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It's Time to Start Preparing for Congressional Investigations

- If the Democrats win a majority in the House, and possibly the Senate as well, they are likely to launch investigations, seeking documents and testimony from corporations.
- Areas in which Democrats have expressed interest include: gifts, donations or funding directed to the administration or its initiatives; regulatory or merger approvals where the White House may have played a direct role; transactions in which the U.S. government invested; presidential pardons; and white-collar matters where normal processes may have been bypassed.
- Companies whose businesses may touch on these areas, or that have links to the current administration, should consider planning now for the possibility of congressional investigations in 2027.

Current polling suggests that Democrats may retake the House of Representatives and could possibly flip the Senate as well. For businesses, one of the most significant consequences would be to give the new majority the power to compel companies and individuals to produce documents and testimony through legally binding subpoenas.

Any company whose business intersects with government contracts, regulatory approvals, the current administration's priorities, or which has direct or indirect links with the current administration should consider planning now for the possibility of congressional investigations when the new Congress convenes in 2027. Democratic lawmakers have already signaled some of the areas they hope to focus on.

Why This Matters Beyond Politics

Exposure to congressional investigations can reach any company that received a favorable regulatory decision, benefited from a government transaction, donated to certain political causes, or simply operates in a sector — such as digital assets or prediction markets — where the current administration or its allies are seen as having a stake. A subpoena can also land on a company because of its relationships: who it partners with, who sits on its board, or who has invested in it.

Today, without subpoena power, opposition lawmakers are largely limited to sending letters requesting information voluntarily, and targets can simply decline to comply. That option would largely disappear if Democrats win a majority in either chamber and can compel responses. Even a House-only

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majority would likely be significant, since House committees are likely to coordinate closely with Senate Democrats to pursue a shared agenda.

This is not a hypothetical concern. Democratic lawmakers have already begun sending a steady stream of letters to companies directing them to preserve documents and communications, effectively laying the groundwork for subpoenas that could follow a change in majority. In one notable example, the ranking member of a House select committee sent a preservation letter to a digital assets firm with ties to the administration, instructing it to retain all records concerning its dealings with the administration and its foreign investors.

That letter is far from an isolated case. In the past 12 months, ranking Democratic members across multiple House and Senate committees have sent similar letters to companies and individuals in a wide range of industries. Recipients have included:

- Energy company executives asked about contacts with the administration involving foreign policy matters.
- A pharmaceutical company regarding a drug-pricing arrangement with the White House.
- A grocery delivery platform regarding algorithmic pricing practices.
- Parties to a major media merger regarding the approval process.

These letters do not carry the legal force of a subpoena, but they put companies on notice: Failing to prepare for future requests and to preserve the requested materials now could create potential exposure once a committee has subpoena power to back up its request. Companies that have received such a letter should treat it as an early warning sign that a formal process will be in the cards if the Democrats regain subpoena power.

What Investigators Are Likely to Focus On

Several themes are emerging as likely oversight priorities:

- Gifts, donations or funding — including from foreign sources — directed to the administration or its initiatives.
- Regulatory or merger approvals where the White House is reported to have played a direct role.
- Transactions in which the U.S. government acted as an investor, counterparty or key decision-maker.
- Pardons connected to political donors or administration allies.
- White-collar matters where normal enforcement processes are reported to have been bypassed.
- Parties and industries purported to have close ties to the administration or the president's family, and the broader networks of business partners around them.

Companies do not need to be direct targets to be swept within the areas of congressional concern. Vendors, joint venture partners and financial counterparties to a primary target are frequently asked for records as well.

How an Investigation Typically Unfolds

Every congressional investigation proceeds slightly differently, and some congressional inquiries don't become formal investigations at all. Nonetheless, a standard practice for congressional inquiries and investigations is as follows:

1. An initial letter arrives, requesting documents and written answers. There is no legal obligation to respond, though ignoring it carries risks of escalation and may be untenable if it comes from a committee with oversight responsibility for the recipient's industry.
2. If the response is viewed as inadequate, the committee can escalate to a subpoena — a legally enforceable demand.
3. Investigators may ask to interview employees informally or take formal depositions.
4. The matter can culminate in a public hearing, where a refusal to testify, absent a valid legal basis, can itself trigger a subpoena.
5. Many investigations end with a public report highlighting findings and the individuals or companies the committee views as bad actors. Even absent any finding of wrongdoing, the reputational impact of being named can be substantial.

A Word on Cross-Border Exposure

Companies with international operations face an added layer of complexity. A foreign subsidiary asked to produce documents located overseas must weigh U.S. compliance demands against local privacy, national security and secrecy laws. Congressional committees generally lack authority to reach beyond U.S. borders, but companies often cooperate anyway rather than risk being frozen out of future U.S. business. Most that resist ultimately negotiate the scope of production, using the limits of Congress's reach abroad as leverage — rather than trying to block a subpoena outright, an approach that has rarely succeeded.

What Boards Can Do Now

The companies that navigate congressional scrutiny most successfully are those that prepare in advance. Steps companies can take now include:

- **Take stock of exposure.** Identify dealings, past or present, that touch on government contracts, regulatory approvals, political contributions or relationships connected to the administration.
- **Check for preservation letters** already received, by the company or its peers, and evaluate their applicability to the business.

- **Identify outside counsel and government relations support** in advance, so the company can move quickly if it is targeted by a member of Congress or a congressional committee.
- **Prepare a communications framework** for employees, investors and customers, since a letter or subpoena can become public quickly.
- **Map internal owners** of politically sensitive relationships so management can flag developments to the board early.
- **Brief the board periodically** on the company's oversight risk profile, not just when a letter arrives.
- **Coordinate messaging and response strategies** with industry peers and trade organizations facing similar exposure, where appropriate.
- **Review insurance coverage and indemnification provisions** relevant to investigation costs and executive exposure.

The Bottom Line

A shift in congressional control would meaningfully change capabilities of oversight committees to evaluate the activities of businesses around the world. Boards that use the period before the election and new Congress to understand their exposure, shore up their document practices and line up the right advisers will be far better positioned to handle whatever comes.

Authors

Ryan D. Junck / London

Margaret E. Krawiec / Washington, D.C.

David B. Leland / Washington, D.C.

Don L. Vieira / Washington, D.C.

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One Manhattan West / New York, NY 10001 / 212.735.3000