by Chair	Member Designated by Committee	
			Concurs	Is Consulted					
Oversight and Government Reform	b	✓				✓			
Rules	✓	✓			✓	✓		✓	
Science, Space, and Technology	b	✓				✓			
Small Business	✓ <sup>b,p</sup>								
Transportation and Infrastructure	✓	✓ <sup>q</sup>		✓		✓		✓	✓
Veterans' Affairs	✓								
Ways and Means	b	✓				✓			
Intelligence	✓ <sup>b</sup>	✓		✓		✓		✓	

**Source:** Prepared by the Congressional Research Service based on a review of House committee rules, 114<sup>th</sup> Congress.

**Notes:**

- a. A subcommittee investigation may be initiated only after consultation with the committee chair or by a majority of the committee.
- b. The committee's rules do not explicitly address subcommittee subpoenas.
- c. The chair is directed by committee rule to consult the ranking minority member at least 48 hours in advance of a subpoena being issued under the chair's authority.
- d. The power to authorize and issue subpoenas may be delegated to the chair pursuant to such rules and under such limitations as the committee may prescribe.
- e. Concurrence of the full-committee chair and consultation with the ranking minority member are required for a subpoena authorized by a subcommittee. A subpoena may be issued in the course of an investigation only when the investigation was authorized by a majority vote of the committee or a subcommittee, a majority being present.
- f. Committee has no subcommittees.

- g. The chair, to the extent practicable, should consult with the ranking minority member at least 24 hours in advance of issuing, excluding Saturdays, Sundays, and federal holidays.
- h. Notification must be in writing.
- i. The chair, to the extent practicable, should consult with the ranking minority member at least 72 hours in advance of issuing.
- j. Notification must occur no later than one week after issuance of a subpoena.
- k. Investigative subcommittees, by a majority vote, may authorize a subpoena for witnesses or documents. Unless the full committee otherwise provides, the chair and ranking minority member must issue the subpoena upon request of the subcommittee. Adjudicatory subcommittees may authorize and issue subpoenas. A respondent or counsel may also apply to the adjudicatory subcommittee for the issuance of subpoenas for the appearance of witnesses or the production of evidence.
- l. The chair and ranking minority member together issue subpoenas in behalf of the committee and investigative subcommittees. The committee rule permitting adjudicatory subcommittees to authorize subpoenas does not indicate who may issue them.
- m. The chair should notify the ranking minority member at least 48 hours in advance of authorizing and issuing. If exigent circumstances prevent 48 hours' notice, the chair must provide notice "as soon as possible."
- n. To include provisions in a subpoena to prevent the disclosure of the committee's demands, the chair must obtain the concurrence of the ranking minority member or the committee's approval.
- o. The chair is directed by committee rule to consult the ranking minority member at least 2 "business days" in advance of a subpoena being issued under the chair's authority, and must provide the ranking minority member with a "full copy" of the subpoena, including "any proposed document schedule." This requirement may be waived if "an emergency does not reasonably allow for advance written notice."
- p. The requirement of a majority vote by the full committee may be waived by the ranking minority member.
- q. If a specific request for a subpoena has not previously been rejected by the committee or a subcommittee, the committee chair, after consulting the ranking minority member, may authorize and issue the subpoena.
- r. The chair may issue a subpoena when the House is out of session for more than "three legislative days," upon consultation with the ranking minority member.



## Oversight

Committees have both legislative and oversight jurisdiction. The former refers to the authority of a committee to report legislation on subject matter. The latter refers to the authority to conduct oversight on subject matter. Although oversight jurisdiction may be the product of a specific legislative enactment, it also accrues where committees have responsibilities for broad subject areas. Hence, overlaps in oversight jurisdiction among committees are more likely to occur than overlaps in legislative jurisdiction.<sup>84</sup>

## Authority

Rule X, clauses 2 and 3 assign oversight responsibilities to standing committees, and clause 4 assigns “additional functions” to four committees. Clause 2 requires committees on a “continuing basis” to study and review the execution of laws, departmental and agency organization, conditions that might necessitate “new or additional legislation,” and “future research and forecasting.” Clause 2(c) specifically allows committees to study the potential impact of tax policies on subjects within their jurisdiction.<sup>85</sup>

Clause 3 assigns “special” oversight functions to committees, generally clarifying that the identified committees’ oversight (not legislative) jurisdiction extends to broad subject matter that is not specifically named in their jurisdictional statements in Rule X, clause 1. Thirteen committees are named. For example, the Committee on Natural Resources is given a special oversight function for “laws, programs, and Government activities relating to Native Americans.”

Clause 4 assigns “additional functions” to four standing committees: Appropriations, Budget, Oversight and Government Reform, and House Administration. These additional functions include directives or authority, or both, not granted elsewhere in House rules. For example, the House Administration Committee is directed to provide policy direction to the House inspector general; to conduct oversight of House officers (the clerk, sergeant-at-arms, chief administrative officer, and inspector general);<sup>86</sup> to conduct oversight of the services provided to the House by the Architect of the Capitol (except those within the jurisdiction of the Committee on Transportation and Infrastructure); to accept gifts in behalf of the House, subject to named conditions, and to promulgate regulations for this activity; and to establish standards for making House and committee documents available in electronic formats. The chair and ranking minority member of the committee are also under this clause given authority to approve or disapprove proposed settlements by employing offices of the House under the Congressional Accountability Act of 1995.<sup>87</sup>

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<sup>84</sup> For an introduction to congressional oversight, see CRS Report R41079, *Congressional Oversight: An Overview*, by Walter J. Oleszek. For a detailed guide to conducting oversight, see CRS Report RL30240, *Congressional Oversight Manual*, by Todd Garvey et al. See also, above, “Hearings Procedures” and “Subpoenas.”

<sup>85</sup> House Rule X, cl. 11(b)(3) and (4) states that this clause, on the jurisdiction of the Intelligence Committee, does not restrict other committees from study of intelligence or intelligence-related activity affecting a matter within their jurisdiction or from obtaining intelligence products related to a matter within their jurisdiction.

<sup>86</sup> Additional reporting requirements for these House officers appear in House Rule II.

<sup>87</sup> House Rule X, cl. 11(c) imposes additional duties on the Intelligence Committee, and Rule X, cl. 11(g)(4) assigns responsibility to the Ethics Committee to investigate unauthorized disclosures of intelligence.

House Rule XI, cl. 3(a)(1) also authorizes the Ethics Committee to recommend administrative actions to establish or enforce standards of official conduct, and clause 3(a)(6) directs the committee to conduct annual ethics training.

Clause 4 also directs every standing committee to study appropriations made for programs and activities of the federal and District of Columbia governments. The stated purpose of this activity is to ensure appropriations are made annually and consistent with program objectives. In instances where no appropriation is made, a committee is to determine whether program changes are suggested.

Rule XI, clause 1(b) authorizes committees to conduct “investigations and studies” at any time.<sup>88</sup> Rule X, clause 4(c)(3) provides deposition authority to the Oversight and Government Reform Committee. Other committees generally receive authority to conduct depositions through resolutions or another means. The 114<sup>th</sup> Congress rules package, H.Res. 5, provided deposition authority for the first session of the Congress to the Committees on Energy and Commerce, Financial Services, Science, Space, and Technology, and Ways and Means.<sup>89</sup>

Rule XI, clause 2(n), (o), and (p) contain additional oversight directives to committees. Clause 2(n) directs each standing committee, or a subcommittee of a committee, to hold a hearing within each 120 days (or three times a year) on “waste, fraud, abuse, or mismanagement” in federal programs authorized by a committee, specifically on the “most egregious instances” as documented by a department or agency inspector general or the Government Accountability Office (GAO). Clause 2(o) requires at least one hearing in a session of Congress by a committee or one of its subcommittees when a committee receives from an agency auditor “disclaimers of agency financial statements” of an agency within its jurisdiction. Clause 2(p) requires at least one hearing by a committee or one of its subcommittees when GAO has identified a federal program within the committee’s jurisdiction as at high risk for waste, fraud, or mismanagement.

## Organization, Planning, and Subsequent Reporting

Rule X, clause 2(b)(2) requires standing committees of more than 20 members, other than the Appropriations Committee, to establish an oversight subcommittee or to require its subcommittees to conduct oversight.<sup>90</sup>

Each standing committee is also directed by February 15 of the first session of a Congress to adopt an oversight plan for that Congress, meeting in open session with a quorum present. Clause 2 details attributes of oversight plans. Once adopted, oversight plans are submitted to the Committee on Oversight and Government Reform and the Committee on House Administration. The Committee on Oversight and Government Reform is directed to consult the Speaker, majority leader, and minority leader before reporting committees’ oversight plans to the House, with any recommendations by the Oversight and Government Reform Committee or the House leadership “to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.”

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<sup>88</sup> Several committees have rules that require a majority vote of the committee or subcommittee or permission of the committee chair before the committee or a subcommittee undertakes an investigation.

<sup>89</sup> Section 3(a) of H.Res. 5, agreed to in the House January 6, 2015. The standing order was extended through the second session in Sec. 2 of H.Res. 579, agreed to in the House January 6, 2016. The original order authorized the chair of the Rules Committee to issue and print in the *Congressional Record* regulations for the exercise of this authority. See Rep. Pete Sessions, Extensions of Remarks, “Procedures for the Use of Staff Deposition Authority,” *Congressional Record*, vol. 161 (January 7, 2015), p. E21.

<sup>90</sup> House Rule X, cl. 2(e) also allows the Speaker, when authorized by the House, to appoint “special ad hoc oversight committees” to review specific subjects within the jurisdiction of two or more standing committees. See CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by Michael L. Koempel. See also CRS Report RL34293, *Resolving House Committee Jurisdictional Disputes: A Survey of Options*, by Walter J. Oleszek (out of print; available from Dr. Oleszek).

Rule XIII, clause 3(c)(1) requires committees to include oversight findings and recommendations in reports on legislation.

Rule XI, clause(1)(d) requires each committee, by January 2 of odd-numbered years, to file with the House a so-called activities report for the preceding two-year Congress. This rule also authorizes the chair of a committee to file an activities report after the sine die adjournment of Congress, or after December 15, whichever occurs first, without the committee's approval, provided that the report was available to committee members for at least seven calendar days, and it includes any committee member's supplemental, minority, additional, or dissenting views.

The activities to be reported are those undertaken by the committee, with legislative and oversight activities appearing in separate sections. The requirements for the oversight section attempt to provide a measure of accountability by requiring a committee to summarize its oversight plan and additional oversight activities, and to summarize actions and recommendations made pursuant to the plan and the additional activities. This section must also list hearings held pursuant to the directives in Rule XI, clause (2)(n), (o), and (p), as explained just above (see "Authority").

## **Committee Procedure for Oversight Reports**

Rule XI, clause 1(b) contains four procedures applicable to oversight and investigative reports. First, it allows such a report to be considered as read if it has been available to committee members for 24 hours or longer, excluding Saturdays, Sundays, and holidays if the House was not in session. In this circumstance, such a report would not have to be read for a committee to consider it. Second, such a report conducted by more than one committee may be filed jointly with the House so long as each committee individually complied with requirements for approving and filing the report. Third, such a report may be filed with the clerk of the House after the sine die adjournment of a session of Congress. Fourth, a committee filing a report after the sine die adjournment of a session of Congress must have allowed committee members, who gave timely notice, seven calendar days (rather than the otherwise required two calendar days) to file supplemental, minority, additional, or dissenting views to be included in the report. (See also, below, "Party and Staff Reports" under "Committee Records.")

## **Referral of Legislation**

### **Jurisdiction**

Committee jurisdiction is determined by a variety of factors. Paramount is Rule X, which lists the subject matter within the jurisdictional purview of each standing committee. These jurisdictional statements, however, are very broadly worded and are the product of an era in which governmental activity was not so extensive and relationships among policies not so intertwined as now. Most of Rule X was drawn from 19<sup>th</sup> and early 20<sup>th</sup> century precedents and codified in the Legislative Reorganization Act of 1946. Although the rule underwent modest revisions in 1974 and 1980, as well as more extensive changes in the 104<sup>th</sup> and 109<sup>th</sup> Congresses, topic omissions and a lack of clarity, as well as overlaps among committees in areas of jurisdiction, still exist. Accordingly, the formal provisions of Rule X are supplemented by an intricate series of precedents and informal agreements governing the referral of legislation.

In general, based on precedent, once a measure has been referred to a given committee, it is within the jurisdiction of that committee, and the committee is responsible for any subsequent legislative action on it. If the measure is enacted into law, amendments to the law are presumed to be within the originating committee's jurisdiction. Relatedly, bills that are more comprehensive

than the measure they amend or supersede are presumed to be within the jurisdiction of the committee reporting the more comprehensive measure. The resultant accretion of subject responsibility may broaden the range and scope of jurisdictional subjects assigned to each committee.

Formal agreements, drafted among committees to stipulate their understanding of jurisdictional boundaries, are also used. House parliamentarians, in advising the Speaker, have generally considered agreements as authoritative when drafted with the assent of the Speaker and the guidance of the Office of the Parliamentarian and when they are signed by the chairs of the relevant committees of jurisdiction.<sup>91</sup>

Legislative jurisdiction may generate conflict between committees. Committees carefully monitor legislative referrals and committee reports to ascertain any encroachment on their jurisdiction. A committee might seek a referral whenever it believes a new measure or a reported measure has provisions that fall within its jurisdiction or seek the removal of offending provisions from a measure under another committee's consideration.<sup>92</sup> Committees might also formally waive a referral with the understanding that the waiver does not detract from their jurisdiction or from the committees' participation in later congressional action, such as a conference committee.<sup>93</sup>

## Referral

The Speaker refers legislation and other matters to committees pursuant to authority granted in Rule XII.<sup>94</sup> The House might also by resolution or motion refer legislation or other matters, but referrals are made almost exclusively by the Speaker. Pursuant to Rule XII, clause 2, the Speaker—

- refers legislation and other matters pursuant to the jurisdictional statements of Rule X and House precedents;
- refers a piece of legislation or other matter to all committees with jurisdiction over one or more provisions of the legislation or matter so that to the “maximum extent feasible” each committee may consider provisions within its jurisdiction;<sup>95</sup>
- designates a committee of primary jurisdiction, unless “extraordinary circumstances justify” two or more committees acting as though primary;
- may refer a measure or matter sequentially to additional committees when it is introduced (“additional initial referral”) or when it has been reported (“sequential referral”);
- may refer portions of a measure or matter to additional individual committees (“split referral”);

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<sup>91</sup> For additional information, see CRS Report RL34293, *Resolving House Committee Jurisdictional Disputes: A Survey of Options*, by Walter J. Oleszek (out of print; available from Dr. Oleszek). See also CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by Michael L. Koempel.

<sup>92</sup> See CRS Report 98-175, *House Committee Jurisdiction and Referral: Rules and Practice*, by Judy Schneider.

<sup>93</sup> See, for example, the exchange of letters between the chairs of two committees and the chair of the Oversight and Government Reform Committee, to which H.R. 1163 had been referred and which had reported it. The chairs of the two committees carefully waived sequential referral, to which they believed their committees were entitled based on Rule X. “Federal Information Security Amendments of 2013,” exchange of letters between committee chairs with jurisdictional claims, *Congressional Record*, daily edition, vol. 159 (April 16, 2013), pp. H2041-H2042.

<sup>94</sup> The House parliamentarian normally acts in behalf of the Speaker and refers bills, resolutions, and other matters.

<sup>95</sup> See House Rule X, cl. 1 and the accompanying parliamentarian's notes in the *House Rules and Manual*.

- may refer to an ad hoc committee approved by the House;
- may refer with time limits; and
- may “make such other provision as may be considered appropriate.”

When a measure is introduced and referred to more than one committee, the referral language often includes the phrases “in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned” and “for a period to be subsequently determined by the Speaker.” The former phrase places provisions of a measure that are clearly outside a committee’s jurisdiction outside the committee’s ability to report the measure with amendments to those provisions; a point of order could lie against amendments recommended by a committee to provisions outside its jurisdiction.

The latter phrase allows the Speaker at a later time to impose time limits on any or all of the committees that received a referral. In some instances, when the committee of primary jurisdiction has reported, the Speaker has discharged all other committees that received a referral. In other instances, the Speaker, at the time the committee of primary jurisdiction reported, has imposed a time limit on the other committees that received a referral. For example, when the Committee on Agriculture reported H.R. 1947 in the 113<sup>th</sup> Congress on May 29, 2013, the Speaker sequentially referred the legislation to the Committees on Foreign Affairs and on the Judiciary and imposed a time limitation of June 7, 2013, on their consideration. He later extended the time for their consideration to June 10. The Committee of the Judiciary reported the measure, while the Committee on Foreign Affairs was discharged from further consideration of the measure.

As an example of a *House referral decision*, the House on June 19, 2002 (107<sup>th</sup> Congress), agreed to H.Res. 449, creating a Select Committee on Homeland Security. The resolution authorized the Speaker to refer a bill—creating a homeland security department to be introduced by the majority leader—to committees of the House; subject to any time limitation imposed by the Speaker, the resolution directed these committees to report their recommendations to the select committee. The select committee was directed to report legislation to the House. When the majority leader introduced H.R. 5005 on June 24, 2002, it was referred to 12 committees for a period set by the Speaker as not later than July 12.

The other clauses of Rule XII proscribe the introduction of measures for certain purposes; govern the introduction or referral of petitions, memorials, private bills, and executive communications; and regulate the sponsorship of legislation.

Committees operate within the Speaker’s, or House’s, referral decisions as well as House rules.

## House Rules and Committee Markups

House rules contain few rules on committee markups and do not state which of the chamber’s rules are applicable to committees and their subcommittees in markups.<sup>96</sup> House rules contain different sets of procedures that the House uses under different circumstances to consider various bills and resolutions. It would be not be possible for all of these procedures to be applicable to

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<sup>96</sup> For rules pertaining to the business of the Intelligence Committee, see House Rule X, cl. 11; for those pertaining to the Ethics Committee, see Rule XI, cl. 3.

committees or applicable at the same time. It would also not be possible for committees to adopt rules that avoid inconsistency with all House procedures.<sup>97</sup>

The House parliamentarian, however, has provided important guidance relevant to committee markups in the parliamentarian's notes to Section XXX of *Jefferson's Manual*: "The procedures applicable in the House as in the Committee of the Whole generally apply to proceedings in committees of the House of Representatives...."<sup>98</sup> The phrase "House as in the Committee of the Whole" refers to a distinctive set of procedures that the House may, but rarely does, use to consider measures. These procedures are not listed in the House's rules; rather, they are a matter of well-established precedent. For example, the motion for the previous question is available in the House and in the House as in the Committee of the Whole, although it is not available in the Committee of the Whole. As the phrase suggests, the procedures applicable in the House as in the Committee of the Whole combine elements of the procedures that apply in the House and those that are followed in Committee of the Whole House on the state of the Union (the Committee of the Whole).

Although no House rule specifically requires committees to follow these procedures in marking up legislation, committees typically do follow them—unless a committee agrees by unanimous consent to diverge from these procedures. To the extent feasible or applicable, House rules and precedents on reading measures, amending, voting, and other aspects of legislative procedures, including the authority of the presiding officer, are employed in committee and subcommittee markups.<sup>99</sup>

There are in addition some well-established procedures in committees that differ from the procedures of the House as in the Committee of the Whole. For example, in the House as in the Committee of the Whole, a measure is considered as read and open to amendment at any point.<sup>100</sup> However, the same parliamentarian's notes that indicate that the procedures of the House as in Committee of the Whole "generally apply" in committee proceedings also state, "except that a measure considered in committee must be read (by section) for amendment...."<sup>101</sup>

Based on the parliamentarian's guidance and House rules, the key procedures applicable to House committees in the markup process are then as follows:

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<sup>97</sup> See CRS Report 98-312, *House Rules Governing Committee Markup Procedures*, by Judy Schneider; and CRS Report 98-168, *House Committee Markup: Preparation*, by Judy Schneider. For an introduction to House committee markups, see CRS Report RL30244, *The Committee Markup Process in the House of Representatives*, by Judy Schneider; and CRS Report RS20308, *House Committee Markups: Commonly Used Motions and Requests*, by Judy Schneider. For a manual on conducting a House committee markup, see CRS Report R41083, *House Committee Markups: Manual of Procedures and Procedural Strategies*, by Michael L. Koempel and Judy Schneider.

<sup>98</sup> In *House Rules and Manual*, §427, p. 224. In addition, the parliamentarian comments in the notes to Rule XI, cl. 2(a): "Many of the procedures applicable to committees derive from Jefferson's Manual, which governs the House and its committees in all cases to which it is applicable...." *House Rules and Manual*, §792, p. 553. Regarding the relationship of *Jefferson's Manual* to House rules, Rule XXVIII states: "... the rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House." See also *House Practice*, ch. 11, §18, p. 275.

<sup>99</sup> In the commentary accompanying Rule XI, clause 2(a)(1), the House parliamentarian explains that "a point of order does not ordinarily lie in the House against consideration of a bill by reason of defective committee procedures occurring prior to the time the bill is ordered reported to the House...." *House Rules and Manual*, §792, p. 553. See also *House Practice*, ch. 11, §15, p. 271.

<sup>100</sup> *House Practice*, ch. 2, §15, p. 31.

<sup>101</sup> *Jefferson's Manual*, §XXX, in *House Rules and Manual*, §427, p. 224.



- **First Reading.** A measure is first read in full. Pursuant to Rule XI, clause 1(a)(2), this first reading may be waived by a privileged, nondebatable motion,<sup>102</sup> if printed copies of the measure are available.<sup>103</sup>
- **Reading Sections (or Paragraphs) of a Measure.** A section (or paragraph) of a measure must be read verbatim before committee members offer amendments to it. This reading may be waived *only* by unanimous consent.<sup>104</sup>
- **Reading a Measure for Amendment.** A measure must be read for amendment one section (or, if so organized, one paragraph) at a time, unless the committee agrees by unanimous consent to another reading procedure. Members offer their amendments to each section of a measure after that section has been read and before the next section is read. A committee may consider a measure as open for amendment in another way (e.g., by title or at any point or by use of an amendment roster) *only* by unanimous consent.
- **Reading Amendments.** Each amendment must be read before debate on it begins. Reading of an amendment may be waived *only* by unanimous consent.<sup>105</sup>
- **Debate.** All debate on amendments and the legislative vehicle is conducted under the five-minute rule.<sup>106</sup> The chair normally entertains parliamentary inquiries and debate on points of order at his or her discretion. Discussion under reservations of the right to object to a unanimous consent request is by practice normally brief, but is not limited by the five-minute rule.
- **Motion to Limit or Close Debate.** A committee member may move to limit or close debate on a pending section (and all amendments thereto) or on a pending amendment (and all amendments thereto). This motion may provide that debate end immediately, at a certain time, or after a specified number of minutes or hours. A motion is not in order to close debate on an entire measure if any portion of the measure has not yet been read.

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<sup>102</sup> A motion is a proposal to take a procedural action. The House decides a nondebatable motion without debate. Privilege is an attribute of a motion (or other proposition) that gives it priority status for consideration; this attribute may have been granted by a House rule or precedent or in another manner.

<sup>103</sup> For a succinct explanation of markup vehicles, see CRS Report 98-188, House Committee Markup: Vehicle for Consideration and Amendment, by Judy Schneider. It is largely the decision of the committee chair whether to mark up legislation on a subject and what legislative vehicle to use. The majority party leadership is also often influential in this decision as it considers the agenda of the House and the sentiments of Members of the majority party. Committee rules sometimes are a factor as well for certain legislative initiatives. For example, a rule of the Foreign Affairs Committee requires measures expressing the sense of the House or the sense of the Congress to have 25 cosponsors, 10 of whom are committee members, before the measure might be scheduled for consideration. The Oversight and Government Reform Committee has one rule that precludes the committee from the consideration of measures on commemorative stamps and semipostal issues and requires the committee to handle the designation of postal facilities to minimize time required by the committee or the House. Several committees reiterate the House rule against the consideration of commemorative measures. The Veterans' Affairs Committee's rules establish standards for naming Veterans' Affairs facilities and require unanimity of a state's congressional delegation and the support of the state's chapters of congressionally chartered veterans organizations with a national membership exceeding 500,000.

<sup>104</sup> The Budget Committee has a rule containing a process for considering a budget resolution.

<sup>105</sup> Some committees explicitly provide for amendments to be committed to writing upon a member's demand or in advance. For a succinct explanation of the amendment process in a markup, see CRS Report 98-335, House Committee Markup: Amendment Procedure, by Judy Schneider.

<sup>106</sup> A number of committees include a five-minute rule applicable to hearings and meetings in their committee rules. Those with such a rule might also provide that members may not have additional time until all members have had five minutes, or that additional time may be had by unanimous consent.

- **Previous Question.** A nondebatable motion to close debate does precisely that: it stops the debate. It does not prevent committee members from offering additional amendments. To end debate *and* preclude further amendments, a member may move the previous question on a pending amendment and all amendments thereto. A member may also move the previous question on an entire measure (and all amendments thereto) only after the measure has been read in full.<sup>107</sup>
- **Vote to Report.** After a committee disposes of the last amendment to a measure, it votes on a motion to report the measure, together with any amendments the committee has agreed to. The committee does *not* vote on passing the measure, and amendments agreed to are *not* changes to the measure but recommendations to the House for change. A majority of a committee must be “actually present” to vote to report a measure.<sup>108</sup>

Additional sections, above, of this report also explain the conduct of committee markups. Regarding scheduling, see “Notice and Documents” and “Scheduling Subcommittee Hearings and Meetings.” Concerning markups being conducted as open meetings, see “Open and Closed Meetings” and “Media Coverage.” Regarding quorums, see “Meetings” under “Quorum Requirements.” See also, below, “Reports”

## Motions

Three motions specific to committees are authorized in Rule XI.

Rule XI, clause 1(a)(2) provides a privileged motion to recess, either recessing subject to a call of the chair within a 24-hour period or recessing day to day. The motion to recess is not debatable.

Pursuant to Rule XI, clause 1(a)(2), the first reading of a measure may be waived at a markup by a privileged, nondebatable motion, if printed copies of the measure are available.

Rule XI, clause 2(a)(3) allows committees to adopt a rule to direct the committee’s chair to offer a motion in the House under Rule XXII, clause 1 whenever the chair considers it appropriate. Such a rule provides authority for a chair at his or her discretion to initiate a request for or to agree to conference with the Senate in lieu of a specific committee authorization to a chair required by Rule XXII, clause 1. Otherwise, Rule XXII, clause 1 allows the Speaker to recognize the chair of the “primary committee” to make a motion to disagree to Senate amendments to a House proposition and to request or agree to a conference *or* to make a motion to insist on House amendments to a Senate proposition and to request or agree to conference.<sup>109</sup>

Numerous other motions and requests, based on House rules or precedents applicable to the House as in the Committee of the Whole, are available in committees. A chair and individual members might also ask for unanimous consent to take procedural actions that violate a rule or precedent; individual members might pose parliamentary inquiries to a chair; and individual members might reserve or make points of order. Motions and requests can be used to facilitate committee action, to reach agreement, or to impede or delay committee action.<sup>110</sup>

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<sup>107</sup> A rule of the Ways and Means Committee prevents the chair from recognizing a committee member from moving the previous question unless the member has advised the committee of this purpose in seeking recognition.

<sup>108</sup> House Rule XI, cl. 2(h)(1).

<sup>109</sup> A majority of committees have provided their chair with this authority. Some committees in addition provide explicitly for consultation between the chair and the ranking minority member on the selection of conferees.

<sup>110</sup> See CRS Report RS20308, House Committee Markups: Commonly Used Motions and Requests, by Judy Schneider. (continued...)



## Recess

Rule XI, clause 1(a)(2) establishes a privileged motion to recess a committee (or subcommittee) subject to the call of the chair within a 24-hour period, or to recess day to day. This motion is not debatable.

## Voting

### Obtaining a Record Vote

Rule XX, clause 1(b) states that a recorded vote in the House, when requested by a Member, will be taken if one-fifth of a quorum supports the request. There is not a specific House rule applicable to obtaining a vote in committee. Rule XI, clause 2(h)(1) states, however, that committees may not report any measure or recommendation unless a majority of the committee is actually present.

As shown in **Table 5**, sixteen committees specify the procedures to obtain a recorded vote in their rules. The Ethics Committee's rules address recorded votes. Four committees do not have a rule on obtaining a recorded vote: Homeland Security, Judiciary, Ways and Means, and Intelligence. These committees may follow the House rule, requiring a quorum to be present and the support of one-fifth of the members to obtain a recorded vote; may allow an individual member to call for a roll-call vote; or may follow another practice.

### Proxy Voting

Proxy voting in committees is prohibited by Rule XI, clause 2(f).

### Postponing Votes

Rule XI, clause 2(h)(4) authorizes each committee to adopt a rule to allow its chair to postpone proceedings to take a recorded vote on an amendment or approval of a measure and to permit a chair to resume proceedings after notice. This rule also provides that such a committee rule must allow the underlying proposition to be subject to further debate or amendment to the same extent as when the question was postponed. All but three committees (Budget, Ethics, and Rules) have adopted a rule allowing votes to be postponed, as shown in **Table 5**. Some committees' rules provide a role for the ranking minority member in the decision to postpone votes.

In practice, most committees postpone votes to allow members to vote on the House floor or, for the convenience of members, to cluster votes in committee on amendments. Because floor votes are often clustered and might therefore consume much more time than the 15 minutes that a single vote could minimally take, committee chairs typically announce when proceedings will resume in committee after chamber votes, for example, 10 minutes following the conclusion of the last floor vote. A quorum must be reestablished when the committee reconvenes.

A chair might postpone votes as a tactical move so that he or she can assemble a majority of votes on the side of the proposition that the chair is supporting. It could be that the chair wishes to

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(...continued)

See also CRS Report R41083, *House Committee Markups: Manual of Procedures and Procedural Strategies*, by Michael L. Koempel and Judy Schneider.

persuade additional committee members, to await the attendance of committee members not currently available, or to negotiate a compromise with an amendment's sponsor.

A determined minority might take tactical advantage of a recess to allow committee members to vote on the floor by not returning to committee in a timely fashion, requiring additional time for a quorum to be assembled and thereby delaying the resumption of business. They might also try to build support for their position in the interim.

## Record Keeping

Rule XI, clause 2(e)(1) requires committees to keep a record of all roll-call votes, as detailed in this paragraph. With exceptions, these records must be available for inspection by Members, staff, and the general public in the committee offices. In addition, committee votes must be posted electronically within 48 hours. The text of any amendment agreed to in committee must be posted electronically within 24 hours of its adoption (Rule XI, clause 2(e)(6)). One committee in its rules (Armed Services) provides a means for members to explain their absence from a roll-call vote. (See also, above, "Subcommittee Reporting to Its Parent Committee" under "Subcommittees.")

## Explanation of Table 5. Record Vote Procedures in Committees, House Committee Rules, 114<sup>th</sup> Congress

**Table 5** compares committee rules in the 114<sup>th</sup> Congress on calling for a record vote and on delaying further proceedings once a record vote has been demanded. Committees are listed in alphabetical order in the left column, with the Permanent Select Committee on Intelligence appearing last. The first three rows of the headings contain key terms describing committees' rules, as explained immediately below. A check in a box indicates that that committee adopted a rule or a closely related variation on it. An empty box indicates that a committee did not address that subject, although a footnote may appear in an otherwise empty box to explain a committee rule different from the choices exercised by other committees. Certain checks are footnoted to offer additional detail on a particular committee's rule. In some cases, a single footnote is used to offer additional detail on a rule that appears in more than one committee's rules.

The following list explains the headings in **Table 5**:

- Record Vote—indicates under what circumstances a recorded vote may be obtained:
  - One-fifth of the Members Present—if one-fifth of the members present request a recorded vote, assuming a quorum.
  - Upon Request of 3 or More Members—if 3 or more members request a recorded vote.
  - Upon Request from Any Member—if any member requests a recorded vote.
  - Any Member in the Absence of a Quorum—if it is determined that there is not a quorum present, then one member may request a recorded vote.
- Postponing Further Proceedings—indicates under what circumstances further proceedings may be postponed if a record vote is requested:
  - Chair—the chair may postpone further proceedings in the event a recorded vote is requested:
    - On Own Initiative—Discretion resides with the chair.

- Ranking Minority Member Consultation—the chair must consult with the ranking minority member before postponing further proceedings in the event of a record vote.
- Ranking Minority Member Concurs—the chair must obtain the concurrence of the ranking minority member before postponing further proceeds in the event of a record vote.
- No Rule—the committee does not specify a rule on this issue.

**Table 5. Record Vote Procedures in Committees, House Committee Rules, 114<sup>th</sup> Congress**

How To Obtain a Record Vote, and Authority To Postpone Proceedings in the Event a Record Vote Is Requested

Committee	Record Vote				Postponing Further Proceedings			
	1/5 of Members Present	Upon Request of 3 or More Members	Upon Request of Any Member	Any Member in the Absence of a Quorum	Chair			No Rule
					On Own Initiative	Ranking Minority Member is Consulted	Ranking Minority Member Concurs	
Agriculture	✓				✓			
Appropriations	✓				✓			
Armed Services	✓						✓ <sup>a</sup>	
Budget	✓			✓				✓
Education and the Workforce	✓			✓	✓			
Energy and Commerce	✓			✓			✓	
Ethics	<sup>b</sup>							✓
Financial Services	✓				✓			
Foreign Affairs	✓			✓	✓			
Homeland Security					✓			
House Administration			✓		✓			
Judiciary					✓			
Natural Resources	✓			✓		✓		
Oversight and Government Reform	✓				✓			
Rules			✓ <sup>c</sup>					✓
Science, Space and Technology	✓				✓			

Committee	Record Vote				Postponing Further Proceedings			
	1/5 of Members Present	Upon Request of 3 or More Members	Upon Request of Any Member	Any Member in the Absence of a Quorum	Chair			No Rule
					On Own Initiative	Ranking Minority Member is Consulted	Ranking Minority Member Concur	
Small Business			✓			✓		
Transportation and Infrastructure	✓					✓		
Veterans' Affairs	✓			✓	✓			
Ways and Means					✓			
Intelligence					✓			

**Source:** Prepared by the Congressional Research Service based on a review of House committee rules, 114<sup>th</sup> Congress.

- a. If the ranking minority member is not present, then the chair must obtain the concurrence of the most senior minority member who is present at the time.
- b. The rules for the Ethics Committee state that no voting actions on eight enumerated ethics matters may be entertained by the chair unless a quorum of the committee is present when such a motion is made. Additional requirements pertain to investigative and adjudicatory subcommittees.
- c. “No vote may be conducted on any measure or motion pending before the Committee unless a majority of the members of the Committee is actually present for such purpose.”

## Reports

The word “report” has several meanings in Congress. The chair of a committee or subcommittee or the presiding officer in the House or the Committee of the Whole might direct a clerk to *report* a measure or amendment. Depending on the parliamentary circumstances, the clerk is being directed to read the title or text of a measure or to read or designate an amendment.

At the conclusion of a committee markup, a committee member typically makes a motion to *report* the marked-up measure to the parent chamber.<sup>111</sup> Assuming that a majority is “actually present” to vote on this motion, as required by Rule XI, clause 2(h)(1), and that the motion is agreed to, the chair must promptly *report* the measure to the House by submitting it to the Clerk of the House for printing and reference to the appropriate calendar.<sup>112</sup> (See the explanation of filing adverse reports and of filing reports on privileged legislation below, “Filing.”)

“Report” may also be a noun. When a committee approves a motion to report, it normally writes a *report* explaining the measure and advocating its passage by the House with any amendment(s) recommended by the committee.<sup>113</sup> (What immediately follow are the requirements in House rules for the content of a House committee report.) *Report* is also used to designate a committee document submitted to the House on a committee investigation, study, or other activity.

## Contents

Rule XIII, clause 3 delineates many, but not all, requirements for the content of committee reports.<sup>114</sup> Clause 3 requires a report to be filed as a single volume, allowing a supplemental report only for the correction of a technical error in the main volume.<sup>115</sup> Highlights of the content requirements include—

- record votes on amendments and the motion to report;<sup>116</sup>
- oversight findings (see, above, “Organization, Planning, and Subsequent Reporting”);

<sup>111</sup> For a succinct explanation of this part of committee procedure, see CRS Report 98-267, House Committee Markup: Reporting, by Judy Schneider.

<sup>112</sup> House Rule XIII, clauses 2(b)(1) and 2(a)(1).

<sup>113</sup> House Rule XIII contemplates preparation of a written report, and Rule XIII, clause 4(a)(1) disallows the House from considering a measure or matter reported from a committee unless the written report has been available for three days, excepting Saturdays, Sundays, and holidays when the House was not in session. However, when a committee expects that the House will consider a measure under the suspension of the rules procedure, the committee might not prepare a written report. The action listed in the *Congressional Record* or Congress.gov might then show a measure’s status as having only been *ordered reported*. Since the motion in the House is to “suspend the rules,” the rules requiring a report are among the House rules suspended. See also CRS Report 98-314, Suspension of the Rules in the House: Principal Features, by Elizabeth Rybicki.

<sup>114</sup> For a fuller list, including provisions found in other rules and in laws, see CRS Report 98-169, House Committee Reports: Required Contents, by Judy Schneider. The House will on occasion also agree to standing orders on requirements for committee reports, which may be in effect for one Congress or renewed biennially to apply in more than one Congress. See, for example, the requirements for information to be included in committee reports on duplication of federal programs and on disclosure of directed rulemaking, which were contained in separate orders in the 113<sup>th</sup> and 114<sup>th</sup> Congresses’ rules package. See H.Res. 5, §3(g) and (i); resolution agreed to in the House January 6, 2015.

<sup>115</sup> House Rule XIII, cl. 3(a)2) limits a supplemental report to the correction of errors in the depiction of record votes. If so limited, a supplemental report is not subject to a layover requirement. (See “Availability,” below.)

<sup>116</sup> This provision does not apply to votes taken in an executive session of the Ethics Committee.

- new budget authority in spending bills;
- a cost estimate;<sup>117</sup>
- performance goals and objectives;
- changes to existing law, the so-called Ramseyer rule;<sup>118</sup>
- a list of unauthorized appropriations in a report on a general appropriation bill;<sup>119</sup> and
- in measures reported by the Committee on Ways and Means, a tax complexity analysis of amendments to the Internal Revenue Code of 1986 and an analysis of the budgetary effects of major legislation, as defined in the House rules.<sup>120</sup>

A report on a special rule by the Rules Committee “shall to the maximum extent possible specify ... any waiver of a point of order against the measure or against its consideration.” (Rule XIII, clause 6(g).) A committee rule paraphrases this provision. Practice, however, has not been to use specific waivers, but rather so-called blanket waivers to protect a measure against possible points of order.

## Supplemental, Minority, Additional, and Dissenting Views

Rule XI, clause 2(1) allows any committee member to file supplemental, minority, additional, or dissenting views for inclusion in a committee report accompanying legislation reported to the House, provided that the views are filed “not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day).” Most committees explicitly or tacitly follow the House rule of two calendar days.<sup>121</sup>

Rule XIII, clause 3(a)(1) requires committee reports to be filed as a single volume and to include supplemental, minority, additional, and dissenting views that are timely submitted. The cover must show that these views are included. Rule XIII, clause 2(c) also requires supplemental, minority, additional, and dissenting views that are timely filed to be printed as part of a committee’s report. A committee may arrange to file its report with the clerk not more than one

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<sup>117</sup> Does not apply to reports by the Committees on Appropriations, Ethics, House Administration, or Rules. See also CRS Report R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*, by Robert Jay Dilger and Richard S. Beth.

<sup>118</sup> After Representative Christian Ramseyer (U.S. House, 1915-1933).

<sup>119</sup> A rule of the Appropriations Committee also requires bills and resolutions reported by the committee and reports thereon to contain, respectively, “separate headings for rescissions and transfers of unexpended balances with all proposed rescissions and transfers listed therein” and “a separate section with respect to such rescissions or transfers.” A rule of the Budget Committee requires specific content for a report on a budget resolution.

<sup>120</sup> The requirement for an analysis of budgetary effects appears in Rule XIII, cl. 8. The rules package for the 114<sup>th</sup> Congress repealed the requirement for a macroeconomic analysis and added the requirement for the analysis of budgetary effects (H.Res. 5, §2(c)(1) and (2)); resolution agreed to in the House January 6, 2015.

<sup>121</sup> In addition, some committees’ rules require a report to be available in a final or near-final form for a period of time prior to filing. A rule of the Budget Committee requires a report on a reported measure to be available to committee members for 36 hours before the report is filed. No “material change” may be made in a report made available to members without the concurrence of the ranking minority member or a majority vote of the committee. However, the chair or the committee by majority vote may waive this rule. The rule of the Education and the Workforce Committee is similar, but does not provide for waiver by the chair or committee. A rule of the Foreign Affairs Committee requires a report to be available to committee members 24 hours in advance of filing. The Natural Resources Committee’s rule requires availability but does not set a time.

hour after time has expired, or earlier if all views have been received. This subparagraph also allows a committee to file a report if a request to file views is not timely made.

In practice, committees interpret differently the two days in the House rule. A committee might interpret two days as 48 hours from the time of a vote to order a measure reported or from the conclusion of the markup meeting, or might even interpret the first day as the day on which the vote occurred to order a measure reported. A committee might interpret two days to commence at midnight the day of the vote to order the reporting of a measure and count the second day as ending a midnight of that day or during business hours of that day. Potential later questions can be resolved if committee members discuss their committee's interpretation of the House and any related committee rule at the committee organization meeting.

Supplemental, minority, additional, and dissenting views may foreshadow arguments and amendments in the Rules Committee and on the House floor.

## Restrictions on Reported Measures

In addition to requirements and restrictions on reports and reported measures already described, such as the requirement that a majority be actually present to report a measure or that a committee report be published as one volume, other restrictions appear in several places in House rules on what measures committees may report.<sup>122</sup> For example, the Committee on Rules is prohibited from reporting a special rule preventing a motion to recommit, with or without instructions, from being made for a bill or joint resolution. This motion by tradition is a right of the House minority. (Rule XIII, clause 6(c).)<sup>123</sup>

The House is also prohibited from considering a special rule waiving the rule requiring the disclosure of earmarks in bills, joint resolutions, committee amendments, and conference reports. The House, however, may dispose of a point of order that a special rule waives the disclosure requirement on a question of consideration. (Rule XXI, clause 9.) (The earmark disclosure rule is discussed below in this section.)

Rule XXI contains a number of restrictions on reported measures applicable to tax, appropriations, and budget measures.

With regard to tax or tariff measures and amendments, no committee may report a bill or joint resolution containing a tax or tariff unless the committee has jurisdiction to do so. Likewise, an amendment in the House or proposed by the Senate containing a tax or tariff is not in order when the House is considering a bill or joint resolution reported by a committee without jurisdiction over the tax or tariff. A point of order lies against the bill, joint resolution, or amendment while the measure is open for amendment. This rule protects the jurisdiction of the Ways and Means Committee. (Rule XXI, clause 5(a).)

The House may also not consider a bill, joint resolution, amendment, or conference report carrying a "retroactive Federal income tax rate increase." (Rule XXI, clause 5(c).)<sup>124</sup>

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<sup>122</sup> Restrictions on measures that may be introduced in the House, or upon the manner of their introduction, appear in House Rule XII. Furthermore, the House majority leader for several Congresses has biennially published protocols concerning legislation for which floor consideration is sought or on a few other matters. The protocols may affect the content or provisions of legislation reported by committees, such as sunset provisions for authorizations or authorizing specific sums rather than "such sums." The 114<sup>th</sup> Congress protocols may be found on the majority leader's website at <http://www.majorityleader.gov/protocols>.

<sup>123</sup> Procedures applicable to the motion to recommit appear in House Rule XIX, cl. 2.

<sup>124</sup> Another part of House Rule XXI—cl. 5(b)—requires a three-fifths vote for passage of a bill or joint resolution or (continued...)



Another clause of Rule XXI protects the jurisdiction of the Appropriations Committee. Clause 4 provides that a committee may not report a bill or joint resolution carrying an appropriation unless the committee has jurisdiction to report appropriations. Likewise, an amendment providing an appropriation to a bill or joint resolution reported by a committee, which is without jurisdiction to report appropriations, is not in order. A point of order lies against the bill, joint resolution, or amendment while the measure is open for amendment.

While a general appropriations bill and, after September 15, a continuing appropriations resolution may be called up by a privileged motion, an appropriation bill today is typically considered pursuant to a special rule.<sup>125</sup> A special rule may be used to waive various points of order that would lie against an appropriations bill under Rule XXI, clauses 2 and 3.<sup>126</sup> The restrictions in clause 2 disallow the Appropriations Committee from reporting measures, with limited exceptions, containing unauthorized appropriations<sup>127</sup> or changing existing law. Other restrictions on bills and amendments appear in clause 2. The restriction in clause 3 prohibits the House from considering a general appropriation bill or joint resolution, or conference report on these measures, that provides spending from the Highway Trust Fund or reduces or limits balances accruing in the Highway Trust Fund, except for activities authorized for highways and mass transit.<sup>128</sup>

Rule XXI also contains restrictions on various budgetary measures. Clause 7, for example, disallows the House from considering a concurrent resolution on the budget, an amendment to it, or a conference report on it, that contains reconciliation directives that would result in an increase in net direct spending. Direct spending is defined to include mandatory spending and changes in mandatory spending included in appropriations acts. Similarly, clause 10 disallows the House from considering bills, joint resolutions, amendments, or conference reports on bills and joint resolutions that have the net effect of increasing mandatory spending, including changes in mandatory spending included in appropriations acts, over 5-year and 10-year budget windows.<sup>129</sup>

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(...continued)

adoption of an amendment or conference report when that matter carries a “Federal income tax rate increase,” which is defined in the rule. See also CRS Report 98-778, *Super-Majority Votes in the House*, by Walter J. Oleszek.

<sup>125</sup> For a succinct explanation of special rules, see CRS Report 98-334, *Provisions of Special Rules in the House: An Example of a Typical Open Rule*, by Judy Schneider; CRS Report 98-612, *Special Rules and Options for Regulating the Amending Process*, by Megan S. Lynch; CRS Report 98-433, *Special Rules and Waivers of House Rules*, by Megan S. Lynch; and CRS Report 98-354, *How Special Rules Regulate Calling up Measures for Consideration in the House*, by Richard S. Beth.

<sup>126</sup> Indeed, House Rule XXI, cl. 1 provides that points of order against provisions of a general appropriation bill are considered to be reserved when the bill is reported to the House.

<sup>127</sup> An unauthorized appropriation is an “appropriation for a purpose not authorized in law or that exceeds the amount authorized in law.” Walter Kravitz, *Congressional Quarterly’s American Congressional Dictionary*, 3<sup>rd</sup> ed. (Washington, DC: CQ Press, 2001), p. 268; available at <http://www.crs.gov/resources/GLOSSARY?source=search>.

<sup>128</sup> For an explanation of the appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup. See also CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh; and CRS Report RS20371, *Overview of the Authorization-Appropriations Process*, by Bill Heniff Jr.

<sup>129</sup> House Rule XXI, cl. 8 allows title III points of order in the Budget Act against unreported measures, the forms of measures made in order for amendment, and the forms of measures on which the previous question is ordered to passage, when considered pursuant to a special rule. For a succinct explanation of the congressional budget process, see CRS Report RS20368, *Overview of the Congressional Budget Process*, by Bill Heniff Jr. For an introduction to the congressional budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by Bill Heniff Jr.

Rule XXI also disallows the consideration of legislation where earmarks have not been disclosed and of certain public works. Rule XXI, clause 9 disallows the House from considering a bill or joint resolution, whether or not reported from committee; a committee amendment; or a conference report—unless the report on a reported measure, the joint explanatory statement accompanying a conference report, or a list provided for an unreported measure or a committee amendment lists the earmarks, limited tax benefits, or limited tariff benefits that the proposition contains and the sponsor of each, or carries a statement that the proposition contains no earmarks, limited tax benefits, or limited tariff benefits. An additional requirement applies to the joint explanatory statement accompanying a conference report on a general appropriations bill: it must disclose any earmarks, limited tax benefits, or limited tariff benefits included that had not been submitted to conference by either house. (The restriction on special rules was described above in this section.)

Rule XXI, clause 6 disallows the House from considering a bill, joint resolution, amendment, or conference report that designates or redesignates a public work in honor of a sitting Member of Congress.

## Filing

Rule XIII, clause 2(b) requires a committee chair to “promptly” report a measure or matter approved by a committee and to “take steps necessary to bring the measure or matter to a vote.” This paragraph also requires a report to be filed within seven calendar days, excepting days when the House is not in session, of the day that a majority of committee members file a written request with the committee clerk for filing of the report.<sup>130</sup>

Rule XIII, clause 2(a) provides that committee reports are to be delivered to the clerk and referred to the appropriate calendar as directed by the Speaker. A report made adversely is laid on the table unless the committee requests its referral to the appropriate calendar or unless, within three days, any Member, Delegate, or the Resident Commissioner requests its referral to the appropriate calendar. (See also “Committee Procedure for Oversight Reports,” above.)

Privileged reports are listed in Rule XIII, clause 5, which identifies five committees and the specific matters they might report that are eligible under this clause. Unlike nonprivileged reports, privileged reports are filed from the floor and referred to the appropriate calendar.<sup>131</sup>

If a resolution of inquiry has not been reported from the committee to which it was referred, a privileged motion to discharge the committee is available 14 days after the referral (see Rule XIII, clause 7.)

## Availability

Rule XIII, clause 4(a) disallows the House from considering in the House a measure or matter reported by a committee until the third calendar day (excluding Saturdays, Sundays, and holidays unless the House was in session) on which a report was available.<sup>132</sup> In addition, this paragraph exempts five kinds of measures from the rule:

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<sup>130</sup> This provision of this paragraph does not apply to the Rules Committee or to a resolution of inquiry.

<sup>131</sup> This privilege may be based on precedent; a constitutional provision, such as a presidential veto; or on a House rule, such as Rule XIII, clause 5, which designates certain measures reported by specified committees as privileged.

<sup>132</sup> See also CRS Report RS22015, *Availability of Legislative Measures in the House of Representatives (The “Three-Day Rule”)*, by Elizabeth Rybicki.

(continued...)

- a resolution providing a rule, joint rule, or order of business reported by the Rules Committee;
- a committee funding resolution reported by the House Administration Committee;
- a question of the privileges of the House reported by any committee;
- a declaration of war or national emergency; and
- a measure disapproving of a government agency's decision or action that would be effective unless disapproved by one or both houses of Congress.

This layover requirement does not apply to a supplemental committee report to correct record votes (Rule XIII, clause 3(a)(2)).

A one-day layover rule applies to reports of the Rules Committee (Rule XIII, clause 6), although this layover may be waived by a two-thirds vote of members.<sup>133</sup> The layover also does not apply during the last three days of a session or in two limited instances under Rule XXII pertaining to reaching agreement with the Senate.<sup>134</sup> Other paragraphs of Rule XIII, clause 6 address additional aspects of the consideration of resolutions reported by the Rules Committee.

A measure to be called up under the suspension of the rules procedure might have been reported by a committee, might have been ordered reported by a committee, or might have another status in the legislative process. Since the motion is to “suspend the rules and pass” the measure, House rules are waived by the motion. Both parties have guidelines that the party leadership may follow in deciding whether to schedule a measure for House consideration by suspension of the rules.<sup>135</sup>

## Committee Records

### Record Keeping and Public Access

Rule XI, clause 2(e)(1) requires committees to keep records of all committee actions, including “substantially verbatim” accounts of hearings and meetings, including markups, and a record of all roll-call votes.<sup>136</sup> With exceptions, these records must be available for inspection by Members, staff, and the general public in committee offices.<sup>137</sup> A committee's records must be kept by the

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A separate layover rule applies to bills and joint resolutions that have not been reported from committee. House Rule XXI, cl. 11 states that it is not in order consider such bills until the “third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which such measure has been available to Members, Delegates, and the Resident Commissioner.”

<sup>133</sup> House Rule XIII, cl. 6(a). The House also has adopted by majority vote special rules that make the one-day layover inoperative for a specific day or days or for a specific piece of legislation.

<sup>134</sup> “[T]o waive a requirement of clause 4 or clause 8 of rule XXII concerning the availability of reports....”

<sup>135</sup> The Republican Conference's guidelines on measures to be considered by the suspension of the rules procedure may be found on the conference's website at <https://www.gop.gov/114th-rules>. The Armed Services Committee has a rule exhorting the chair and ranking minority member to work together on criteria for recommending legislation to be considered by the suspension of the rules procedure. A rule of the Education and the Workforce Committee prohibits a committee member from seeking consideration of a measure under the suspension of the rules procedure if the measure was modified after being ordered reported, unless notice has been given to the chair and ranking minority member.

<sup>136</sup> Pursuant to House Rule XXIII, cl. 17, a committee must also keep and make available for public inspection Members' requests for congressional earmarks, limited tax benefits, or limited tariff benefits.

<sup>137</sup> House Rule XI, cl. 2(e)(1)(B)(ii) exempts the Committee on Ethics and states that a majority of the committee (continued...)

committee, separately from the office records of the committee's chair.<sup>138</sup> Public availability does not necessarily allow a person reviewing a record to photocopy it or make notes.<sup>139</sup>

The House requires its committees to post a markup text not less than 24 hours in advance of a markup meeting (Rule XI, clause 2(g)(4)). Rule XI, clause 2(e)(5) requires committees, to the "maximum extent practicable," to provide audio and video coverage of each hearing or meeting in a way that allows for easy public viewing or hearing and then to maintain those recordings so that they are readily accessible to the public.

Committees are required to post electronically votes taken in a markup (within 48 hours) and amendments adopted (with 24 hours) (Rule XI, clause 2(e)(1)(b) and (6), respectively). Witnesses' "truth-in-testimony" filings are to be posted electronically within one day of a witness's appearance (Rule XI, clause 2(g)(5)).

Pursuant to Rule VII, each committee chair is responsible for transferring noncurrent records of the committee to the Clerk of the House, who is then responsible for transmitting those records to the National Archives.<sup>140</sup> Committees are directed in Rule XI, clause 2(e)(3) to adopt in their rules "standards for availability" of committee records delivered to the National Archives, addressing specified policies. Rule VII contains additional provisions on the availability of records, including committee records, and assigns regulatory authority on implementation to Rule VII to the Committee on House Administration (Rule VII, clause 5(b)).

A number of committees have rules on access to or protection of classified, sensitive, or confidential information.<sup>141</sup>

## Publication

Pursuant to Rule XI, clause 1(c), committees are authorized to print hearings. Clause 2(e)(4) states that committee publications must be made available in electronic form "to the maximum extent feasible."

Rule XIII, clause 4(b) directs a committee that reports a measure or matter to make "every reasonable effort" to have its hearings printed and available before the measure or matter is considered by the House.

## Party and Staff Reports

Committees might publish reports that have not been approved by a majority vote of the members of a committee. As a result, a report might be issued without the knowledge of certain members of the committee, perhaps minority members. In response to this possibility, some committees

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members must vote to make records available; subparagraph (2)(B) denies access to Ethics Committee records to Members who are not members of the Ethics Committee. In addition, Rule X, cl. 11(c) and 11(g)(3) allows the Intelligence Committee to restrict access to classified information in its possession. Rule XI, cl. 2(k)(7), applicable to most committees, allows a committee that has conducted a meeting in executive session to vote to make those proceedings publicly available, "a majority being present."

<sup>138</sup> House Rule XI, cl. 2(e)(2)(A).

<sup>139</sup> *House Rules and Manual*, §796, p. 559.

<sup>140</sup> For a discussion of committee record keeping, see *House Practice*, ch. 11, §16, pp. 271-274.

<sup>141</sup> See the rules of the Committees on Armed Services, Budget, Ethics, Foreign Affairs, Homeland Security, Natural Resources, Small Business, and Intelligence.

have added provisions to their rules that attempt to alleviate their committee members' concerns. Committees' responses may generally be characterized in two ways:

- Disclaimer—the committee requires that any report not approved by a majority vote of the committee carry a disclaimer on its cover explaining that the report was not adopted by that committee and may not necessarily reflect the views of its members; or
- Individual Views—members would be afforded the opportunity to add their views to the report.

Six have rules requiring a disclaimer,<sup>142</sup> and six committees allow individual views.<sup>143</sup> A committee might also proscribe by rule the printing of a report not approved by a majority of a committee, as is the case with the Science, Space, and Technology Committee.

## Additional Duties

Rule X, clause 4(f) requires each standing committee to submit to the Budget Committee its views and estimates six weeks after the President transmits the executive budget to Congress. This clause also requires the Ways and Means Committee, after undertaking public hearings, to recommend in its submission an “appropriate level” of public debt to be included in the concurrent resolution on the budget.

A rule of the Budget Committee governs information the committee provides to the Speaker in fulfillment of its duties under the Congressional Budget Act to inform floor debate on measures with a budgetary effect. This information is contained in the Parliamentarian's Status Report and the Section 302 Status Report. Another rule provides the committee chair with the opportunity to consult committee members on recommendations to the Rules Committee on waivers of Budget Act points of order. Modifications to the Budget Committee's reports and roles are regularly included as separate orders in the biennial rules packages.<sup>144</sup>

Rule X, clause 6 governs aspects of committee expense resolutions reported by the House Administration Committee. Rule XI, clause 1(b)(1) allows committees to conduct “investigations and studies” subject to any expense resolution adopted pursuant to Rule X, clause 6.

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<sup>142</sup> The committees are Budget, Education and the Workforce, Financial Services, Foreign Affairs, Natural Resources, and Transportation and Infrastructure.

<sup>143</sup> The Committees on Education and the Workforce, Foreign Affairs, Judiciary, Oversight and Government Reform, Science, Space, and Technology, and Veterans' Affairs.

<sup>144</sup> See H.Res. 5, §3(e); resolution agreed to in the House January 6, 2015.