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The Power to Investigate – Table of Authorities of House & Senate 118th Congress

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For the seventh successive Congress, Gibson Dunn is pleased to release a table of authorities summarizing the oversight and investigative ("O&I") authorities of each House and Senate committee. Congressional investigations can arise with little warning and immediately attract the media spotlight. Understanding the full extent of a committee's investigative arsenal is crucial to successfully navigating a congressional investigation.

Congressional committees have broad investigatory powers, including the power to issue subpoenas to compel witnesses to produce documents, testify at committee hearings, and, in some cases, appear for depositions. Committees may adopt their own procedural rules for issuing subpoenas, taking testimony, and conducting depositions, and many committees update their rules each Congress. Committees are also subject to the rules of the full House or Senate, and, in the House, the Chair of the Committee on Rules issues regulations prescribing general deposition procedures applicable to all committees.

Failing to comply with a subpoena from a committee or to otherwise adhere to committee rules during an investigation may have severe legal, strategic, and reputational consequences. If a subpoena recipient refuses to comply with a subpoena, committees may resort to additional demands, initiate judicial enforcement or contempt proceedings, and/or generate negative press coverage of the noncompliant recipient. Although rarely used, criminal contempt prosecutions can also be brought in the event of willful refusals to comply with lawful congressional subpoenas. As we have detailed in previous client alerts,[1] however, defenses exist to congressional subpoenas, including challenging a committee's jurisdiction, asserting attorney-client privilege and work product claims, and raising constitutional challenges.

With Republicans in control of the House, committee investigations to date have focused on environmental, social, and corporate governance ("ESG") investing, social media censorship, collusion between the government and private parties to censor conservative speech, China, and COVID-19 origins and the government's response to the pandemic. In the Senate, where Democrats have an effective one-seat majority, investigations have centered on climate change, healthcare, prescription drug costs and labor-related issues. We also anticipate that committees in both chambers will pursue investigations regarding the power of technology companies, international corporate and military competition and espionage, cybersecurity breaches, and supply chain issues, including forced and child labor.

Attached you will find a table that presents key investigative powers and authorities for each House and Senate committee. The table includes information for each committee that answers key O&I related questions, including:

- What is the scope of the committee's investigative authority?
- What are the procedures for exercising the committee's subpoena power?

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- Can the chair of the committee issue a subpoena unilaterally?
- Does the committee permit staff to question witnesses at a hearing?
- Can the committee compel a witness to sit for a deposition? If so, what are the procedures for doing so?
- What are the rules that apply to depositions before the committee?

The table includes hyperlinks to the sources of committee rules and jurisdiction and is meant to be a one-stop-shop for information relevant to O&I activities.

Below, we have highlighted noteworthy changes in the committee rules, which House and Senate committees of the 118th Congress adopted earlier this year.

If you see something missing from our discussion or the table, please let us know. We welcome your feedback.

Some items of note:

House:

- As we detailed in earlier this year,[2] the House Republican majority is well-equipped to conduct investigations. In 2019, the new Democratic majority expanded their set of investigative tools and continued to add new ones in 2021. Republicans are taking full advantage of those expanded tools.
- The Rules of the 118th Congress authorized three new investigative committees in the House: The Committee on Oversight and Accountability (formerly known as the Committee on Oversight and Reform) now has a **Select Subcommittee on the Coronavirus Pandemic**; the House Judiciary Committee now has a **Select Subcommittee on the Weaponization of the Federal Government**; and the Rules package and a separate House resolution created a new full investigative committee, **the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party**.
    - The **Select Subcommittee on the Coronavirus Pandemic** is tasked with investigating and reporting on the origins of the COVID-19 pandemic, waste or fraud involving pandemic-relief funds, vaccine development, and COVID-related school closings. The Select Subcommittee does not have subpoena power nor legislative authority and, thus, cannot report legislation. However, the full Oversight and Accountability Committee or its Chair "may authorize and issue subpoenas to be returned at the select subcommittee," and the select subcommittee can from "time to time" report to the House or any House committee the results of its investigations or legislative recommendations.[3] To date, the Select Subcommittee has focused on the origins of COVID-19, allegations of government cover-ups regarding its origins, and the consequences of school closures.
    - The **Select Subcommittee on the Weaponization of the Federal Government** is directed to study and issue a final report on its findings regarding executive branch collection of information on and investigation of U.S. citizens as well as "how executive branch agencies work with, obtain information from, and provide information to the private sector, non-profit entities, or other government agencies to facilitate action against American citizens."[4] The Select Subcommittee does not have its own subpoena authority, but the Chair of the full Judiciary Committee may issue subpoenas for the Subcommittee.[5] The Subcommittee has cast a wide net and has issued document and information requests to a broad range of companies, non-profits, and government entities.
    - The **Select Committee on the Strategic Competition Between the**

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United States and the Chinese Communist Party is directed to investigate and submit policy recommendations concerning the status of the economic, technological, and security progress of the Chinese Communist Party and its competition with the United States.[6] The Chair has the power to authorize and issue subpoenas for testimony and documents.[7] Thus far, the Select Committee has held seven hearings on a variety of topics relating to China's economic aggression, human rights record, and threat to the security of the United States.

Senate:

- In the Senate, the Democrats' one-seat majority gives them significantly more power to investigate in the 118th Congress. During the 117th Congress, subpoenas required bipartisan support in the evenly divided Senate. Now, Democratic chairs can issue subpoenas with the consent of their ranking members or by majority vote of their committees. We've already seen a strong start to their investigative agenda in the 118th Congress, as evidenced by investigations into technology companies,[8] labor practices,[9] and bank failures.[10]
- Although its rules have not meaningfully changed since last Congress, the Senate **Health, Labor, Education and Pensions ("HELP") Committee** has interpreted its Rule 17(a) to require a separate vote to authorize an investigation prior to voting on authorizing a subpoena.
- The Senate **Budget Committee** issued its first subpoena in decades in a congressional investigation. The move, which had bipartisan support, signals a possible expansion or congressional use to subpoenas to committees beyond those we typically see active in the investigatory space. The move indicates that Senate Democrats are actively strengthening their investigative arsenal across committees, particularly regarding subpoena and deposition authority.

Our table of authorities provides an overview of how individual committees can compel a witness to cooperate with their investigations. But each committee conducts congressional investigations in its own particular way, and investigations vary materially even within a particular committee. While our table of authorities provides a general overview of what rules apply in given circumstances, it is essential to look carefully at a committee's rules and be familiar with its practices to understand how its authorities apply in a particular context.

Gibson Dunn lawyers have extensive experience defending targets of and witnesses in congressional investigations. They know how investigative committees operate and can anticipate strategies and moves in particular circumstances because they also ran or advised on congressional investigations when they worked on the Hill. If you have any questions about how a committee's rules apply in a given circumstance or the ways in which a particular committee tends to exercise its authorities, please feel free to contact us for assistance. We are available to assist should a congressional committee seek testimony, information, or documents from you.

Table of Authorities of House and Senate Committees

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[1] Michael Bopp, Thomas Hungar, and Megan Kiernan, *118th Congress: Investigative Tools And Potential Defenses*, Law 360 (March 3, 2023), https://www.gibsondunn.com/wp-content/uploads/2023/03/Bopp-Hungar-Kiernan-118th-Congress-Investigative-Tools-And-Potential-Defenses-Law360-03-03-2023.pdf.

[2] *Congressional Investigations in the 118th Congress: ESG, China, and the Biden*

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Administration Take Center Stage, (Jan. 13, 2023), https://www.gibsondunn.com/wp-content/uploads/2023/01/congressional-investigations-in-118th-congress-esg-china-and-the-biden-administration-take-center-stage.pdf.

[3] H.R. Res. 5, 118th Cong. § 4(a)(2).

[4] H.R. Res. 12, 118th Cong. § 1(b)(1) (2023).

[5] H.R. Res. 12, 118th Cong. § 1(c)(1)(B) (2023).

[6] H.R. Res. 11, 118th Cong. § 1(b)(2) (2023).

[7] House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, Committee Rule VI.

[8] *Sen. Cruz Launches Sweeping Big Tech Oversight Investigation*, (Feb. 13, 2023) https://www.commerce.senate.gov/2023/2/sen-cruz-launches-sweeping-big-tech-oversight-investigation.

[9] *Chairman Sanders Questions Howard Schultz in HELP Committee Hearing and Calls on Starbucks to End the Illegal Union Busting*, (Mar. 29, 2023) https://www.help.senate.gov/chair/newsroom/press/prepared-remarks-chairman-sanders-questions-howard-schultz-in-help-committee-hearing-and-calls-on-starbucks-to-end-the-illegal-union-busting.

[10] *Recent Bank Failures and the Federal Regulatory Response*, (Mar. 28, 2023) https://www.banking.senate.gov/hearings/recent-bank-failures-and-the-federal-regulatory-response.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you usually work or the following lawyers in the firm's Congressional Investigations group in Washington, D.C.:

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