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Congressional investigations after the midterms

How to prepare now

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If Democrats win either chamber of Congress in the upcoming midterm elections, they are likely to launch a wave of investigations. Congressional investigations are one of the most powerful tools available to Congress and can create significant legal and reputational challenges for both subjects and witnesses. Below, we address some of the most common congressional investigation related questions.

What is a congressional investigation?

Congressional investigations occur when a House or Senate committee examines a topic for the purpose of considering legislation or conducting executive branch oversight. Congress typically uses tools such as investigative letters, subpoenas for documents and oral testimony, and public hearings to conduct its investigations.

Can Congress investigate whatever it wants?

As long as Congress is acting pursuant to a valid "legislative purpose," e.g., to consider possible legislation or conduct executive branch oversight, Congress's investigative authority is wide-ranging.

Can I ignore a congressional subpoena?

No. Among other negative consequences, willfully ignoring a congressional subpoena exposes the recipient to the possibility of criminal contempt charges.

Can counsel negotiate the scope of a congressional subpoena?

Yes. Experienced congressional counsel can engage with committee staff and seek to negotiate the scope of a congressional subpoena.

How and when would a congressional investigation of my organization begin?

A congressional investigation typically begins with a letter from a member of Congress, usually the current or incoming chairperson of a committee, requesting information or documents from your organization.

When a chamber of Congress changes hands, incoming chairs can send letters as early as November or December, before they have taken control of the committee, or wait until January or February, when the committee is fully organized.

What happens next?

Committee staff typically review any materials you produce and may then seek to interview members of your organization.

How can counsel help defend my organization in a congressional investigation?

Effective representation by counsel in a congressional investigation has many components, such as:

- Anticipating tactics that are often undertaken by committee staff
- Pushing back on committee demands when appropriate
- Strategically engaging with the committee's minority staff
- Navigating any legal issues that are specific to congressional investigations, such as executive privilege
- Ensuring that any interviews of your organization's employees occur under conditions that are as favorable as possible to your staff

How do congressional investigations end?

A successful congressional investigation usually ends in a high-profile hearing that is accompanied by the release of a final written investigative report, and, occasionally, with the passage of related legislation.

Can my personnel avoid being called to testify at a public hearing?

Experienced congressional counsel can help negotiate the forum for testimony of your organization's employees, including by seeking closed-door testimony when possible.

How do congressional investigations differ from criminal investigations?

There are several key differences including:

- The purpose of a congressional investigation is legislative rather than law enforcement
- Congressional investigations are largely driven by political dynamics
- The existence of common-law privileges, such as the attorney-client privilege, is less certain in congressional investigations
- Congressional investigations are typically more public than criminal investigations and thus often pose more immediate reputational risks

What topics and industries might incoming Democratic chairs prioritize?

Congressional investigation priorities often shift quickly. As of this writing, likely investigative targets include, but are not limited to:

- President Donald J. Trump's physical construction projects in Washington DC
- Allegations of pay-to-play between the Trump administration and private companies
- Claims of improper enrichment by President Trump and his family members
- The war in Iran
- Immigration enforcement activities
- The impact of the Department of Government Efficiency (DOGE) on the civil service
- Artificial intelligence (AI)
- General affordability concerns

How can my organization prepare for a congressional investigation?

You can work with counsel over the next few months to:

- Assess your risk profile and internal exposure
- Conduct internal interviews and review key documents
- Review your internal policies and procedures
- Learn about the individual members and committees that are interested in your organization and the political dynamics that drive them.

By the beginning of the 120th Congress, you and your counsel should have a sense of your strengths and weaknesses and what your general strategy will be if you receive a committee letter.

Conclusion

For more on this topic, listen to this interview that Giancarlo Pellegrini, who chairs the firm's Congressional Oversight & Investigations Practice, conducted with Tom Firestone, Global Chair of the Firm's Government Investigations & White Collar Practice.

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