

118th Congress: Investigative Priorities And Rule Changes

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The 118th Congress should present a varied array of high-profile and potentially contentious congressional investigations.

With Republicans now in control of the U.S. House of Representatives, investigations are expected to shift focus in that chamber to environmental, social and corporate governance, or ESG, investing; social media censorship; China; the COVID-19 pandemic; the Biden administration and a range of other issues.

Now with a one-seat majority in the U.S. Senate — which was equally-divided in the 117th Congress — Democrats will have more authority to pursue investigations relating to climate change, health care, big tech, prescription drug costs and other issues.

And although both parties are far apart on many issues, they are likely to find common ground in investigating international corporate and military competition, particularly with China, as well as espionage and cybersecurity breaches.

This two-part article lays out what companies and individuals can expect with regard to congressional investigations in the 118th Congress.

Part 1 discusses new investigative priorities and rules changes in both the U.S. House of Representatives and the Senate. Part 2 examines Congress' broad authorities in this arena, and potential defenses in the case of an investigation.

House of Representatives

Rules and Investigative Authorities

With each Congress, the House adopts new rules and investigative authorities as part of its organizing process.

On Jan. 9, after a historic 15 rounds of voting to elect Speaker Kevin McCarthy, R-Calif., the House passed a new rules package.



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The hard-fought rules package includes a number of provisions added or modified to secure support from different factions within the Republican Party.

The new House Republican majority is poised to investigate parts of the private sector with a vigor equal to that of their Democratic counterparts in the 117th Congress: big tech, financial services, fintech companies and corporations with ties to China all are likely to face congressional scrutiny this year.

The House Republican majority is well-equipped to conduct these investigations, too. When Democrats took the majority in 2019 after eight years of GOP control, they expanded their investigative tools and continued to add new ones in 2021.

For example, Democrats removed the requirement that a member be present during the taking of a staff deposition, which makes it more difficult for minority members to influence or hinder investigations to which they are opposed.

Now that Republicans are in charge, they will have the advantage of these expanded tools.

And, unlike in the Senate, nearly every House standing committee chair is empowered to issue a deposition subpoena unilaterally — that is, without the ranking member's consent or a committee vote, and after mere consultation with the ranking member.

New Investigative Bodies

The House created three new investigative bodies through the 118th Congress rules package and related resolutions.

The Committee on Oversight and Accountability — formerly known as the Committee on Oversight and Reform — has a Select Subcommittee on the Coronavirus Pandemic.

The House Judiciary Committee has a Select Subcommittee on the Weaponization of the Federal Government.

And the rules package and a separate House resolution added a new select investigative committee: the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party.[1]

Although each of these bodies will seek information from the Biden administration, they are expected to gather information from the private sector as well.

Select Subcommittee on the Coronavirus Pandemic

The Select Subcommittee on the Coronavirus Pandemic will investigate the origins of the pandemic, the development of treatments and vaccines, the effectiveness of certain laws and regulations enacted to combat the pandemic, the economic impact of the pandemic, the societal impact of decisions to close schools, and executive branch policies during the pandemic, among other issues.[2]

Unlike the Select Subcommittee on the Coronavirus Crisis, created by the Democratic-controlled House in the last Congress, this select subcommittee will not have its own subpoena authority. Instead, it will need to request that the chair of the full Committee on Oversight and Accountability issue subpoenas on

its behalf.[3]

Rep. Brad Wenstrup, R-Ohio, is chairman of the coronavirus select subcommittee.

Likely private sector targets of the Select Subcommittee on the Coronavirus Pandemic include: hospitals; medical and pharmaceutical companies; health care research companies; and recipients of various financial aid programs such as the Paycheck Protection Program, the Homeowner Assistance Fund, the airline and national security relief programs, and the Coronavirus Economic Relief for Transportation Services program.

Select Subcommittee on the Weaponization of the Federal Government

The resolution establishing the Select Subcommittee on the Weaponization of the Federal Government directs it to study executive branch collection and dissemination of information on U.S. citizens, including "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 resolution also directs the select subcommittee to study executive branch investigations of U.S. citizens — including criminal investigations. [5]

Further, the select subcommittee is authorized to receive information available to the Permanent Select Committee on Intelligence. [6]

The select subcommittee will not have its own subpoena authority, but the chair of the full Judiciary Committee may issue subpoenas on its behalf. [7]

Finally, although the Select Subcommittee on the Weaponization of the Federal Government is authorized to investigate ongoing executive branch investigations, it is highly unlikely that agencies will provide information on these ongoing investigations.

Although the focus of the select subcommittee is on executive branch activity, it will likely gather information from social media companies, financial institutions, fintech companies, telecommunication companies, consulting firms and nonprofit organizations.

The inquiries may focus on any collaboration with the federal government in its investigations and any activity that appeared to happen in parallel with government action, as well as the financial activity of various targets of investigations.

House Judiciary Committee Chair Jim Jordan, R-Ohio, is also now chair of the weaponization select subcommittee.

Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party

The Select Committee on the Strategic Competition Between the U.S. and the Chinese Communist Party's sole authority will be to

investigate and submit policy recommendations on the status of the Chinese Communist Party's economic, technological, and security progress and its competition with the United States.[8]

Unlike the Select Committee on the Climate Crisis, created by the Democrat-controlled House in the 116th Congress, this select committee will have the same authorities as standing committees, including subpoena and deposition authority.[9]

As a result, this new body is expected to take more of an investigative approach than other bodies.

The select committee likely will seek information from companies and individuals engaged in activity in China, including: social media companies and software companies; organizations that have taken steps to appease the Chinese Communist Party in relation to their positions on Taiwan, Nepal or other interests; and educational and corporate institutions that may have been infiltrated by agents or sympathizers of the Chinese Communist Party.

They are also likely to seek information from financial institutions and telecommunications companies serving any of those entities.

Rep. Mike Gallagher, R-Wis. — a veteran with a background in strategic intelligence and international relations— chairs the select committee.

Other Investigative Priorities

The Republican majority in the House has announced its plans to focus on a wide variety of topics.

Big tech will face scrutiny for censorship on various platforms. Financial companies will have to address their investment strategies in light of Republican opposition to ESG investing. Fintech companies will face questions regarding deplatforming users, as well as privacy and cybersecurity concerns.

The House also will focus on the Biden administration, including IRS enforcement priorities and funding, as well as the administration's border policy, student loan forgiveness program and withdrawal from Afghanistan.

Senate

The Senate Democrats' new one-seat majority gives them substantially more power to pursue investigations in the 118th Congress than they had previously.

During the last Congress, which was evenly divided between Republicans and Democrats, subpoenas required bipartisan support. In the 118th Congress, Democratic chairs will be able to issue subpoenas with the majority vote of their committees.

The 117th Congress gave Senate committees two years to define their priorities, hire staff and build investigative muscle.

Now, Senate committees are expected to get an early and strong start to their investigative agenda in the 118th Congress.

Key Committees to Watch

Three Senate bodies will likely be more active than others in their investigations: the Senate Finance Committee, the Senate Homeland Security and Governmental Affairs Committee, and the Permanent Subcommittee on Investigations.

Senate Finance Committee

Sen. Ron Wyden, D-Ore., will continue to serve as chairman of the Senate Finance Committee.

During the 117th Congress, he investigated pharmaceutical company tax practices, the use of offshore account reporting, and potential conflicts of interest in international trade within the Trump administration.

Wyden is expected to continue many of those investigations into the 118th Congress and to use his new subpoena authority as needed.

It is also likely he will pursue investigations into big tech and oil companies.

Senate Homeland Security and Governmental Affairs Committee

Sen. Gary Peters, D-Mich., will continue to serve as chairman of the Senate Homeland Security and Governmental Affairs Committee.

In the last Congress, this committee held hearings on COVID-19 preparedness, ransomware attacks enabled by cryptocurrency and social media's impact on homeland security.

The committee is expected to continue its focus on these issues, with potential investigations into cryptocurrencies and social media companies.

Under its jurisdiction over government waste, fraud and abuse, the committee likely will also investigate pandemic relief fraud and ways to mitigate fraud in government programs going forward.

Senate Permanent Subcommittee on Investigations

The Senate Permanent Subcommittee on Investigations, a subcommittee of the homeland security and governmental affairs committee, has some of the broadest investigative authorities and jurisdiction in the Senate.

The Permanent Subcommittee on Investigations has the responsibility of studying and investigating the efficiency and economy of operations relating to all branches of the government, and is also tasked with investigating all aspects of crime and lawlessness within the U.S. that affect national health, welfare and safety.

Chaired by Sen. Jon Ossoff, D-Ga., the subcommittee was less active last Congress than under previous Democratic chairs.

Sen. Richard Blumenthal, D-Conn., will chair the subcommittee in the 118th Congress. He is likely to take advantage of Democrats' increased authority in the Senate to advance his party's agenda.

Other Investigative Bodies

Other investigative bodies to note include the Senate Health, Education, Labor and Pensions Committee and the Senate Commerce, Science and Transportation Committee.

Senator Bernie Sanders, I-Vt., is now the chairman of the Senate Health, Education, Labor and Pensions Committee, and he is expected to wield his investigative authorities aggressively.

In particular, he is likely to focus on drug prices, health care executive salaries and workforce shortages, workers' rights, and educational and medical debt.

As chairwoman of the Senate Commerce, Science and Transportation Committee, Sen. Maria Cantwell, D-Wash., has already convened hearings related to December's airline flight cancellations.

She also may find bipartisan support for investigating and legislating on the threats social media platforms pose to children.

Potential Changes to Subpoena Authority

The private and public sectors are closely watching whether Senate Democrats strengthen their investigative arsenal, particularly when it comes to subpoena authority.

Currently only the chair of the Permanent Subcommittee on Investigations is authorized to issue a subpoena unilaterally — a significant difference with the House, where nearly all committee chairs may do so.

Because Senate investigations have historically been more bipartisan than those in the House, there has been a long-standing hesitation on both sides to expand unilateral subpoena power.

It remains to be seen if that philosophy will continue to hold sway in the 118th Congress.

Conclusion

The 118th Congress will be a significant one for congressional investigations.

The change in control of the House portends a shift in investigative focus, and this particular Republican majority appears keen to investigate both public and private sector entities.

Senate Democrats will use their enhanced authority to pick up their investigative tempo, as well.

The parties are also likely to find some common ground, whether it be on cybersecurity, China, social media or other issues.

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

[2] H.R. Res. 5, 118th Cong. § 4(a)(2)(A) (2023).

[3] H.R. Res. 5, 118th Cong. § 4(a)(3)(A)(ii) (2023).

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

[5] *Id.*

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

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

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

[9] H.R. Res. 11, 118th Cong. § 1(c)(3) (2023).