

While the effort to push through financial services regulatory reform is getting most of the attention these days, the House has passed a bill to boost the Securities and Exchange Commission's enforcement power by granting the agency nationwide subpoena service in civil actions brought in federal district courts. H.R. 2873, the Enhanced S.E.C. Enforcement Authority Act, passed the House in a Dec. 2 voice vote.

An SEC spokesman says the provision will "provide an important tool to help the SEC prosecute fraud and other securities law violations more efficiently."

Currently the SEC only has authority for nationwide service in administrative proceedings, as noted in a press release issued by the bill's sponsor, Rep. John Campbell (R-Calif.), who says the authority will help reduce costs and increase effectiveness.

The bill would amend the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Company Act of 1940 so that, in any action or proceeding brought by the SEC in a U.S. district court for any judicial district, subpoenas may be served in any other district, and enforced without application to the court or a showing of cause.

Ryan However, among the various pending proposals that would affect securities litigation and enforcement, this is "probably among the least significant ... because it won't help at all with finding new leads, and would affect only a small fraction of the investigations the SEC opens each year," says Russ Ryan, a former assistant director in the SEC's Enforcement Division who is now a partner at King & Spalding.

That's because the provision would apply only after a case is filed in federal court, and then only if it isn't settled and there's a need to conduct pre-trial discovery. Since most investigations don't result in any charges, and even those that do usually get settled before any pre-discovery becomes necessary, "this new bill is relatively insignificant," says Ryan.

"It would provide the SEC with just one more subtle advantage over other parties in the cases that get litigated through pre-trial discovery in federal court, because it would exempt the

agency from the rules that apply to all other litigants, including the defendants in the SEC's cases," says Ryan. "Yes it would make things marginally more convenient and less expensive for the SEC by allowing the agency to force other people to travel great distances for depositions, but it would simply shift the inconvenience and cost to the private citizens and companies who receive the subpoenas."

The bill must still be approved by the Senate.