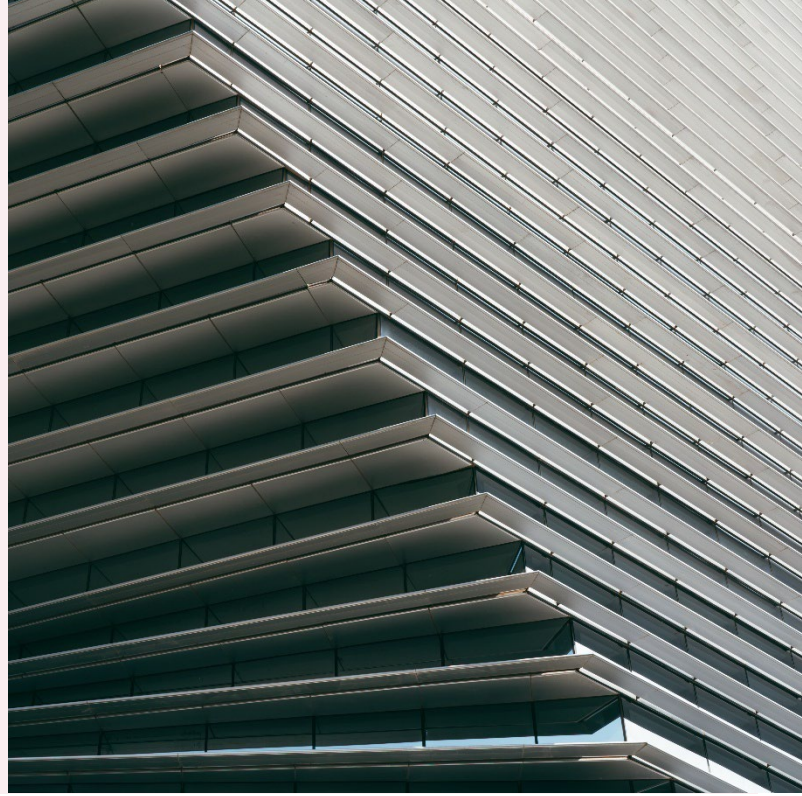


No Matter Who Wins, Congress is Coming For You

*What the 120th Congress Means for
Your Industry, and What a Split Chamber
Actually Means*
[October 2026](#)



NO MATTER WHO WINS, CONGRESS IS COMING FOR YOU

*What the 120th Congress Means for Your Industry, and What a Split Chamber
Actually Means*

In July 2026, the Senate voted unanimously to hold a hospital CEO in criminal contempt of Congress. He had refused to testify about a bankruptcy that put thousands of jobs and dozens of hospitals at risk. That vote should be seen as a preview, not an outlier. Because Congress and enforcement agencies have abdicated their traditional roles, Congressional oversight has become the default tool of governance in Washington, and that will not change in November regardless of outcome. Narrow majorities have made ordinary legislating nearly impossible for several cycles running, and committee chairs on both sides of the aisle have responded by leaning harder on subpoena power, document requests and public hearings as a substitute for traditional legislative activity. That dynamic is unlikely to change in the near or medium term.

What the midterms will change is who holds the gavels, and therefore which organizations become the target of that oversight machinery. Committee staff on both sides have spent months building investigation target lists, drafting document requests and issuing preservation letters in anticipation of a shift in control. Much of that groundwork is already public: in letters to agencies and companies, in hearing announcements, and in legislation introduced but not promulgated. The outline of the 120th Congress's investigative agenda are visible now, before a single vote is cast, for organizations willing to look.

To provide some clarity, we answer four central questions below:

- 1 How Congressional investigations differ mechanically from the DOJ, SEC and regulatory proceedings most legal and compliance teams are built to handle
- 2 What a split House and Senate would actually mean operationally
- 3 Which industries are likely to be in the scope of Congressional investigators
- 4 Which specific concrete steps organizations should be taking now, while the makeup of the next Congress is still undetermined and the target lists are not yet final

HOW CONGRESSIONAL INVESTIGATIONS DIFFER FROM OTHER PROCEEDINGS

Organizations that have experienced traditional government enforcement inquiries often assume a Congressional investigation will follow a similar path. That assumption is often mistaken, as the differences can be significant and carry real strategic consequences.

The threshold to open a Congressional inquiry is extremely low. Unlike DOJ, the SEC, and other traditional enforcement agencies, Congress does not need to allege any wrongdoing or establish probable cause. Nor is it required to connect an investigation to a specific bill it intends to draft. Nearly a century ago, the Supreme Court held that the power to obtain information is inherent in the legislative function, and as a practical matter that standard reaches almost any private-sector activity on which Congress could plausibly legislate.

There is no neutral decision-maker in Congressional investigations. Unlike DOJ investigations or civil or criminal litigation, in a congressional investigations the committee leadership plays the role of both prosecutor and judge. The same committee leadership that opened the inquiry also decides whether to honor a privilege claim, narrow a document request, or accept a written submission instead of live testimony. Judicial review exists when Congress attempts to enforce a subpoena. It is rarely invoked, and even more rarely succeeds quickly enough to matter to the entity under scrutiny.

Privilege protections are discretionary, not guaranteed. While the attorney-client privilege and work-product doctrine carry real weight in court, before a Congressional committee they carry only as much weight as committee staff choose to give them. The determination often turns simply on whether honoring the claim serves the committee's broader narrative. Constitutional privilege claims generally fare no better. Two recent D.C. Circuit decisions from July 2026, *United States v. Navarro* and *de la Torre v. Cassidy*, reinforce the point: a blanket assertion of executive privilege does not excuse a witness from appearing or responding to a Congressional subpoena, and privilege objections must be raised through accommodation and negotiation on a question-by-question or document-by-document basis, not treated as a complete shield against participation. The same courts have made clear they will not inquire into a committee's motives, and will not entertain pre-

enforcement challenges to a subpoena. Negotiation with staff, not litigation, is the real point of leverage. Organizations that assume their privileged materials are automatically protected should expect that assumption to be tested, and should build their privilege log as well as plan a negotiation and potential accommodation strategy.

Congressional investigations are generally conducted in public by design. Committee letters are frequently posted online even before they reach the addressee, hearings are televised, and confidential documents are routinely shared with the press, sometimes selectively, to build a specific story. For many organizations, the reputational risk is greater than the risk of any potential formal committee finding.

And the timeline compresses fast. What begins as an informal staff call can become a written request, then a subpoena, then a contempt referral within weeks. A subpoena recipient who does not comply faces three enforcement paths: DOJ criminal referral, a civil enforcement action, or Congress's rarely used inherent contempt power.

THE SPLIT-CHAMBER PROBLEM

Contrary to conventional wisdom, a divided Congress likely would not result in more moderate oversight. To the contrary, it would generate two committee structures pursuing different theories, on different timelines, with no mechanism to reconcile them.

On the House side, a new Democratic majority would inherit committees, staff, and target lists under preparation since early this year. Oversight, Financial Services, Energy & Commerce, and Judiciary Committee chairs would gain subpoena authority on day one of the 120th Congress, and the record points to where they intend to direct it: pricing and affordability, the administration's relationships with favored companies and family-linked ventures, and the retreat of financial and consumer regulators from enforcement. Expect formal requests within weeks of the new term, not months. The preservation letters that have already issued out to companies and agencies are a signpost, not a bluff.

On the Senate side, a Republican majority would almost certainly not go quiet. Instead, in a narrow-majority, populist-leaning caucus, it would likely sharpen its own oversight priorities: efficiency and waste in federal spending, program integrity, and scrutiny of how agencies enforce, or decline to enforce, existing rules.

Companies can face real whiplash in such a climate. For example, a company can face a House committee alleging it received an improper favor from the administration, and a Senate committee alleging, in the same session, that a different part of its federal funding was mismanaged. Neither committee is bound by the other's findings, timeline, or view of privilege.

The operational consequence is real. A document produced to satisfy one chamber's staff, or a claim of privilege made to one, can become an exhibit the other chamber uses for its own purposes. Coordinating productions, testimony, and public statements across two committees with opposing incentives requires considerable planning and foresight before the first letter arrives, not after.

SIX INDUSTRIES, WATCHED FROM BOTH DIRECTIONS

The industries below are being flagged from both sides of the aisle right now, through letters, hearing announcements, and public statements. That is the most reliable early-warning signal available before subpoena authority actually changes hands.

Healthcare

Affordability is the organizing theme on the Democratic side: drug pricing arrangements with the administration, insurer denial practices, and the use of AI in coverage determinations have already been the subject of letters and preservation notices. Republican committees have run parallel hearings on insurance affordability and AI-driven coverage decisions from the other direction. A payer or PBM with both a government pricing arrangement and an algorithmic denial process is scope of both parties' investigative priorities.

The collapse of Steward Health Care previews what committees will do with a distressed operator in either scenario. As noted above, the Senate HELP Committee subpoenaed Steward's former CEO to testify publicly about the causes of the bankruptcy. When he refused to appear, the full Senate voted unanimously to hold him in criminal contempt, a step Congress rarely takes and one that a recent D.C. Circuit decision has now made considerably harder to resist. Hospital systems, health plans, and private-equity owners of distressed healthcare should expect that a committee investigating one issue will not stay confined to it once a public hearing is scheduled. Labor-focused Democrats have also pushed for federal action on the healthcare cost burden facing workers, a thread a Democratic House would likely convert into direct oversight of large employer-sponsored plans and PBM contracting practices.

Oil & Gas

Energy remains a bipartisan target, but for very different reasons. Republican interest centers on permitting efficiency and reshoring. Democratic interest focuses on the pass-through of energy costs to consumers, and the environmental impact of the administration's actions and inactions. Companies with either favorable permitting outcomes or rate impacts on residential customers are in scope.

Of particular interest is the collision between fossil-fuel infrastructure and the AI data-center buildout. Utilities, pipeline operators and power generators supplying data-center demand are already being asked how those contracts affect residential rates. That inquiry sits squarely in the same affordability narrative driving healthcare and financial-services oversight. A change in House control would also likely revive scrutiny of expedited permitting and environmental-review shortcuts granted over the past two years, particularly where a company's government-relations spending or executive contact with the administration is part of the public record. Companies that received a favorable siting, permitting, or enforcement decision should assume the underlying agency record, not just their own conduct, will become part of the investigating committee's file.

Digital Assets

This is already an active area of Congressional investigation. House Democrats have already pressed the SEC directly over its retrenchment from crypto enforcement, and separate letters have raised national-security concerns about crypto ventures tied to the administration's family members. A change in House control would likely escalate that correspondence into subpoena-backed hearings within the opening months of the new term.

Expect the House Financial Services and Oversight Committees to move quickly on two fronts: the adequacy of SEC and CFTC enforcement against crypto asset issuers and exchanges, and the conflicts-of-interest questions raised by administration-linked digital-asset ventures. Prediction-market operators sit at the intersection of this issue and the gaming exposure discussed below. Stablecoin issuers should also expect continued attention, since concerns about sanctions evasion and illicit finance have drawn interest from both parties even where their views on crypto regulation generally diverge. Exchanges, custodians, and issuers with any nexus to politically connected ventures, or with recent enforcement actions that were narrowed or dropped, should expect a high likelihood of Congressional interest.

Gaming & Prediction Markets

This sector warrants more attention than it typically receives. Legislation to bar prediction-market bets on elections, government action, and sports has already been introduced. The Senate has adopted its own internal trading restriction, and vocal members have signaled that industry self-restrictions do not go far enough. Sportsbooks, exchanges, and prediction-market platforms should expect the current Congressional attention to move from statements to document requests before any change in committee control.

Election and sports-outcome prediction markets sit at the collision point of securities and commodities regulation, state-law gaming frameworks that were never built with them in mind, and integrity concerns that professional leagues and state regulators have raised directly with Congress. Members on both sides have questioned whether platform self-imposed restrictions on political and sports contracts are adequate or merely a hedge against legislation. Operators should thus expect requests for internal risk-committee records, market-integrity protocols, and communications with leagues or state regulators, not just trading data. Traditional sportsbooks are not insulated simply because the current attention is on prediction markets. Any operator with lobbying activity, state-compact arrangements, or executive statements minimizing federal interest should revisit that posture now, since it is precisely the kind of public position likely to draw Congressional attention.

Artificial Intelligence

Two threads are converging: data-center energy costs being passed on to residential ratepayers, and AI-driven decision-making in regulated sectors like healthcare and financial services. A company at the intersection, such as an AI infrastructure buildout with a visible local rate impact, is a natural hearing subject regardless of which party is asking the questions.

A third thread will likely gain force after November, regardless of which party controls the House: algorithmic discrimination and bias in high-stakes

automated decisions. This issue spans credit underwriting, housing, insurance pricing, and employment screening, an area where Democratic committees have already opened informal inquiries into pricing algorithms generally. Republican committees, for their part, have shown sustained interest in AI's effect on children and in national-security competition with China over advanced compute and model access. These cross-currents mean an AI company can face very different theories from the two chambers, even where the underlying technology is the same. Companies deploying AI in a regulated decision-making context should expect document requests to reach model documentation, training data provenance and internal bias-testing records, not just the customer-facing output, and should assume that a Congressional committee will focus on the adequacy of that internal testing.

Banking & Financial Services

Consumer data-access fees, algorithmic and surveillance pricing, and the pace of financial regulators' enforcement activity are already subjects of active congressional correspondence. Institutions should assume that any pricing model built on customer data, and any recent examination or enforcement posture that could read as lenient, is already on a staffer's list.

A Democratic House would likely focus on the CFPB's reduced posture on consumer-data access rules, the pace and rigor of bank merger review, and whether recent regulatory guidance has weakened examination standards for large institutions in ways that trace back to political access rather than sound policy. Republican committees, meanwhile, are likely to continue pressing on debanking and account-closure practices, and whether regulators are applying supervisory standards evenhandedly. Institutions that have recently benefited from a favorable merger approval, a narrowed consent order, or relaxed capital or liquidity guidance should map that decision against both parties' theories now, because the same underlying record can support two entirely different hearing narratives depending on which committee reaches it first.

BEFORE JANUARY

The period before Election Day is the only window in which an organization controls the terms of its own preparation. Once a committee letter arrives, the posture shifts from planning to reacting, and the costs, legal fees, leadership distraction, public exposure, potential regulatory referrals begin compounding immediately. We suggest below some practical steps to manage these risks.

1. Map exposure against both parties' priorities, not just the current majority's

Under the protection of privilege, catalog the organization's federal funding sources, regulatory relationships, political contribution history, executive public statements and recent business decisions, then test each against the known oversight priorities of both parties. The test is not whether any law was actually broken: congressional investigations are not constrained by the elements of a legal claim. The real test instead is whether a committee, hostile or otherwise, could build a public narrative around the facts as they exist. Where the split-chamber scenario applies, this mapping has to be done twice, once against each chamber's likely theory, because a fact pattern that reads as favorable treatment to a House Democratic staffer can read as unrelated

program mismanagement to a Senate Republican staffer, and the organization needs a position ready for both.

2. Extend the document-preservation hold beyond the obvious custodians

Any issue with plausible Congressional interest should trigger a hold covering not just the executives most likely to be named, but their staff, board members, government-relations personnel, and any custodian who touches email, messaging platforms, shared drives, and personal devices used for business purposes. Minority-party ranking members have already sent preservation letters to private entities and administration offices well ahead of any change in committee control. The minority cannot compel production without subpoena power, but a preservation letter still creates an expectation, and if that member becomes a chair in January, a failure to preserve responsive material will likely be among the new majority's first questions, one that damages credibility with the committee before the substance of any inquiry is even reached.

3. Build a coordinated response infrastructure now, sized for two chambers at once

An organization exposed to simultaneous House and Senate inquiries under divided control cannot manage them as two unrelated matters run by two unrelated teams. Productions, privilege positions and public statements made to one chamber will be read by the other, and inconsistency between them becomes its own story. Establish a single point of control, internal or outside counsel, with authority over every congressional-facing communication before any letter arrives, not after the second one does. That structure should include a standing protocol for privilege review that will not shift depending on which committee is asking, and a media and government-relations function that coordinates messaging so the organization is not making incompatible arguments to two audiences that exchange information with each other.

4. Invest in bipartisan Hill relationships before you need them

Organizations with substantive relationships on both sides of the aisle will face more considerate treatment than those with only partisan relationships. Bipartisan relationships create the possibility that a committee's first move is a private staff call rather than a public demand letter. Those relationships cannot be developed after a subpoena lands; relationship-building that begins in response to scrutiny reads as damage control and carries little weight with staff. An organization whose Hill relationships run exclusively through the current majority has, in a midterm cycle, built a bridge with only one end secured. Government-relations engagement should span both parties' current members and staff, not just committee leadership, since ranking members and their staff are frequently the ones who become chairs.

5. Stress-test the public record through a hostile-hearing lens

Review recent business decisions, political contributions, executive statements, government contracts, sponsorship arrangements, or regulatory approvals through the lens of a thirty-second televised exchange: could any of these be made to look like self-dealing, favoritism, or indifference to the public interest, regardless of the actual facts? Where that risk exists, develop the clear, plain-language explanation now, while there is time to get it right, rather than drafting it for the first time under the pressure of a hearing announcement.

6. Treat minority-party activity as an early-warning system, not background noise

Preservation letters, ranking member statements, and investigative-focused press coverage from the current minority are the most reliable indicator of where oversight will go if that party gains committee control. Organizations that monitor only the sitting majority's activity are, by definition, missing half of the signal about what happens after November.

7. Prepare executives for congressional testimony specifically, not deposition prep repurposed

Congressional testimony operates under different rules than a deposition or regulatory interview: there is no judge to sustain an objection, the format rewards a clean thirty-second answer over a complete one, and the audience is the public, not the transcript. Executives who have only prepared for depositions or SEC examinations are frequently unprepared for the format itself, regardless of how strong the underlying facts are. Media training and mock-hearing preparation should be built into the response plan before testimony is compelled, not assembled in the days beforehand.

8. Revisit the industry-specific exposure above against the organization's actual footprint

The six sectors addressed above are not exhaustive, and exposure compounds where they overlap: a technology company with a federal contract and a visible relationship with the administration, for example, can face parallel investigations from multiple committees advancing entirely different theories. Reassess the organization's specific footprint against both the industry signals above and the split-chamber dynamic, and prioritize the preparation steps accordingly rather than treating this as a uniform checklist.

TALK TO US BEFORE NOVEMBER

If your organization sits in one of the sectors above, or you want a confidential read on your specific exposure before the target lists are final, we can walk through it with you. With a team of former federal prosecutors with extensive experience representing clients on Capitol Hill, we are eager to help. Contact Joshua Berman or Glen Donath for a direct conversation.



Joshua Berman
Partner, Washington DC

Email: joshua.berman@cliffordchance.com
Mobile: +1 202 912 5174

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

cliffordchance.com

Clifford Chance, Two Manhattan West, 375 9th Avenue, New York, NY 10001, USA

© Clifford Chance 2026

Clifford Chance US LLP



Glen Donath
Partner, Washington DC

Email: glen.donath@cliffordchance.com
Mobile: +1 202 912 5138

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest** • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague** • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.



Robert-Arthur Yick
Associate, Washington DC

Email: robert-arthur.yick@cliffordchance.com
Mobile: +1 202 912 5927