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Government Investigations & White-Collar Defense Alert

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Under the gavel: What the upcoming 120th Congress means for congressional investigations

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With the 2026 midterms less than six weeks away and Democrats expecting wins impacting key committees, investigative priorities are taking shape, and executives should be prepared.



What's the impact?

- The likelihood that control of the House, the Senate, or both will flip from Republican to Democrat continues to increase.
- Democratic committee leaders further clarify investigative priorities and which industries may face additional scrutiny if their party gains control.
- The publicity, speed, and stakes of congressional investigations necessitate risk analysis and preparation before receipt of a letter or subpoena. Parties who anticipate such scrutiny should engage legal representation now.

The midterm elections on November 3 are quickly approaching, and many predict that Democrats will regain control of the House and possibly the Senate. If the House flips, Democratic leaders will gain control of committees with robust oversight functions, such as the

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House Committee on Oversight and Government Reform, the House Committee on the Judiciary, and the House Committee on Energy and Commerce. A similar shift could occur in key Senate committees.

Top Democratic leaders have already indicated their intent to use congressional oversight authority should they gain committee control, including the power to subpoena records and testimony. The power of Congress to issue subpoenas is a function of its constitutional prerogative to conduct investigations and exercise its oversight authority.¹ Such powers are broad in scope and carry real enforcement risk, including contempt of Congress and possible referrals for criminal prosecution for individuals or companies that fail to comply.

Congressional investigations in practice

At the forefront, the public nature of congressional investigations distinguishes them from more routine and often discreet investigations by traditional enforcement and regulatory agencies. Public exposure is often the primary goal of committee investigations, and counsel often has a limited window of opportunity for client advocacy before letters and subpoenas for documents and testimony become public. Given the potential for highly publicized oversight hearings, reports citing internal company documents, and transcripts of sworn testimony from company employees, potential reputational harm is a serious threat to organizations subject to a congressional investigation.

Further, congressional investigations move at a rapid pace and do not follow the same rules as more traditional government inquiries. With Congress possessing the power to investigate any issue reasonably related to “matters affecting the interest of the United States...as well as to those having relation to the legislative function,”² nearly any private sector activity may be subject to committee inquiry. With that power comes the committee’s ability to broadly investigate matters without being bound by the formal rules of evidence or other protections afforded to litigants in a traditional court of law. The subjects of these investigations should have counsel in the early stages of a congressional inquiry, when it is critical to define the narrative and advocate for cooperative efforts that include protection for individuals and organizations. Depending on the circumstances, some subpoenas for a public committee hearing can be negotiated to include lesser intrusive measures, such as private staff interviews or non-public transcribed interviews.

¹ *McGrain v. Daugherty*, 273 US 135 (1927).

² *Sinclair v. United States*, 279 US 263 (1929).

Industries that could face more scrutiny

In recent weeks, Democratic legislators have begun to indicate which companies and issues may face additional scrutiny in the event of Democratic committee control. As reported in the [Washington Post on September 12](#), priorities include companies associated with President Trump's family, as well as government contractors that may have received favorable contracts and policies from the current administration. Additionally, Democratic leaders have expressed interest in investigating those individuals and companies that have received support from the administration in the form of pardons and settlements.

Corporations and executives who have responded to requests and pressures from the White House in the first half of President Trump's term may also find themselves facing committee investigations—from companies responsible for the president's projects in Washington, DC, or those that made direct financial contributions to presidential projects and events, to law firms, universities, and corporations that worked with the Trump administration to alter policies and procedures related to diversity, equity, and inclusion (DEI), immigration, and media content modifications. Organizations that prepare in advance for demand letters and committee scrutiny will be far better positioned than companies that hope to go unnoticed.

How to prepare

In the next six weeks, organizations that anticipate scrutiny from a Democratic-controlled House or Senate should take steps to secure counsel familiar with congressional investigations and experienced in working on both sides of the aisle. The polarizing and public nature of these investigations further increases the need for counsel that can both effectively communicate with committee staff and vigorously defend an organization at the same time.

To best protect themselves and their interests, companies should engage counsel and work under the protection of attorney-client privilege to review past public statements, internal operations, political contributions, and government agency interactions that may interest various congressional committees.

It is not too late for organizations to proactively assess their potential risks if the midterm elections result in a flip of one or both houses. The sooner counsel is engaged, the better prepared organizations and their executives will be to face new congressional committees armed with the tools to pursue their enhanced and explicit investigative interests.

Nixon Peabody's bipartisan [Congressional Investigations team](#) has deep insight into the practical realities of congressional investigations and the need for strategic preparation and response. With a deep bench of former government officials and prosecutors representing both political parties, as well as former committee staff with knowledge of the congressional oversight process, we are well positioned to advise corporations and individuals navigating the challenges and public scrutiny of congressional investigations in the current environment.

If you suspect that your organization may be a target of an upcoming investigation, or if you receive a subpoena, letter, or inquiry from a congressional committee, please reach out to your Nixon Peabody attorney or the author of this article for strategic guidance to help you minimize risk and prepare for next steps.

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