

What to Expect From the New Congressional Coronavirus Subcommittee

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On April 23, 2020, the US House of Representatives voted to establish a new investigative subcommittee of the Committee on Oversight and Reform called the Select Subcommittee on the Coronavirus Crisis (Subcommittee). The Subcommittee, which will be chaired by Majority Whip Jim Clyburn (D-SC), will have subpoena power and a broad mandate to examine any issues related to the COVID-19 crisis.

The Subcommittee joins several other oversight mechanisms established by the recently-passed CARES Act, including a new Special Inspector General for Pandemic Recovery, a Pandemic Response Accountability Committee made up of existing federal Inspectors General, additional funding for the US Government Accountability Office (GAO) and a Congressional Oversight Commission with members appointed by the House and Senate Democratic and Republican leadership.

With all these other mechanisms for oversight, why create a new House subcommittee on the coronavirus? Although it is still early, there are some clues indicating that this body is expected to conduct the kind of nimble, political investigations of the private sector that the other entities may not.

Focus on Private Sector “Profiteers” and “Price Gougers”

The Special Inspector General, Pandemic Response Accountability Committee, Congressional Oversight Panel and GAO are all expected to conduct oversight over both the Administration and the private sector. The Special Inspector General is exclusively tasked with oversight over the Department of the Treasury, while the other entities have broader mandates.

The Subcommittee has extraordinarily broad jurisdiction to investigate all aspects of the COVID-19 response, including, but not limited to, “the efficiency, effectiveness, equity and transparency” of COVID-19 spending; “waste, fraud, abuse, price gouging, profiteering, or other abusive practices;” “the implementation or effectiveness of any Federal law applied, enacted, or under consideration” related to the COVID-19 or future pandemic; preparedness and response; the economic impact of the COVID-19 crisis; and “any other issues” related to the COVID-19 crisis.

Based on public statements from Speaker Pelosi and Rep. Clyburn, it appears that the Subcommittee will focus predominantly on bad actors in the private sector. Speaker Pelosi noted that she expected that there would be “cooperation” with the Subcommittee’s investigations because it would not be investigating whether the Administration was adequately prepared for the virus before it struck and then responded quickly and aggressively enough after it struck. She specifically highlighted the “exploiters” of the current crisis and ensuring that the recipients of the COVID-19 funds comply with the requirements of the legislation and “don’t make any ‘mischief,’” both of which imply a focus on the recipients of federal money.

In a statement on the floor supporting the creation of the Subcommittee, Speaker Pelosi added that the Subcommittee “will be laser-focused on ensuring that taxpayer money goes to workers’ paychecks and benefits, and it will ensure the federal response is based on the best possible science and guided by health experts and that the money invested is not being exploited by profiteers and price gougers.”

Rep. Clyburn has reinforced this messaging, saying that the Subcommittee will not be focusing on the Administration’s actions prior to the crisis. According to Rep. Clyburn, the Subcommittee is “not going to be looking back on what the president may or may not have done back before this crisis hit. ... The question is whether or not the money that’s appropriated will go to support [people who have been affected] or whether or not this money will end up in the pockets of a few profiteers.”

Need for a Quick Response

The creation of the Subcommittee also indicates the importance to Congressional Democrats of conducting oversight over the massive fiscal outlay in response to COVID-19 as quickly as possible. Simply announcing the creation of the Subcommittee, which occurred following statements by President Trump that he could take steps to limit the power and independence of the Special Inspector General, signaled that the House intended to move quickly and vigorously to ensure that there are fully empowered oversight mechanisms in place.

The Subcommittee will also be able to move more quickly than the other oversight entities. The Special Inspector General must be confirmed by the Senate, and will then have to hire staff and set up an office. The President recently nominated Brian Miller, the former Inspector General of the General Services Administration who currently serves in the White House Counsel's Office, to serve as the Special Inspector General. (Many have raised concerns about his willingness to conduct aggressive oversight based on his current role, where he focused on defending the President during the impeachment inquiry, despite his reputation as a dogged watchdog as Inspector General.) The Congressional Oversight Commission still lacks a Chairman and must establish operations. And while Defense Department Acting Inspector General Glenn Fine had been named as the Chairperson of the Pandemic Response Accountability Committee, the President announced on April 7 that he was removing Mr. Fine from his position as Acting Inspector General, effectively removing him from his position on the Pandemic Response Accountability Committee as well.

By contrast, current House Oversight and Reform Committee staff will be able to begin investigations on behalf of the Subcommittee immediately. The House Oversight Committee, which already has the largest, most experienced and most active investigative staff in Congress, can also quickly add experienced attorneys and investigators, without the strictures of executive branch hiring requirements. The Committee also has well-oiled management, administrative and communications structures, and will be able to rapidly integrate the Subcommittee's operations.

The Subcommittee, unlike other entities, will also react quickly and publicly to reports of waste, fraud, abuse or mismanagement. The CARES Act establishes extensive public reporting requirements for entities that are recipients of funding under the Act, which will be complemented by regular media reports regarding entities that are misusing the funds. While the Special Inspector General and Pandemic Response Accountability Committee will have the mandate to audit and/or investigate possible misconduct, the same rules that ensure that federal audits and investigations are conducted fairly and thoroughly will ensure that those entities will not be able to conduct reviews and issue reports as quickly as the expert staff on the Subcommittee. And while the Congressional Oversight Commission could, in theory, react quickly, the experience of similar panels (e.g., the TARP Congressional Oversight Commission or the Wartime Contracting Commission) indicates that they will not be able to mobilize quickly enough to respond to reports of misconduct in real time.

Focus on Public and Political Perception

Although the other entities will doubtless want to attract public attention to their work, the Subcommittee will have a particular interest in driving the public perception of the COVID-19 response – and ensuring that that perception aligns with the Democrats' political agenda, especially with the approach of the November election.

The selection of Rep. Clyburn to serve as Chairman of the Subcommittee signals that the public perception and political messaging of the Subcommittee are key drivers of its creation. As Majority Whip, Rep. Clyburn is closely aligned with Speaker Pelosi and can be expected to drive investigations – and messages – that hew to the Democrats' goals. He is also one of the few members with the gravitas of former Rep. Elijah Cummings, whose recent death left a tremendous hole in the House Democrats' oversight bench.

The House Oversight and Reform Committee, where the Subcommittee will reside, is known for conducting combative investigations on hot-button topics – and where even seemingly bipartisan issues often devolve into partisan battles. Subcommittee members and staff will doubtless bring the same political lens to their work, with both sides focused on ensuring that their respective party advances its narrative. Each party will also be quick to accuse the other of using investigations to score political points engaging in partisan politics.

Given the Subcommittee's anticipated focus on the private sector, and its particular emphasis on timeliness, companies will need to ensure that, in addition to complying with all federal laws and regulations, they have processes in place to prepare for aggressive, political and high profile investigations by the Subcommittee.

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