

Preparing for the New Investigative Priorities of the Next US Congress

Shift in control of the House of Representatives dramatically alters the focus of oversight and investigations through 2020.

Key Points:

- The Democratic majority in the House of Representatives will significantly change the scope and focus of congressional investigations.
- Aggressive oversight is likely to impact both the Trump Administration and private industry, particularly those industries connected to technology and privacy, health care, the environment and natural resources, education, and finance.

Having gained control of the House, Democrats will likely feel emboldened to proceed with a vigorous oversight agenda beginning in January 2019. Prior to the election, House Democrats signaled that a Democratic victory would increase both the intensity and scope of the oversight agenda of the next Congress. On Wednesday, House Minority Leader Nancy Pelosi reiterated those comments stating that Democrats have a “constitutional responsibility for oversight.”¹ Similarly, Rep. Elijah Cummings, the Ranking Member of the House Oversight and Government Reform Committee and likely incoming chair of the Committee, indicated that as chair he plans to “probe senior administration officials across the government” and “shine a light on waste, fraud and abuse in the Trump Administration.”² While the Democrats’ scrutiny is expected to focus on their perceived concerns regarding the Trump Administration, Democrats are also likely to launch investigations into other issues that substantially affect private industry, including technology and privacy, health care, the environment and natural resources, education and finance.

Midterm Election Victory Allows Democrats to Set Oversight Agenda

Republicans, who controlled both the House and Senate for the past two Congresses, have had complete control over the congressional oversight agenda since 2014. In the past term, they have prioritized a few key issues for investigation, including Russian interference in the 2016 presidential election, data privacy and cybersecurity, and the opioid epidemic, including the potential role of opioid manufacturers in the current crisis.

Because Democrats won a majority of seats in the House, beginning in January they will be able to control the focus and scope of congressional investigations in that chamber of Congress. The chairs of many House committees will exercise unilateral subpoena power to compel the production of documents

and testimony from both public and private parties, without concurrence or approval from the Ranking Member. Republican-led House committees have done this frequently as part of the Russia probe, often issuing subpoenas to both government agencies, as well as private companies and individuals over Democrats' objections. Among the committees wielding this power are the leading investigative committees, including Oversight and Government Reform, Energy and Commerce, Financial Services, and Judiciary. As the minority party, Republicans on those committees will have little power over the investigative agenda or ability to block Democratic requests for testimony and documents.

Democratic Investigative Priorities That May Impact Private Parties

Predictably, the Democratic victory in the midterms will have a dramatic effect on the Trump Administration, as Democrats are likely to conduct extensive oversight of the executive branch to address Democrats' perceived concerns regarding corruption and ethical lapses in the Trump Administration.

However, the effects of a Democratic oversight agenda would not be limited to the executive branch. Public reporting suggests that Democrats will prioritize investigative matters such as technology and privacy, health care, environment and natural resources, education, finance and consumer protection, emergency response, and Russian interference in the 2016 election.

Technology and Privacy

Democrats have signaled publicly that data privacy will be a key issue, with members already drafting legislation intended to provide consumers more control over use of their personal data. For example, Sens. Edward Markey and Richard Blumenthal introduced an internet-focused "privacy bill of rights" in April 2018, and Sen. Mark Warner's office circulated a policy paper in July 2018 outlining a number of proposals on data privacy, including copying Europe's General Data Protection Regulation (GDPR) privacy regulations.³ In addition to this legislative agenda, the Democrat-controlled House likely will conduct additional investigations into how prominent technology companies collect and use their customers' data. Senate Democrats have expressed similar concerns to the Federal Trade Commission about technological devices that may be violating users' privacy by collecting and using their data. Democrats could use their power as the majority party to more fully investigate these issues.⁴

Health Care

One of the highest investigative priorities for Democrats will likely be how the Trump Administration is handling the Affordable Care Act.⁵ These investigations will likely involve document requests and testimony from healthcare providers and insurance companies to provide information about the consequences of these changes.

Rep. Cummings has been particularly interested in investigating the escalating costs of prescription medications, which will undoubtedly impact drug manufacturers. As evidenced in the Committee's Democratic staff report from May 2018, "Skyrocketing Drug Prices: Year One of the Trump Administration," the Democrats are likely to investigate the prices of some of the country's best-selling drugs, and in turn, some of the largest US-based drug companies.⁶

Environment and Natural Resources

Public reports suggest that the Interior Department, the Environmental Protection Agency, and the Department of Agriculture will face a barrage of congressional inquiries, given the new Democratic majority in the House.⁷ Rep. Raul Grijalva, the likely chair of the House Committee on Natural Resources, has stated that the new Congress must "demand accountability" and that he wants answers from Administration officials on how policies have been shaped.⁸ Various committees, including the House

Committees on Natural Resources, Energy and Commerce, and Oversight and Government Reform likely will investigate programs and initiatives such as the rescission or modification of regulations relating to hydraulic fracturing, methane emissions, and a host of environmental standards, including power plant and vehicle standards, and pesticide and chemicals regulations. They also likely will investigate matters relating to access to natural resources, including the revision of the boundaries of the Bears Ears and Grand Staircase-Escalante national monuments, the amendment of agency resource management plans, and the development of the offshore oil and gas leasing plan. Other potential oversight topics include the Trump Administration's consideration of emergency authorities to subsidize coal, the consequences of fracking, electrical grid security efforts, and the Department of Energy loan program.

These investigations will inevitably implicate various companies in the oil and gas, mining, power, auto manufacturing, chemicals, and utility sectors, as well as other industry actors that the Administration had engaged on the issues described above. As a result, these companies could receive requests to provide testimony or documents as part of these investigations.

Education

Media reports also suggest that the House Committee on Education and Workforce, led by expected chair Rep. Bobby Scott, is likely to scrutinize the Education Department's decisions from the past two years, many of which involved scaling back regulations issued by the previous administration.⁹ In addition, given the Trump Administration's plans to eliminate certain regulations aimed at for-profit college programs, House Democrats may seek to scrutinize those programs more closely. A renewed focus in Congress on student borrowing and the financial institutions involved is also likely, as Democrats have made affordable college a focus of their legislative agenda.

Financial Institutions and Consumer Protection

Rep. Maxine Waters, the current Ranking Member of the House Financial Services Committee and expected chair, has been vocal about Democrats' desire to take Trump Administration regulators to task, calling for the Committee to investigate the conduct of the Consumer Financial Protection Bureau (CFPB) in the current Administration. Any such investigation likely will implicate the financial institutions the CFPB is responsible for regulating, including some of the nation's largest banks. In addition, Rep. Waters has stated that she has not forgotten the effects of the financial crisis and intends to focus on the actions of banks during that period that hurt consumers.¹⁰ Recent issues related to account fraud and consumer abuse could also be a ripe area for oversight.

Hurricane Response and FEMA Oversight

The Trump Administration's response to Hurricane Maria is a key issue for Democrats on the House Oversight and Government Reform Committee. In September 2018, Ranking Member Cummings released a staff report accusing Republicans of blocking an investigation into the Administration's response. Any Democratic-led investigation of the response is also likely to scrutinize the Federal Emergency Management Agency's (FEMA's) contracting practices, including specifically, who the agency awarded contracts to as part of the recovery efforts and whether the contractors have fulfilled the contracts as required.

Russian Interference in the 2016 Presidential Election

As the majority party, Democrats likely will re-open the House Permanent Select Committee on Intelligence's (HPSCI's) investigation into Russian interference in the 2016 election. Rep. Adam Schiff, the current Ranking Member of the HPSCI and expected chair, has been particularly vocal that he believes Republicans on the Committee "abdicated" their oversight role in the last two years.¹¹ In

particular, Rep. Schiff has criticized Republicans' decision to conclude the Russia probe as premature, even releasing a March 2018 report pointing to outstanding lines of inquiry that Republicans had ignored. This report also identified more than 30 witnesses Democrats would like to interview as part of the investigation, as well as more than 20 entities that Democrats believed hold documents relevant to the probe. The list goes beyond Trump-connected companies and individuals, extending to social media and technology companies, as well as hotels and other institutions.

Conclusion

The Democratic victory in the 2018 midterm elections will likely result in a significant increase in investigations and oversight of certain industries, including energy, technology, and health care. In turn, companies and individuals connected to those industries can expect to be in the crosshairs of these investigations by responding to requests for documents, participating in voluntary interviews, or even testifying at public hearings regarding their involvement and role in a particular issue. While congressional investigations can be inherently unpredictable and bring intense media scrutiny, potential disruption to corporations and individuals can be minimized through strategic engagement and negotiations with the relevant committees as well as an affirmative and responsive press strategy.

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Endnotes

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