

A Divided Congress Will Have an Active Investigations Agenda Over the Next Two Years

Contributing Partners

Margaret E. Krawiec / Washington, D.C.

David B. Leland / Washington, D.C.

Associate

Dorielle Obanor / Washington, D.C.

This article is from Skadden's 2023 Insights.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

Key Points

- Democrats are likely to have the same investigative priorities in 2023 as they did leading up to the midterm elections, both as the majority in the Senate and the minority in the House.
- Republicans' victory in the House could lead to oversight of Big Tech and corporate ESG policies, among other priorities.
- Congressional oversight likely will dominate both parties' agendas as lawmaking grinds to a halt and both sides gear up for the 2024 presidential election.

Democrats, having maintained narrow control of the upper chamber in the midterm elections, likely will remain focused on the issues and industries they prioritized in 2022.

Meanwhile, with Republicans taking control of the House in January 2023, we expect an aggressive investigative agenda aimed at government actors and the private sector. Congressional oversight will be a critical tool for House Republicans limited on the legislative front by their slim majority.

Digital assets likely will receive attention from both sides of the aisle. The two parties also may focus on climate change and Big Tech, but any inquiries will be from opposing views.

Continued Democrat Oversight Initiatives

Although not directly impacting the business community, we would be remiss not to mention congressional investigations into high-profile political issues. Most notably, the House Select Committee to Investigate the January 6th Attack on the United States Capitol has garnered much attention, particularly after issuing a subpoena to former President Donald Trump.

However, Democrats have conducted other investigations with greater implications for private companies, including:

Cryptocurrency-related fraud. Various committees and members have initiated inquiries into alleged fraud in the digital asset space. Moreover, following the recent collapse of a cryptocurrency exchange, leaders from both sides of the aisle have made public statements calling for greater oversight.

Climate change. While Congress was passing key aspects of the Biden administration's legislative agenda on climate change, committees in both chambers homed in on oil and gas companies and their impact on global climate change. The House Oversight and Reform Committee has been the most active, holding three hearings on the industry's prices, profits, climate pledges and alleged role in spreading "climate disinformation." Meanwhile, the House Natural Resources Committee focused on whether public relations (PR) firms played a part in broadcasting allegedly misleading information on climate change. After holding a hearing on the topic, the committee released a report in September 2022 concluding that PR firms helped oil and gas companies challenge climate policies and allegedly mislead the public about their "green" initiatives.

Other industries. Democrats convened hearings, sent letters and requested Government Accountability Office reports aimed at other industries, including:

- **internet providers**, for alleged price hikes, speed cuts and fraud risks;
- **commercial banks**, relating to consumer protection, inflation, diversity and inclusion, enforcement actions and recidivism, mergers and acquisitions, emerging technologies, workers’ rights and abortion access;
- **the cryptocurrency and bitcoin mining industry**, regarding its impact on the Texas power grid, climate change and consumers;
- **drug manufacturers**, for their tax practices; and
- **hospitals**, relating to compliance with the Hospital Price Transparency rule.

Republican Priorities in 2023

House Republicans are expected to launch a series of investigations into the Biden administration. Republicans have signaled their intention to investigate President Joe Biden’s response to the pandemic, U.S.-Mexico border issues, the withdrawal from Afghanistan, the Mar-a-Lago warrant, President Biden’s son Hunter and industries in the private sector with ties to the Biden administration.

“Congressional oversight will be a critical tool for House Republicans limited on the legislative front by their slim majority.

Prior to the midterm elections, House Minority Leader Kevin McCarthy held regular training sessions for Republican

members and staff on oversight, including two titled “Oversight Education Series: Investigations 101” and “How To Conduct Detailed Depositions.”

Although Republicans are typically less adversarial toward business and industry, Republican members have expressed an interest in conducting investigations targeting the following areas.

Big Tech. In August 2022, Republican congressional staffers reportedly met with several think tanks to strategize potential investigations aimed at Big Tech. Such probes could focus on the technology industry’s ties to the Biden administration, censorship and partisan bias. As a preview of potential oversight in this area, Rep. Jim Jordan, R-Ohio, and 34 other House Republicans sent a letter in September 2022 to a technology company CEO outlining concerns about the company’s role in the 2020 presidential campaign. The Republicans requested that the company preserve all existing and future records related to their inquiry.

ESG policies. Republican lawmakers are expected to focus on what they describe as “woke capitalism,” — the belief that banks and Wall Street have prioritized environmental, social and governance (ESG) causes traditionally associated with left-leaning politics. (See “[ESG Momentum Remains Strong but May Face Headwinds in 2023](#).”) News sources suggest that CEOs of major financial firms could be called to testify about their ESG policies, specifically any efforts to curb climate change and end investments in the fossil fuel industry.

Climate change. Several conservative organizations have lobbied to disband the House Select Committee on the Climate Crisis, as the Republican House leadership did in 2011. While Republicans have not publicly addressed the future of the committee, they may decide to use the panel as a platform to challenge the Biden administration’s climate and energy policies if they reauthorize it. Republican lawmakers also have vowed to investigate climate-related disclosure regulations initiated by the Securities and Exchange Commission.

Focus on China. Several Republican lawmakers have expressed interest in focusing on China as it relates to supply chains, foreign policy and national security. These probes could impact drug manufacturers, the wind and solar industry, electric vehicle manufacturers, technology companies and financial institutions. Republicans also may establish a select committee to address issues related to China.

In Sum

With a divided government, Republicans holding only a narrow majority in the House and both parties gearing up for the next presidential election, we can expect congressional activity to be dominated by oversight battles as gridlock prevents the parties from achieving their respective legislative agendas.

Companies should continue to monitor developments inside the Beltway and determine whether their industry attracts the attention of either party and how they can prepare for any potential probes or inquiries.