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The First 100 Days: Congressional Investigations under the 117th Congress

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Non-Investigatory Priorities

In the 117th Congress, Democrat control both the House and Senate for the first time since 2011. In its first 100 days, this Congress has both borne witness to and partaken in numerous unprecedented events. Following the insurrection at the Capitol on January 6, the House impeached President Trump on January 13, just days before the end of his term. Although the Senate acquitted the former president after a four-day trial, this marked the first time in U.S. history that a president had been impeached twice. Shortly after, President Biden and Vice President Harris, the first Black and South Asian Vice President, were sworn into office on the Capitol steps in a socially distant and highly secure ceremony.

Congress then turned its attention to confirmations and legislation, both of which were of historic import as well. To date, Congress has confirmed twenty-one of Biden's twenty-three Cabinet-level nominees. President Biden's Cabinet nominations were unprecedented in their diversity. Among those confirmed are the first woman Secretary of Treasury, the first Black Secretary of Defense, the first-ever Native American Cabinet Secretary, the first Latino Secretary of the Department of Health and Human Services, the first openly LGBTQ Secretary, and the first Latino and immigrant Secretary of Homeland Security. Congress also passed the American Rescue Plan (the "ARP"), a \$1.9 trillion relief package to address the COVID-19 pandemic. The ARP provides direct relief to Americans through \$1,400 per-person checks, housing and nutrition assistance, increased tax credits for childcare costs, and an extension of unemployment insurance. It also provides funding to increase COVID-19 vaccination and testing capabilities, funding directed at elementary, secondary, and higher education, and over \$360 billion in emergency funding for state, local, territorial, and Tribal governments.

Investigatory Priorities

Despite its focus on other pressing matters, investigations and oversight of the private sector also remain congressional priorities. Enacted rules and procedures and committee requests for information and hearings help shed light on the scope and force of investigations to come, and those already underway.

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House Priorities

The House of Representatives approved a rules package in January which reinforces the investigative capacities of various committees.¹ Specifically, the rules re-authorize the Select Subcommittee on the Coronavirus Crisis and the Select Committee on the Climate Crisis. The rules also authorize a new Select Committee on Economic Disparity and Fairness in Growth. Each has broad oversight authority that may impact the private sector. Additionally, the rules allowed the Oversight Committee and the Select Subcommittee on the Coronavirus Crisis to issue subpoenas prior to their formal reorganization, signaling a commitment to ongoing investigations. Finally, the rules maintain an investigatory policy adopted by the previous Congress: Staff counsel are permitted to take depositions without a member of Congress present, facilitating the investigatory process.

House committees began issuing requests for information from private sector companies in the first few weeks of the session with many of the letters originating in the House Committee on Oversight and Reform. That committee and its various subcommittees have issued letters to the following entities:

- Two ventilator manufacturers following allegations that ventilators purchased by the federal government were not equipped to treat COVID-19 patients;²
- A social media platform with regard to its financing and alleged ties to foreign entities;³
- Twenty e-cigarette companies in response to FDA allegations that products were being sold without the required marketing authorization;⁴
- A media conglomerate and credit reporting agency regarding the use of a database to obtain and sell personal data to ICE;⁵
- Two pharmaceutical entities seeking information relating to flea and tick collars that have allegedly caused injuries to humans and killed thousands of pets;⁶

1 See generally, H.R. Res. 8, 117th Cong. (2021) (enacted), available at <https://www.congress.gov/117/bills/hres8/BILLS-117hres8eh.pdf>

2 *Oversight Committee Launches Probe into \$70 Million Contract for Ventilators Found Ineffective for Coronavirus Patients*, House Committee on Oversight & Reform (Jan. 27, 2021), <https://oversight.house.gov/news/press-releases/oversight-committee-launches-probe-into-70-million-contract-for-ventilators>.

3 *Chairwoman Maloney Demands Docs Related to Parler's Financing, Ties to Foreign Entities*, House Committee on Oversight & Reform (Feb. 8, 2021), <https://oversight.house.gov/news/press-releases/chairwoman-maloney-demands-docs-related-to-parler-s-financing-ties-to-foreign>.

4 *Subcommittee Demands Information from Vaping Companies Found Violating E-Cigarette Law*, House Committee on Oversight & Reform (Feb. 17, 2021), <https://oversight.house.gov/news/press-releases/subcommittee-demands-information-from-vaping-companies-found-violating-e>.

5 *Oversight Subcommittee Launches Investigation into Sale of Utility Customer Info to ICE for Deporting Immigrants*, House Committee on Oversight & Reform (Feb. 26, 2021), <https://oversight.house.gov/news/press-releases/oversight-subcommittee-launches-investigation-into-sale-of-utility-customer-info>.

6 *Subcommittee Launches Probe into Pet Collars Reportedly Responsible for Killing Thousands of Pets and Harming Humans*, House Committee on Oversight & Reform (Mar. 18, 2021), <https://oversight.house.gov/news/press-releases/subcommittee-launches-probe-into-pet-collars-reportedly-responsible-for-killing>.

- Pharmaceutical representatives seeking information regarding the sale of OxyCotin;⁷
- Four pharmaceutical companies inquiring whether the companies planned to use a CARES Act tax provision to offset opioid-related litigation costs after SEC filings disclosed that one company planned to use the tax provision to obtain a refund \$500 million larger than it would have otherwise received;⁸
- A video-sharing platform requesting information pertaining to allegedly predatory advertisement practices targeting children;⁹ and
- An energy supplier seeking information relating to severe power outages across Texas.¹⁰

The Select Subcommittee on the Coronavirus Crisis has also been active in investigations. It launched an investigation into a healthcare provider following allegations that the company gave vaccine priority to friends and family of executives and wealthy clients.¹¹ The Subcommittee also launched an investigation into widespread COVID infection and deaths at meatpacking plants, as already noted.¹² In doing so, the subcommittee sent document requests to some of the nation's largest meatpacking plants.¹³ Finally, the Subcommittee continued ongoing investigations related to the Economic Injury Disaster Loan Program¹⁴ and fraud related to government contracts for N95 protective masks.¹⁵ In a related inquiry, members of the Oversight Committee requested that the Government Accountability Office investigate how taxpayer-funded research was used to develop treatments and vaccines for COVID-19 and the price of such treatments charged by private drug companies.¹⁶

7 *Ahead of Sunshine Week, Committee Makes Public Documents Obtained in Purdue Investigation to Provide Transparency, Promote Accountability*, House Committee on Oversight & Reform (Mar. 11, 2021), <https://oversight.house.gov/news/press-releases/ahead-of-sunshine-week-committee-makes-public-documents-obtained-in-purdue>.

8 *Senior Oversight Committee Members Probe Four Companies on Tax Deductions for Opioid Settlements*, House Committee on Oversight & Reform (Mar. 5, 2021), <https://oversight.house.gov/news/press-releases/senior-oversight-committee-members-probe-four-companies-on-tax-deductions-for->

9 *Oversight Subcommittee Launches Investigation into Predatory Advertisement Practices at YouTube Kids*, House Committee on Oversight & Reform (Apr. 6, 2021), <https://oversight.house.gov/news/press-releases/oversight-subcommittee-launches-investigation-into-predatory-advertisement>.

10 *Environment Subcommittee Launches Probe of ERCOT's Role in Texas Power Crisis*, House Committee on Oversight & Reform (Mar. 3, 2021), <https://oversight.house.gov/news/press-releases/environment-subcommittee-launches-probe-of-ercot-s-role-in-texas-power-crisis>.

11 *Select Subcommittee Launches Investigation into One Medical's Flouting of Vaccine Prioritization Guidelines*, Select Subcommittee on the Coronavirus Crisis (Mar. 2, 2021), <https://coronavirus.house.gov/news/letters/select-subcommittee-launches-investigation-one-medical-s-flouting-vaccine>.

12 *Select Subcommittee Launches Investigation into Widespread Coronavirus Infections and Deaths in Meatpacking Plants*, Select Subcommittee on the Coronavirus Crisis (Feb. 1, 2021), <https://coronavirus.house.gov/news/letters/select-subcommittee-launches-investigation-widespread-coronavirus-infections-and-deaths>.

13 *Id.*

14 *Clyburn and Velázquez Ramp Up Investigation into SBA Loan Program Plagued by Fraud*, Select Subcommittee on the Coronavirus Crisis (Feb. 11, 2021), <https://coronavirus.house.gov/news/letters/clyburn-and-vel-zquez-ramp-investigation-sba-loan-program-plagued-fraud>.

15 *Clyburn Renews Demand for Documents on Trump Administration's Failed Contract to Supply Masks to VA*, Select Subcommittee on the Coronavirus Crisis (Mar. 17, 2021), <https://coronavirus.house.gov/news/letters/clyburn-renews-demand-documents-trump-administration-s-failed-contract-supply-masks-va>.

16 *New GAO Report Requested by Stabenow and Maloney Finds Government Provided \$162 Million to Fund Development of Remdesivir*, House Committee on Oversight and Reform (Apr. 1, 2021), <https://oversight.house.gov/news/press-releases/new-gao-report-requested-by-stabenow-and-maloney-finds-government-provided-162>.

The House Committee on Financial Services sent requests to the twenty-one largest investment firms for data on their diversity and inclusion initiatives. As “part of a longstanding effort to hold the financial services sector accountable” the Committee requested data and policies from 2016 to the present, with focus on workforce and board diversity, spending with diverse suppliers, and challenges implementing diversity and inclusion policies.¹⁷

The House Committee on Energy and Commerce has been active in requesting information relating to the internet and technology sector. The Committee sought information relating to tech privacy labels in light of allegations that the labels were misleading or inaccurate.¹⁸ Additionally, the Committee sought information from nine internet service providers about price increases and data caps implemented throughout the pandemic.¹⁹ Finally, following the events of January 6th, the Committee sent letters to social media platforms seeking information regarding advertising practices and urging the platforms to reform relevant policies.²⁰ Notably, the House Judiciary Committee has not yet issued requests for information.

In addition to the aforementioned requests sent by committees, investigatory priorities may be gleaned by examining other Congressional actions. Specifically, the House has held a number of hearings and press conferences on topics impacting the private sector, such as:

- The fraudulent collection of loans under COVID relief programs (House Select Committee on the Coronavirus Crisis);
- The role of the private sector in preventing, investigating, and remediating cyber-attacks (House Committee on Oversight and Reform and House Committee on Homeland Security);
- The need for stronger safety standards and regulations of baby food (House Committee on Oversight and Reform);
- Diversity and Inclusion in the financial sector (House Committee on Financial Services);
- Discriminatory lending practices (House Committee on Financial Services);
- Market volatility, short selling, and online trading platforms (House Committee on Financial Services);
- Fair access to housing and financial services (House Committee on Financial Services);

17 *Waters and Beatty Request Diversity Data from the Nation's Largest Investment Firms*, House Committee on Financial Services (Mar. 18, 2021), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=407477>.

18 *E&C Chairs Question Accuracy of Apple's New App Privacy Labels*, House Committee on Energy & Commerce (Feb. 9, 2021), <https://energycommerce.house.gov/newsroom/press-releases/ec-chairs-question-accuracy-of-apple-s-new-app-privacy-labels>.

19 *E&C Leaders Demand Answers From Internet Companies Regarding Raising Prices and Imposing Data Caps During COVID-19 Pandemic*, House Committee on Energy & Commerce (Jan. 11, 2021), <https://energycommerce.house.gov/newsroom/press-releases/ec-leaders-demand-answers-from-internet-companies-regarding-raising-prices>.

20 *E&C Democrats Demand Accountability for Facebook's Advertising Practices in Light of Attack on the Capitol*, House Committee on Energy & Commerce (Mar. 8, 2021), <https://energycommerce.house.gov/newsroom/press-releases/ec-democrats-demand-accountability-for-facebook-s-advertising-practices-in>; *E&C Leaders Demand Answers from Facebook for Knowingly Permitting Extremism & Disinformation to Grow on its Platform*, House Committee on Energy & Commerce (Feb. 23, 2021), <https://energycommerce.house.gov/newsroom/press-releases/ec-leaders-demand-answers-from-facebook-for-knowingly-permitting-extremism>.

- Events surrounding the weather-related energy crisis in Texas (House Committee on Energy and Commerce);
- The dissemination of disinformation and misinformation on social media (House Committee on Energy and Commerce);
- Pandemic-related fraud such as substandard PPE, faulty testing kits, and deceptive income schemes (House Committee on Energy and Commerce);
- Leveraging telehealth platforms to advance health equity and improve quality of care (House Committee on Energy and Commerce);
- Examining private equity's role in the U.S. healthcare system (Ways and Means Committee);
- Curbing the dominance of online platforms, modernizing antitrust laws, and the adequacy of current antitrust laws and enforcement levels (House Judiciary Committee); and
- Modernizing energy development laws, preventing carbon and methane emissions, and transitioning to innovative energy (House Committee on Natural Resources).

Senate Priorities

Unlike the House, the Senate has not yet issued rules or policies governing the 117th Congress. In another departure from the House, the first 100 days have seen considerably fewer investigatory actions in the Senate, as Democrats take over Senate Committees for the first time in six years. While Senate committees get organized, hire staff, and develop their legislative and oversight agendas, Senate Democrats so far have issued only one publicly disclosed letter to a private entity. The more likely expectation is for Senate Democrats to focus on issues related to the Biden administration. For example, on April 13, 2021, eighteen Republican senators issued a letter to FBI Director Christopher Wray requesting an investigation into President Biden's nomination for a high rank position in the Pentagon, inquiring into whether the nominee disclosed or solicited classified information after leaving his position with the Obama administration.

This lull in investigatory actions may be due to a delay in establishing a power-sharing agreement between Democrats and Republicans grappling with the 50-50 Senate split.²¹ Additionally, Senate rules typically require either authorization of both the Chair and ranking member or majority vote of the committee to issue subpoenas, signaling stricter rules surrounding investigations than the House.²² Moreover, traditionally, Democrats have pursued investigations of the private sector far more vigorously than Republicans. Nevertheless, Senate Democrats' priorities may be understood from other sources. For example, a report released at the request of the Senate's Permanent Subcommittee on Investigations found that the federal government must take additional action to prevent contamination from per- and polyfluoralkyl substances by ensuring that products containing these chemicals are not imported into the United States without first being reviewed by the EPA.²³ Additionally, to

21 *Senate leaders agree to power-sharing deal with Democrats in control*, NBC News (Feb. 3, 2021), <https://www.nbcnews.com/politics/congress/senate-leaders-agree-power-sharing-deal-democrats-control-n1256604>.

22 Michael L. Koempel, *A survey of House and Senate Committee Rules on Subpoenas*, Congressional Research Service (Jan. 29, 2018), <https://crsreports.congress.gov/product/pdf/R/R44247>.

23 *Peters Releases GAO Report Showing More Action is Needed to Address PFAS Contamination*, Senate Committee on Homeland Security & Governmental Affairs (Mar. 1, 2021), <https://www.hsgac.senate.gov/media/majority-media/peters-releases-gao-report-showing-more-action-is-needed-to-address-pfas-contamination>.

date, Senate committees have held hearings on a number of topics impacting the private sector, such as:

- Improving customs enforcement, mandating clean supply chains, and protecting workers (Senate Committee on Health, Education, Labor and Pensions);
- The effect of the U.S. Tax Code on domestic manufacturing (Senate Committee on Health, Education, Labor and Pensions);
- Antitrust reform and competition policy (Senate Judiciary Committee);
- The impact of the financial system and Wall Street on the racial wealth gap (Senate Committee on Banking, Housing, and Urban Affairs);
- The economic impact of climate change (Senate Committee on Banking, Housing, and Urban Affairs);
- Nuclear energy, innovative transportation technologies, and emissions reductions (Senate Committee on Energy and Natural Resources); and
- The high price of prescription drugs (Senate Committee on Health, Education, Labor and Pensions).

These interests are likely to translate into investigations as the session progresses.

Overlap with the Biden Administration

Furthermore, Congressional investigations will likely parallel Biden Administration priorities, which also may present complex challenges for private actors. President Biden signaled throughout his campaign that his administration would act on a number of policy priorities directly effecting the private sector, including climate change, affordability of health care, and regulation of financial services and Big Tech.

Since taking office, President Biden has taken steps to advance these priorities. In an Executive Order signed his first week in office, President Biden directed the Attorney General to develop “a comprehensive environmental justice enforcement strategy” in coordination with the EPA and prioritize environmental justice within the DOJ. Additionally, responding to the economic downturn, the executive branch is likely to place a renewed emphasis on consumer protection. In a March 1 proclamation, President Biden noted a “zero tolerance” for COVID-related fraud and that the FTC and CFPB, in coordination with law enforcement, would “fight predatory practices and privacy violations.”

The SEC, DOJ, and FTC are similarly positioned to take a tough regulatory stance against the private sector. Newly appointed SEC Chair Gary Gensler was regarded as a “forceful regulator” for overhauling the regulation of derivatives and pursuing investigations as the Chair of Obama’s CFTC.²⁴ Additionally, departing from the Trump Administration’s stance, the SEC has renewed

²⁴ SEC Moves Signal More Aggressive Enforcement Under Biden, Forbes (Feb. 16, 2021), <https://www.forbes.com/sites/erikakelton/2021/02/16/sec-moves-signal-more-aggressive-enforcement-under-biden/?sh=52d6c1996ffd>.

power to issue subpoenas and take sworn testimony in its enforcement efforts.²⁵ The DOJ is also expected to increase False Claims Act investigations surrounding pandemic-related fraud, opioids, telehealth, and cybersecurity.²⁶ Antitrust investigations and enforcement are also expected to expand under Biden. The DOJ's Antitrust Division has demonstrated a continued commitment to investigating and prosecuting anticompetitive practices in connection with consumer and food products and anticompetitive mergers.²⁷ Finally, President Biden's hiring of Tim Wu at the White House and nomination of Lina Khan to the FTC, both of whom are experts in antitrust regulation largely critical of Big Tech, signal that antitrust will be an enforcement priority.

Conclusion

Congressional oversight of the private sector has ramped up over the first 100 days of the 117th Congress. Although the Senate has been slower to initiate investigations, companies should not mistake this for a lack of commitment to goals shared with House Democrats. With Democrats controlling both chambers of Congress and the executive branch, companies can expect more probes from both the House and Senate. Companies should monitor press releases and oversight letters released through congressional committees. Remaining informed of committee actions can assist companies in understanding industrywide priorities and reviewing compliance practices. If oversight activity is a possibility, companies should evaluate their policies, procedures and related compliance efforts to determine whether updates or modifications are appropriate.

²⁵ *Id.*

²⁶ Acting Assistant Attorney General Brian M. Boynton Delivers Remarks at the Federal Bar Association Qui Tam Conference, Dep't of Just. (Feb. 17, 2021), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-m-boynton-delivers-remarks-federal-bar>.

²⁷ Antitrust Division Update Spring 2021, Dep't of Just. (Spring 2021), <https://www.justice.gov/file/1379221/download>.