

Congress Sets Sights on Financial Services, Climate Change and Big Tech

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Takeaways

- Large financial institutions, SPACs and consumer finance are top concerns of key congressional committees.
- Democrats are pressing energy and social media companies about their alleged roles in spreading climate change disinformation, while Republicans want details on U.S. climate envoy John Kerry's activities at the U.N. COP26 conference.
- Lawmakers' focus on Big Tech has shifted from its market power to its effects on users, particularly children. Members of both parties want to monitor the companies for their social impacts.
- Sen. Elizabeth Warren continues scrutinizing the private equity industry.

As expected, since Democrats assumed control of both the House and Senate in January 2021, congressional oversight committees have intensified their focus on the private sector. Whether a bipartisan consensus, single party or individual lawmaker drives oversight of a particular industry, companies should take note. A single lawmaker's pet project could mushroom into a sector-wide investigation engulfing an unwary company.

Despite highly publicized divisions among Democrats on key policy initiatives of the Biden administration, Democratic lawmakers in both chambers have shared an interest in oversight of the financial and technology industries and in addressing climate change.

Financial Industry

Three of the most powerful and active players on Capitol Hill have focused heavily on Wall Street:

- Sen. Sherrod Brown (D-Ohio), chair of the Senate Banking, Housing and Urban Affairs Committee (Senate Banking Committee);
- Rep. Maxine Waters (D-Calif.), chair of the House Financial Services Committee; and
- Sen. Elizabeth Warren (D-Mass.), member of the Senate Banking Committee, chair of its Subcommittee on Economic Policy, member of the Senate Finance Committee and chair of its Subcommittee on Fiscal Responsibility and Economic Growth.

Top agenda items in this area have included the use of special purpose acquisition companies (SPACs) to take companies public; oversight of the largest financial institutions; and general consumer protection issues, such as race-based disparities in lending and the improved financial performance of banks during the pandemic's economic upheaval.

Congress's focus on the financial sector has been buttressed by President Biden's appointment of key progressives to high-profile regulatory positions in his administration, including Gary Gensler as chairman of the Securities and Exchange Commission and Rohit Chopra as director of the Consumer Financial Protection Bureau — an agency the Trump administration effectively dismantled over the previous four years.

Climate Change

Democrats have made climate change a top oversight priority. In September 2021, Rep. Carolyn Maloney (D-N.Y.), chairwoman of the House Oversight and Reform Committee, and Rep. Ro Khanna (D-Calif.), chairman of the House Oversight and Reform Subcommittee on the Environment, sent letters to leading fossil fuel executives requesting documents and communications related to their organizations' roles in "supporting disinformation and misleading the public to prevent action on the climate crisis."

Following the requests, the committee held a hearing with seven CEOs, where Rep. Maloney announced she would issue subpoenas to the companies, that had failed to provide requested documents and communications. During a hearing recess, Rep. Khanna hinted to reporters that the committee might hold additional hearings on the topic and question other witnesses, including social media executives whose platforms may have spread climate disinformation.

Notably, Reps. James Comer (R-Ky.) and Ralph Norman (R-S.C.), two key Republicans on the House Oversight and Reform Committee, are seeking a hearing with John Kerry, the special presidential climate envoy, to examine his participation in the recent United Nations Climate Change Conference (COP26) and the impact of the Biden administration's climate policies on the economy. As minority party members, they cannot set congressional hearings, but their request may provide a glimpse into their climate priorities should Republicans take back the House in 2022.

Big Tech

As in previous years, Big Tech has been subjected to bipartisan oversight. In the 117th Congress, however, lawmakers seem to have shifted their focus from antitrust topics to the industries' role in social issues.

In March 2021, 23 Democrats issued a letter to a technology company demanding answers related to its advertising practices and alleged promotion of disinformation. The House Energy and Commerce Committee held a related hearing titled "Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation," which included testimony from three tech CEOs. The Senate Homeland Security and Governmental Affairs Committee also issued a letter to three social media companies regarding their policies for monitoring and removing extremist content.

In stark contrast, Republican efforts have focused largely on limiting Big Tech's ability to police and censor content based on a user's viewpoints and affiliations.

Despite partisan rancor over many issues, Democratic and Republican lawmakers have shown bipartisan interest in understanding and regulating the industry's impact on children and teenagers. In April 2021, Rep. Raja Krishnamoorthi (D-Ill.) requested information from a tech company and expressed concerns about its content quality, advertisement practices and effects on children. The House Oversight and Reform Committee also issued letter requests to two tech companies regarding their alleged role in facilitating human trafficking content and their impact on the mental health of teen girls.

Meanwhile, the Senate Commerce, Science and Transportation Committee held a hearing with a tech company executive regarding its alleged harmful effects on youth. Several Republican lawmakers issued letters to tech CEOs requesting information regarding internal research or studies conducted by the companies so as to better understand their products' impact on children's mental health. Despite overlap in this issue, the Republican lawmakers issued a press release along with the letters titled "Democrats Refuse To Help Expose Big Tech's Harms to Children."

Although no bipartisan consensus has emerged on these issues, Democratic and Republican lawmakers seem to agree that the industry should be subject to some type of additional oversight. Therefore, regardless of the results of the November 2022 midterm elections, Big Tech will likely be in the congressional spotlight for the foreseeable future.

Private Equity

Sen. Warren has long criticized private equity (PE) firms and shows no signs of relenting. In addition to reintroducing a 2019 bill aimed at PE, Sen. Warren has issued several oversight letters.

In November, Sen. Warren sent a letter to the PE firm that owns a major pet retailer regarding its treatment of workers and animals. She has targeted buyout firms over their retail investments following the liquidation of several private equity-backed department stores and chains. In March 2021, after issuing two letter requests to a nursing home network, Sen. Warren announced plans to launch an investigation into for-profit care facilities and those owned by PE firms. Recently, she and two other senators sent letters to two PE executives in support of workers on strike at a coal mine the investment firms control.

As chair of the Senate Banking Subcommittee on Economic Policy, Sen. Warren led a hearing titled "Protecting Companies and Communities From Private Equity Abuse," and the committee held a hearing on PE landlords in October.

Although some news outlets have described the attendance at these hearings as "sparse" and predict that lawmakers will largely remain uninterested in pursuing the industry, the House Ways and Means Subcommittee on Oversight also held a hearing regarding private equity's extensive investment in the U.S. health care system. In addition, in June 2021, oversight subcommittee chair Rep. Bill Pascrell (D-N.J.) wrote the Government Accounting Office, requesting it study the effects of PE across the health care sector.

Conclusions

Congressional oversight of the private sector has been active in 2021, and high-profile hearings at the end of the year signaled that 2022 will bring more of the same, particularly as the midterm elections approach. We can expect Democrats to move ahead aggressively with their agenda as they fight to keep their majority. Meanwhile, Republicans will likely focus their attention on oversight of the executive branch.

Companies should therefore continue monitoring relevant press and evaluate their policies, procedures and related compliance efforts to determine whether modifications should be made.