

CLIENT ALERT

What You Tell Congress in 2027, Federal Regulators Could Read in 2029

Introduction

On November 3, voters will decide control of the House and Senate for the 120th Congress. Whichever party holds the gavels in January 2027, committee oversight of the private sector will continue, and companies should plan for it now. If control of either chamber changes, members who are poised to lead committees have publicly said they intend to examine, among other topics, companies' dealings with the Administration (tariff exemptions, settlements to restore federal funding, and White House ballroom donations); dropped Securities and Exchange Commission (the "SEC") and Department of Justice (the "DOJ") enforcement matters; immigration-enforcement personnel and other government contractors; algorithmic pricing, drug pricing, and pharmacy benefit managers; crypto, stablecoins, and prediction markets; bank deregulation and mergers; and artificial intelligence and data centers.

If control does not change, current investigations of the private sector will continue, covering, among other topics, federal investigators' collection of lawmakers' phone records; foreign governments' pressure on technology companies to restrict speech; debanking; and diversity, equity, and inclusion programs. Either way, companies whose activities touch these areas should prepare.

In anticipation of congressional scrutiny, companies and their senior executives should be mindful that congressional oversight also can be the first chapter of a regulatory enforcement file. Every document a company produces, every answer an executive gives in a transcribed interview, and every position counsel takes in a letter could reach federal or state regulators and prosecutors. That record could be read years from now — including by a new administration that assumes office in January 2029 — before the limitations period that applies to violations of civil regulatory and criminal laws and rules expires. Companies should prepare their congressional response with the later reader in mind.



How the record reaches regulators and prosecutors

Material produced to Congress ordinarily does not receive the protections common in regulatory or criminal investigations or in litigation. Recipients of congressional requests lack the benefit of the enforceable protective orders courts routinely enter in civil litigation, and there is no equivalent of grand jury secrecy.¹ Congress is not subject to the Freedom of Information Act or the statutes and rules that restrict public disclosure of agency files — a committee is often free to release what it receives. Committees further take the position that attorney-client privilege and work product apply at their discretion. The Supreme Court has observed that recipients of congressional subpoenas "have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications,"² but no court has definitively resolved whether, or how far, attorney-client privilege and work-product protection bind a congressional committee.

There are three common ways that materials produced in the context of a congressional investigation could reach regulators and prosecutors.

01. Committees often publish their findings

Staff reports usually attach relevant documents, and committees post exhibits and deposition excerpts commensurate with hearings. Once public, that material is available to every regulator and prosecutor.

02. Committees can refer perceived legal violations and, in doing so, can provide documents and testimony to accompany the referral³

Aside from the referral risk, the false-statements statute reaches statements made in any investigation conducted under a committee's authority, so even an unsworn statement made to congressional investigators carries criminal exposure.⁴

03. The committee investigating a company or industry often also oversees the agencies that regulate the company or industry

Both parties have used oversight hearings to push agencies on enforcement priorities. Although an agency will generally not discuss a nonpublic investigation in a public hearing, when a committee at an oversight hearing inquires why the agency dropped a category of cases — or never brought one — the agency responds on policy, and enforcement staff take note.

The limitations period runs past 2028

Conduct from 2025 and 2026 that a committee examines in 2027 will still be within the limitations period for many civil regulatory and criminal violations. Conduct remains reachable after the 120th Congress ends in January 2029, and in some cases into the mid-2030s. For example, the default federal statute of limitations for the vast number of federal criminal violations is five years.⁵

¹ Congressional investigators sometimes will enter into negotiated confidentiality arrangements; however, in our experience, the terms of such agreements generally lack an enforcement mechanism and offer little recourse once material has been released.

² *Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020).

³ In January 2017, after a two-year investigation, a bipartisan Permanent Subcommittee on Investigations staff report found that an online classified-ad site had knowingly facilitated sex trafficking and concealed evidence of it. The subcommittee's Republican and Democratic leaders referred the matter to DOJ. In April 2018, the company's CEO and several of its corporate entities pleaded guilty to federal charges.

⁴ 18 U.S.C. § 1001(c)(2).

⁵ 18 U.S.C. § 3282.

What to do before the 120th Congress convenes in January 2027

01 Identify potential areas that could come under congressional scrutiny and develop a factbase.

Committee leaders in both parties have telegraphed industries and topics it will scrutinize through letters and interviews with the press, all of which are public. Companies should start building a factbase now, before a subpoena or request arrives, and use the weeks between the election and the new Congress to finish it. Starting factual development after receipt of such a request puts the recipient behind. Because a committee can demand the factbase and may not honor privilege, companies should have counsel direct the work and set privilege and documentation protocols from the outset.

02 Run one review, not two.

For each issue on a committee's likely list, counsel leading the review should evaluate how the factual predicate maps to civil or criminal charges. Have counsel assess both exposures together.

03 Be mindful of the limitations period.

Date the conduct behind each likely topic and calculate when each limitations period would run, keeping in mind that for continuing conduct the period may run from the last act.

04 Treat transcribed interviews as public testimony.

These transcripts can become public during the congressional investigation but, even if they do not, they can make their way into agency files.

05 Preserve now, before a letter or subpoena arrives.

Committee leaders in both parties already are sending companies preservation letters and say the obligation attaches on receipt. Exposure is not limited to obstructing Congress.⁶ If a congressional inquiry signals a likely SEC or DOJ matter, destroying records with intent to obstruct that matter, even before it opens, could violate the federal tampering with evidence statute.⁷

06 Screen new government-facing commitments.

Contracts, exemptions, settlements, and donations agreed in 2026 could be on the 2027 oversight agenda. Review them now for how they will read in a hearing.

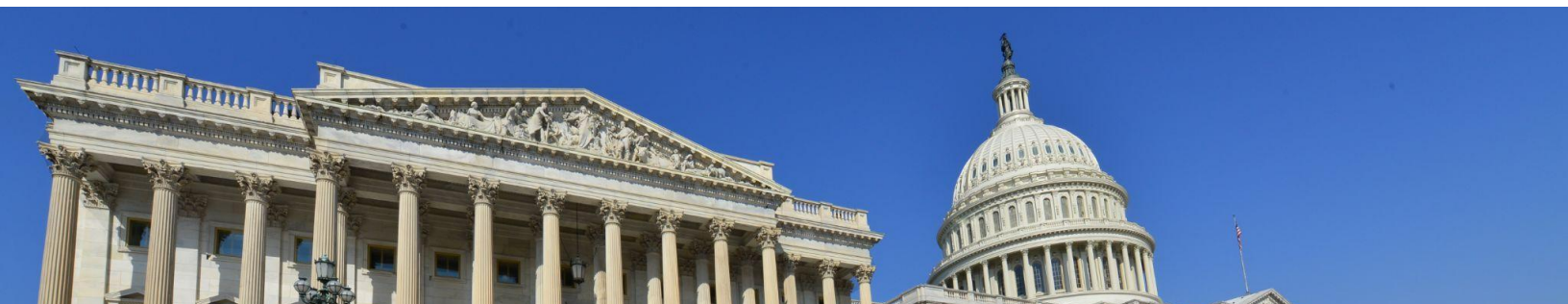
07 Prepare individuals.

Decide early whether executives need separate counsel, evaluate whether any individual may need to assert the Fifth Amendment in interviews, give D&O carriers notice where policies require it, and brief the board. Note that until January, requests from a minority are voluntary. If control changes in January, today's minority letters could become subpoenas.

⁶ 18 U.S.C. § 1505.

⁷ 18 U.S.C. § 1519.

This client alert is not intended to serve as or replace legal advice.



Scale LLP's Congressional Investigations Team

Our congressional investigations team is part of our White Collar & Investigations practice. In addition to congressional inquiries hearings, the practice covers SEC and other regulatory enforcement inquiries, Civil Investigative Demands, and criminal investigations. In these matters, we represent companies and individuals through the lifecycle, from the first letter through interviews, depositions, resolution negotiations, and trial.

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