

Testimonial Subpoena Authority and Inspectors General

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On June 7, 2022, President Biden signed the Strengthening Oversight for Veterans Act of 2021 (P.L. 117-136). This law authorizes the Department of Veterans Affairs Office of Inspector General (VA OIG) to issue subpoenas for testimony to support the office’s oversight activities. Inspectors general (IGs) have [asked Congress](#) in recent years to provide similar authority across the IG community. While Congress has not passed such legislation, it has considered proposals to do so and may do so again in the future.

IGs and other proponents of expanding testimonial subpoena authority for IGs have argued that it would allow IGs to more effectively investigate some individuals suspected of defrauding federal programs. The ability of agency employees to stymie OIG investigations by leaving federal service has been a particularly [frustrating problem](#) for oversight stakeholders.

This Insight provides background information on current testimonial subpoena authority for IGs, proposals to expand that authority, and considerations for Congress. It focuses on subpoena authority generally and does not discuss rules for the issuance or enforcement of individual subpoenas.

Current Law and Practice

Under the Inspector General Act of 1978 ([IG Act](#); [5 U.S.C. Appx.](#)), most OIGs have authority to issue subpoenas for “documents, reports, answers, records, accounts, papers, and other data in any medium” as well as any “tangible thing” or “documentary evidence” ([IG Act §6\(a\)\(4\)](#)). This authority has at least two key boundaries. First, IGs cannot subpoena documents from agencies or current federal employees (which are required to comply with IG requests for information without subpoenas), and, second, it does not authorize IGs to issue subpoenas for testimony.

A few OIGs currently have testimonial subpoena authority, including the VA OIG, the Department of Defense (DOD) OIG ([IG Act §8\(i\)](#)), and the Pandemic Response Accountability Committee (PRAC; [IG Act §11 note](#)). The authority granted to each of these three IG units differs. For example, the DOD OIG must provide the Attorney General notice seven days before issuing a subpoena, while the PRAC does not have any specific limitations or notice requirements.

The VA OIG has the most restrictions. It is required to notify the Attorney General 10 days in advance of issuing a subpoena, and the Attorney General may object, in writing, if the subpoena would interfere with

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an ongoing investigation. In that circumstance, the VA OIG may not issue the subpoena. Additionally, the VA OIG is required to include, in its semiannual reports to Congress, information on the exercise of this authority. In its [Fall 2022 report](#), VA OIG shared that it had issued two subpoenas for testimony from June to September 2022. Finally, VA OIG's testimonial subpoena authority expires on May 31, 2025.

Recent Legislative Activity

In addition to the Strengthening Oversight for Veterans Act, Congress has considered legislation that would further expand testimonial subpoena authority. A recent example is the Inspector General Independence and Empowerment Act ([H.R. 2662, 117th Congress](#)). The version of the bill that passed the House provided testimonial subpoena authority with controls including notice to the Attorney General and review and approval of each subpoena by a panel of IGs. While a number of other provisions in this legislation were amended and included in the FY2023 National Defense Authorization Act (P.L. 117-263), this section was not.

Considerations for Congress

Testimonial subpoenas are likely to remain a point of interest for both the IG community and Congress, and there may be additional attempts to create a consensus policy to authorize these subpoenas for more OIGs. While both chambers of Congress have demonstrated at least some support for testimonial subpoena authority, the controls included in the Strengthening Oversight for Veterans Act and the House text of the Inspector General Independence and Empowerment Act both indicate that Congress may prefer a more incremental approach. Congressional consideration of this issue in the future may include the following issues.

Control

As discussed above, Congress has previously considered different strategies to provide oversight on individual subpoenas including approval by the Attorney General and the creation of subpoena panels. Some in Congress have been [concerned](#) that IGs could abuse their subpoena authority in the absence of such controls. Congress might continue with those strategies or develop others that adjust which officials have control and how that control is exercised. In doing so Congress may wish to weigh factors such as how time or resource intensive procedures are, how officials are likely to review subpoena requests, and whether Congress should specify factors for those reviews.

Monitoring

Congress might also consider what information, if any, it would like to receive about testimonial subpoenas. Congress's decisions to sunset the VA OIG's authority in 2025 and require reporting on testimonial subpoena use may imply that it intends to monitor the VA OIG and evaluate the testimonial subpoena authority based on what it learns.

If Congress wants more information, a number of options are available such as requiring the [Council of the Inspectors General on Integrity and Efficiency](#) to report on testimonial subpoena use across the IG community or requiring IGs to notify Congress when they issue testimonial subpoenas.

Benefits

Finally, Congress might wish to consider the expected benefits of providing testimonial subpoena authority to OIGs and how those benefits compare to the potential risks and administrative costs. If Congress believes use of testimonial subpoena authority will be limited, then it may be more difficult to justify new procedures and responsibilities for OIGs and other officials that would support that authority.

On the other hand, if Congress anticipates that testimonial subpoena will help OIGs promote accountability and protect public funds from waste, fraud, and abuse, then it may wish to prioritize legislative action.

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