

“Congress' Subpoena and Oversight Changes Merit Businesses' Review,” *Bloomberg Law*

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In an article for *Bloomberg Law*, Congressional Investigations Partners Emily Loeb and Sam Ungar and Associate Michael Brady examine changes to Senate subpoena powers, House rules, and the new House Delivering on Government Efficiency (DOGE) Subcommittee. They discuss the evolving focus on China, the House minority oversight, and more.

Important changes to Senate subpoena powers and a new rules package that governs the House of Representatives offer insights into congressional Republican priorities for the 119th Congress.

Senators provided the Republican chair of Homeland Security and Governmental Affairs Committee, or HSGAC, with unilateral subpoena authority, and the Senate Commerce Committee is considering doing the same. This represents a major expansion of investigatory power that may have implications for any businesses subject to federal regulation and oversight.

The House rules package should put the private sector on alert, especially institutions whose work is connected to the federal government, institutions operating in China, and those with an interest in Democratic oversight of the executive branch.

Subpoena Power

Typically, most Senate committee chairs must get consent of the ranking member or hold a committee vote in order to issue a subpoena. But the Senate HSGAC has voted to permit its chair to issue unilateral subpoenas, empowering Chair Rand Paul (R-Ky.) to demand documents and witnesses under penalty of contempt without requiring anyone else's permission.

The Senate Commerce Committee may adopt similar rules, potentially paving the way for Chair Ted Cruz (R-Texas) to wield greater investigatory power. Cruz has indicated that artificial intelligence will be a priority for his committee, and he's taken an interest in whether governments wrongly censor or manipulate AI models to serve partisan ends.

Paul has also voiced his concern over government-influenced censorship, stating he will use his power as committee chair to eradicate it. Both Senate Commerce and HSGAC have very wide jurisdiction. And at least one chair, if not both, will be able to demand documents and summon

witnesses to hearings on issues facing almost every major industry in the US. Companies should take note.

Embracing DOGE

In the House, the majority renamed the House Oversight and Accountability Committee to the House Oversight and Government Reform Committee and added a new Delivering on Government Efficiency Subcommittee. Rep. Marjorie Taylor Greene (R-Ga.) will serve as the subcommittee chair, working with President Donald Trump's Department of Government Efficiency initiative, which aims to cut \$2 trillion in federal spending.

In a November 2024 opinion piece, Elon Musk and Vivek Ramaswamy specifically called out funding for the Corporation for Public Broadcasting, international organizations, and "progressive groups like Planned Parenthood." They also criticized the federal procurement process as badly broken and blamed the Department of Defense for failing its seventh consecutive audit.

The renaming of House Oversight and the creation of the DOGE subcommittee should put defense and government contractors, nonprofits, and other companies that interact with the federal government on further alert about the potential for congressional inquiry.

Because DOGE won't have investigatory powers, the Oversight Committee may deploy its authority to achieve the initiative's goals. Additionally, both the House and Senate have formed their own DOGE caucuses to work with Musk and his team.

Interest in DOGE isn't strictly partisan, either. The congressional caucuses name Democrats among their membership, and Sen. Bernie Sanders (I-Vt.) and Rep. Ro Khanna (D-Calif.) have signaled a willingness to partner with DOGE on government reform.

Given the broad interest in DOGE across both chambers, investigations, subpoenas for documents, depositions, and hearings may all be on the table for private institutions that contract with the federal government.

Chilled China Outlook

One more minor rule change highlights Republicans' evolving focus on China. While the House reauthorized last Congress' bipartisan Select Committee on the Chinese Communist Party, Republicans altered its mandate.

Under the old rules, the committee investigated "the status of the Chinese Communist Party's economic, technological, and security progress and its competition with the United States." The new rules require the committee to recommend "countering the economic, technological, security, and ideological threats of the Chinese Communist Party" to the US.

The escalation from examining CCP's activities and competition with the US to countering its threats underscores an intensified scrutiny of the CCP. Companies and individuals operating in China—especially those that partner with the state—should brace for even more attention from Congress.

House Minority Oversight

One significant House rule carried over from the 118th Congress may undermine the Democratic minority's already-limited ability to conduct official oversight.

The rule restricts rank-and-file members' ability to invoke 5 USC Section 2954, known as the seven-member rule. This permits a minority of House Oversight Committee members to demand federal agencies to produce any records within the committee's jurisdiction. It also requires any Section 2954 request include the committee chair as one of the requestors.

This rule had little relevance to the minority Democrats during the 118th Congress, who were less interested in conducting oversight into the Biden administration. Now that Trump has returned to power, Democrats likely will turn to Section 2954 again—and be frustrated by the chair's certain refusal to sign off on substantial demands to produce Trump administration records.

It isn't clear that the rule comports with Section 2954's text, which allows any seven members to make a request. Litigation is possible.

Companies that have provided documents to the executive branch in matters with any political salience should note that Democrats may pursue them through this statute—and should monitor any court battle over the rule's legality.

Investigation Power Continuity

Although the House rules saw changes from the 118th Congress, Republicans preserved rules on hearings, depositions, and the presence of counsel. Remote appearances, permitted only for private witnesses, remain possible only when the committee chair authorizes them.

For depositions, no more than two personal, non-governmental lawyers can accompany a nongovernmental witness—another continuation of the previous Congress. The majority also aims to continue ongoing investigations by expressly authorizing the Judiciary Committee to pursue subpoena enforcement lawsuits from the last Congress.

The new rules for Senate HSGAC and potentially Senate Commerce, as well as those for the House of Representatives, offer insights about Republicans' priorities. Private institutions and individuals whose affairs intersect with those interests—especially in education, technology, AI, federal contracting, DEI, and operations in China—should brace for scrutiny.

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