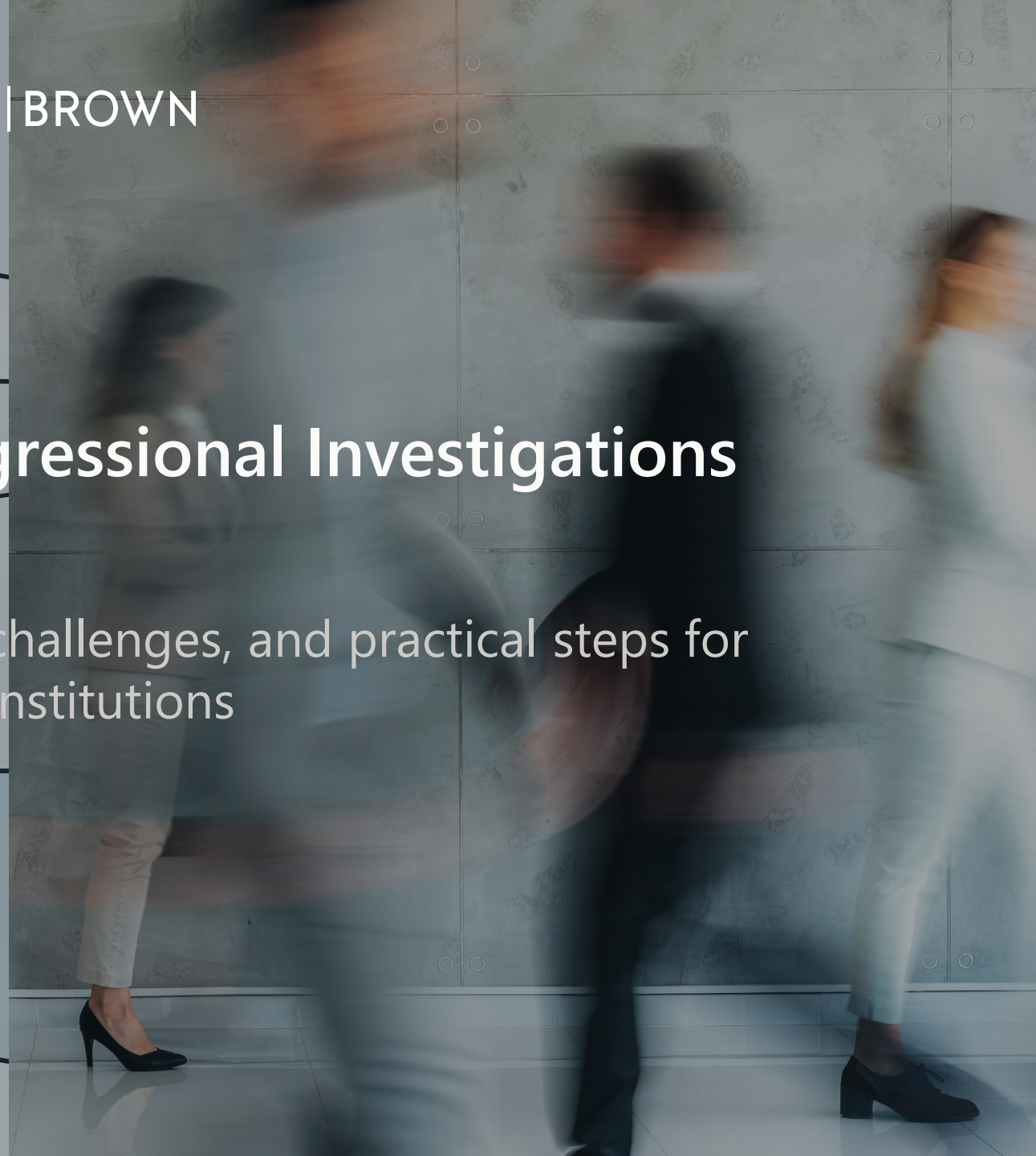
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What to Expect in Congressional Investigations

Emerging priorities, procedural challenges, and practical steps for financial institutions



Agenda

I

Emerging Investigative Priorities

The election and oversight landscape and investigative topics likely to be prioritized

II

Procedural and Strategic Challenges

Source and limits of the power, enforcement, and risks of cooperation

III

Practical Steps Clients Can Take Now

Preparation before any letter arrives and the importance of internal coordination



01

EMERGING INVESTIGATIVE PRIORITIES

Why the midterms matter for financial institutions

- **The minority asks; the majority compels.** A change in control of either chamber installs chairs who can compel what the minority can only request: subpoenas for documents and testimony, depositions, and hearings.
- **Current forecasts.** Public reporting in October 2026 indicates polls suggest Democrats are positioned to win the House and hold an edge in the Senate race.
- **Tools that come with the gavel.** Subpoena authority, expanded investigative staff, and the ability to call agency heads and corporate CEOs to testify.
- **Groundwork already laid.** House and Senate Democrats have spent roughly 18 months building an oversight record through letters, press releases, and staff analyses.



Likely committee landscape after the election

Committee	Current chair	Under a Democratic majority / notes
House Financial Services	Rep. French Hill (R-AR)	Rep. Maxine Waters (D-CA), ranking member, is presumptive chair; industry speculation that Rep. Sean Casten (D-IL) could seek the gavel
Senate Banking	Sen. Tim Scott (R-SC)	Sen. Elizabeth Warren (D-MA), ranking member, could take the gavel if the Senate flips
House Oversight and Government Reform	—	Broad jurisdiction over any matter; Democrats (e.g., Rep. Ro Khanna) have signaled interest in crypto and related financial transactions
House Judiciary	—	Rep. Jamie Raskin (D-MD), ranking member, has co-led consumer-protection and enforcement-rollback inquiries with Rep. Waters
Senate PSI and Senate Finance	Sen. Ron Johnson (R-WI)	Historically the most aggressive staff-driven investigators of banks (AML, offshore tax, sanctions)
House Select Committee on the CCP	—	Bipartisan; continued work depends on reauthorization in the 119th-to-120th Congress transition

Communications with the federal government

- **Regulator communications.** Requests for communications with regulators and Administration officials about controversial regulatory approvals, rule changes, and discontinued enforcement actions.
- **Example.** June 30, 2026, Warren request to Capital One for communications concerning a dropped CFPB enforcement action.
- **Foreign-policy nexus.** Senate Democrats have written to banks about involvement in Administration initiatives concerning Venezuela oil proceeds (Jan. 2026) and Argentina support (Oct. 2025).
- **Likely targets.** Companies that contracted with or operationalized federal initiatives, and institutions granted charters or approvals during this period.



KEY POINT

Even when the investigation targets the Executive Branch, the documents often sit with private companies.

Digital assets, stablecoins, and crypto charters

- **SEC rollbacks.** HFSC Democrats (Waters, Casten, Sherman) challenged the SEC's digital-asset enforcement rollbacks (Jan. 15, 2026 letter).
- **OCC trust charters.** Warren's May 2026 letter questioned at least nine national trust charters granted to crypto companies since December 2025, requesting full applications, legal analyses, and communications with the White House or Trump family.
- **Platforms.** Letters to technology platforms about stablecoin and payments products (April and May 2026).
- **Policy themes.** GENIUS Act implementation, market-structure legislation, consumer protection, and illicit-finance risk.
- **Conflicts of interest.** Democrats have signaled investigations of Presidential family to crypto and prediction markets; prediction markets are an emerging oversight target.

Consumer protection and affordability

- **Enforcement retreat.** Objections to CFPB changes and scaled-back federal consumer-protection enforcement (Waters/Raskin, Dec. 2025).
- **Filling the gap.** Expect Congress to examine company practices directly: "junk" and overdraft fees, mortgage servicing, small-dollar and buy-now-pay-later (BNPL) lending, fintech products, and credit reporting.
- **Examples.** Warren/Blumenthal/Sanders letters to 25 banks (Sept. 2025) and 21 credit unions (Dec. 2025) on overdraft fees; May 2026 letters to credit reporting agencies on BNPL reporting; May 2026 letter to a fintech rewards company.



DEI, immigration-related de-risking, AI, and capital

DEI

Firms that modified or ended DEI, supplier-diversity, or community-lending commitments since January 2025 may face questions about why and how; Republicans scrutinize the same programs from the opposite direction.

Immigration-related guidance

The May 2026 Executive Order “Restoring Integrity to America's Financial System” and June 2026 FinCEN/FDIC/OCC/NCUA advisory on ITIN use as a risk factor may prompt inquiries into account closures or de-risking by immigration status or national origin.

AI

Rep. Waters' July 2026 RFI on AI risks in financial services; Warren has asked about bias controls in AI underwriting.

Capital

After capital requirements were reduced, Warren and Sanders challenged large banks' buybacks and dividend increases (Sept. 2025).

Sector-by-sector exposure

Large banks

Capital deployment and buybacks; overdraft and fees; Zelle/P2P scams; participation in Administration foreign-policy initiatives; China-linked underwriting; immigration-related de-risking.

Securities firms and asset managers

SEC enforcement rollbacks; capital-raising for China-linked issuers; crypto in retirement accounts; prediction markets.

Fintech and crypto

Charter approvals; stablecoins and GENIUS Act; BNPL and earned-wage products; AML controls.

Credit unions, CRAs, insurers

Overdraft fees; credit reporting; AI underwriting models.

Which letters are most likely to become subpoenas in 2027

1 Letter requests specific documents with a deadline

2 Recipient declined or gave a partial response

3 Topic is tied to a political narrative (e.g., conflicts, rollbacks)

4 Author is in line for a gavel

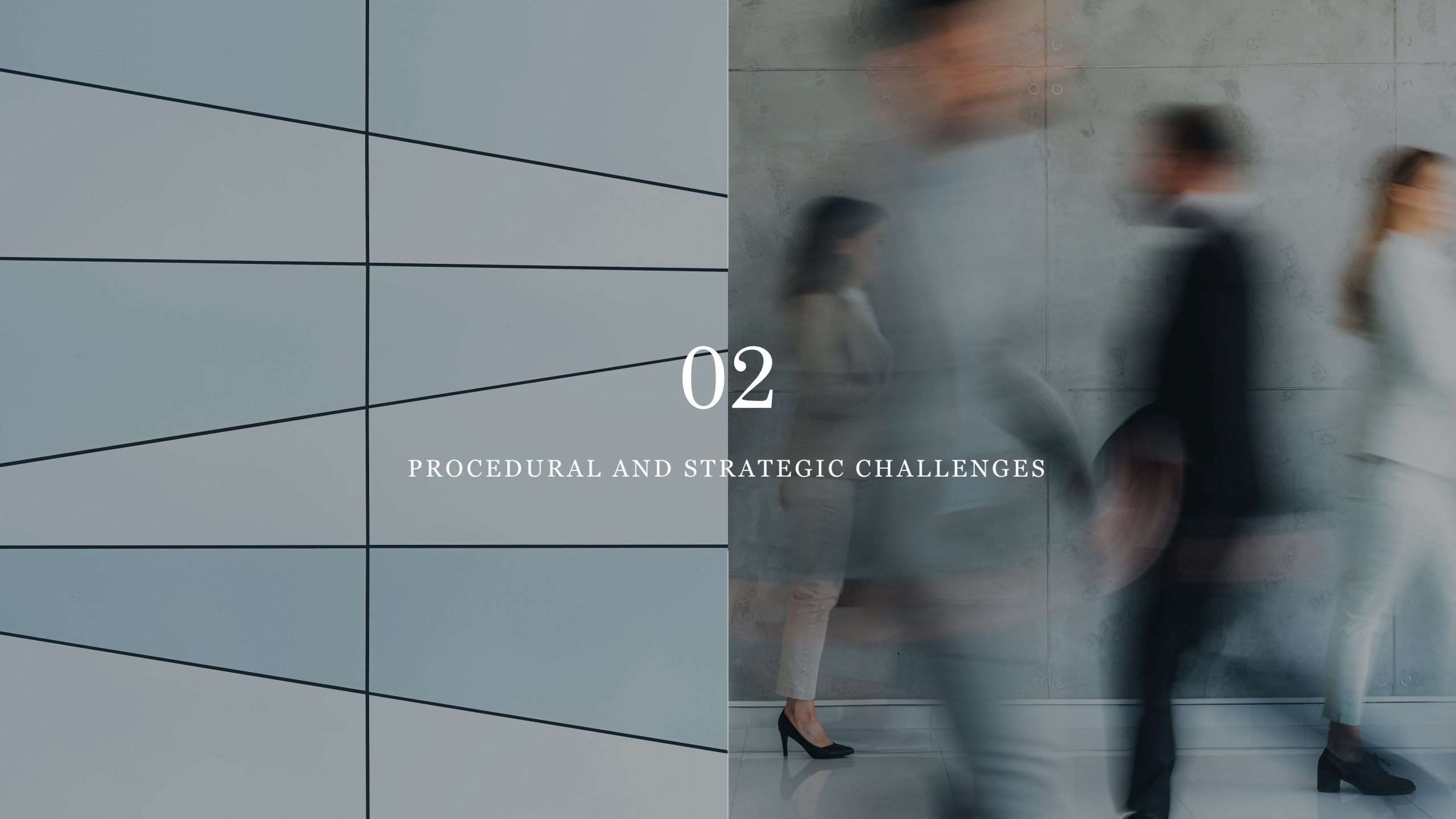
- **Highest-risk candidates:**
  - OCC crypto trust-charter approvals (Warren, May 2026)
  - Bank charter approvals tied to Administration allies (Warren, April 2026)
  - Dropped CFPB/agency enforcement actions and related regulator communications (June 2026)
  - Bank roles in Venezuela oil proceeds and Argentina support (Jan. 2026; Oct. 2025)
  - SEC crypto enforcement rollbacks (HFSC Democrats, Jan. 2026); overdraft fee and P2P scam letters (2025)
- **Rule of thumb:** A non-response to a minority letter is remembered. New chairs commonly re-send prior requests on day one with a subpoena threat.

If Republicans keep control: continuity and bipartisan themes

- **Continuing Republican themes.** "Debanking" and access to financial services; ESG and DEI scrutiny; proxy advisors; regulator performance (including Biden-era actions); digital-asset market structure.
- **Bipartisan regardless of outcome:**
  - Fraud and scams, largely attributed to transnational scam centers
  - BSA/AML deficiencies and sanctions evasion, including via digital assets
  - China: Select Committee on the CCP report "Bankrolling Beijing" (May 2026) on U.S. banks' capital-raising for China-linked companies
  - Cybersecurity and operational resilience; AI risk
- **Divided Congress.** Possible opposing investigations on the same subject (e.g., DEI) from each chamber.

$15.9B

reported 2025 fraud losses cited in HFSC majority staff report "Fighting Back" (July 2026); estimated actual losses near $196B



02

PROCEDURAL AND STRATEGIC CHALLENGES

How congressional investigations differ

Purpose

Informing legislation and oversight, not adjudicating liability; but the political objective is often public accountability.

No neutral arbiter

The committee decides scope, privilege claims, and compliance; courts rarely intervene before contempt.

Public by design

Letters, hearings, staff reports, and selective release of company documents.

Fewer procedural protections

No discovery rules, no protective orders by right, no confidentiality guarantee, limited ability to respond to a staff report before publication.

Timelines

Driven by political calendars, hearings, and news cycles rather than rules of procedure.

Multiple audiences

Members, staff (majority and minority), press, regulators, prosecutors, plaintiffs, shareholders.

PART II

Source of the power: constitutional foundation

- ***McGrain v. Daugherty*, 273 U.S. 135 (1927).** Implied power of inquiry incident to legislating, but no "'general' power to inquire into private affairs and compel disclosures" (*id.* at 173–74); may not "'try' someone 'before [a] committee for any crime or wrongdoing'" (*id.* at 179) (as quoted in *Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020)).
- ***Watkins v. United States*, 354 U.S. 178 (1957).** "No congressional power to expose for the sake of exposure" (*id.* at 200); yet where information is "needed for intelligent legislative action," it is "unquestionably the duty of all citizens to cooperate" (*id.* at 187).
- **Legitimate-task test.** A subpoena "is valid only if it is 'related to, and in furtherance of, a legitimate task of the Congress'" (*Mazars*, 591 U.S. at 862–63 (quoting *Watkins*, 354 U.S. at 187)).
- ***Quinn v. United States*, 349 U.S. 155, 161 (1955).** Subpoena must serve a "valid legislative purpose."
- ***Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 506 (1975).** Inquiry must "concern[] a subject on which legislation 'could be had'" (quoting *McGrain*, 273 U.S. at 177).
- ***Barenblatt v. United States*, 360 U.S. 109, 127–34 (1959).** Subpoenas upheld where they "relate[] to a valid legislative purpose."



KEY POINT

Takeaway: the legislative-purpose standard is broad; financial-services topics (AML, consumer protection, digital assets, capital) almost always satisfy it.

Chamber and committee rules

- **House Rule X.** Defines each standing committee's jurisdiction and oversight responsibilities.
- **House Rule XI.** Authorizes committees to issue subpoenas and governs hearing procedure and deposition authority; most committees delegate subpoena authority to the chair.
- **Senate Rule XXVI.** Authorizes Senate committees to subpoena witnesses and documents; individual committee rules may require ranking-member consultation or a vote (PSI is a notable exception, as its chair may issue subpoenas without bipartisan agreement).
- **House Rule II.8(c).** Permits committees to "act as the successor in interest" to prior-Congress committees to "ensure continuation of" litigation, including by reissuing subpoenas (as described in *Trump v. Mazars USA, LLP*, 39 F.4th 774, 786 (D.C. Cir. 2022)).
- **Committee-specific rules and deposition regulations.** Govern who may question, counsel's role, transcript review, and whether agency counsel may attend. Obtain and read them for every inquiry.

PART II

Enforcement: contempt and related statutes

- **2 U.S.C. § 192 (criminal contempt).** Misdemeanor to "willfully" fail to comply with a valid subpoena "upon any matter under inquiry before either House," or to "refuse[] to answer any question pertinent to the question under inquiry."
- **Willfulness.** A defendant acts "willfully" if they deliberately and intentionally refuse to comply with a valid subpoena; evidence of bad faith not required (*Licavoli v. United States*, 294 F.2d 207, 208 (D.C. Cir. 1961); Jonathan H. Becker, *Senate Unanimously Holds Corporate Executive in Contempt of Congress for Failing to Comply with a Committee Subpoena*, Mayer Brown LLP (Oct. 1, 2024)).
- **2 U.S.C. § 194 (certification).** Once a committee reports noncompliance, the Speaker or President of the Senate must "certify" the facts to the U.S. attorney, who must bring the matter before the grand jury. Practice and at least one decision suggest full-chamber approval may be required.
- **Other routes.** Civil enforcement suits authorized by chamber resolution (2 U.S.C. § 288d); inherent contempt (historically used, now dormant).
- **Timing problem.** Recipients often cannot raise defenses in federal court until after being held in contempt, raising the stakes of noncompliance.
- **No cure.** Complying later does not cure criminal contempt. Congress may, however, certify that further proceedings are unnecessary once it gets compliance.



False statements, obstruction, and immunity

- **18 U.S.C. § 1001(a).** Reaches whoever, "in any matter within the jurisdiction of the executive, legislative, or judicial branch," "knowingly and willfully" falsifies or conceals a material fact, makes "materially false, fictitious, or fraudulent statement[s]," or "makes or uses any false writing or document."
- **§ 1001(c)(2).** For legislative-branch matters, applies to "any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate." This includes unsworn staff interviews and written responses to letters.
- **18 U.S.C. §§ 1505 and 1621.** Obstruction and perjury also apply to congressional proceedings, including staff depositions.
- **18 U.S.C. § 6005 (immunity orders).** With a two-thirds committee vote and advance notice to DOJ, a committee can get a court order compelling testimony over a Fifth Amendment objection; compelled testimony cannot be used against the witness except in a prosecution for perjury or false statements tied to that testimony. The Attorney General is entitled to at least 10 days' notice and may request a 20-day delay of the order.

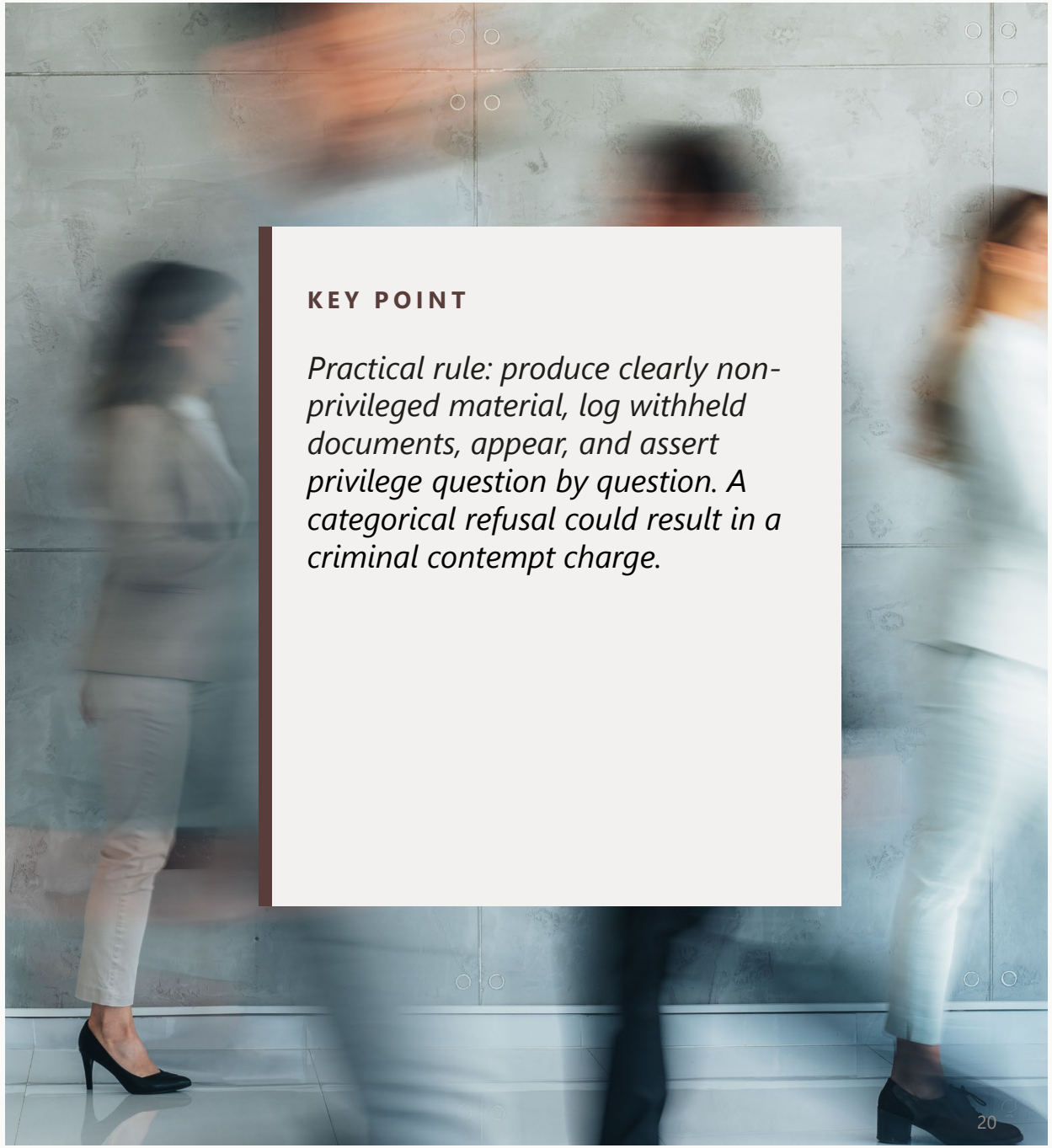
Limits on the power: legislative purpose and *Mazars*

- **Legislative purpose and exposure.** "No congressional power to expose for the sake of exposure" (*Watkins*, 354 U.S. at 200); Congress cannot "try" private parties for wrongdoing (*McGrain*, 273 U.S. at 179).
- ***Trump v. Mazars USA, LLP*, 591 U.S. 848, 869–71 (2020).** Four factors for subpoenas seeking the President's information (including from banks and accountants):
  - (1) "Congress may not rely on the President's information if other sources could reasonably provide Congress the information it needs"
  - (2) "[C]ourts should insist on a subpoena no broader than reasonably necessary to support Congress's legislative objective"
  - (3) "[C]ourts should be attentive to the nature of the evidence . . . to establish that the subpoena advances a valid legislative purpose"
  - (4) "[B]urdens imposed by a congressional subpoena should be carefully scrutinized"
- **Relevance to private companies.** *Mazars* is a separation-of-powers test; it does not generally protect private recipients, but it applies where a company holds Presidential or family records, and its narrowing logic is useful in negotiating scope.

PART II

Room to push back: objections and privileges

- **Pertinency and fair notice.** In *Quinn*, a contempt conviction was reversed because the committee never clearly overruled the objection (349 U.S. at 165–70); a witness must be "clearly apprised that the committee demands his answer notwithstanding" the objection (*id.* at 166).
- **Fifth Amendment.** Protects disclosures that are testimonial, self-incriminating, and compelled. It belongs to individuals, not corporations.
- **Attorney-client and work product.** Per CRS, acceptance "rests in the sound discretion of a congressional committee regardless of whether a court would uphold the claim." But in *United States v. Navarro*, 182 F.4th 1005, 1010 (D.C. Cir. 2026), the panel noted in dicta that recipients "retain common law and constitutional privileges," citing *Mazars*.
- **Ethics.** D.C. Bar guidance: a lawyer must "seek to quash or limit the subpoena on all available, legitimate grounds" but may produce if the committee overrules objections and threatens contempt.



KEY POINT

Practical rule: produce clearly non-privileged material, log withheld documents, appear, and assert privilege question by question. A categorical refusal could result in a criminal contempt charge.

PART II

Risks of cooperating with a voluntary request

Risks

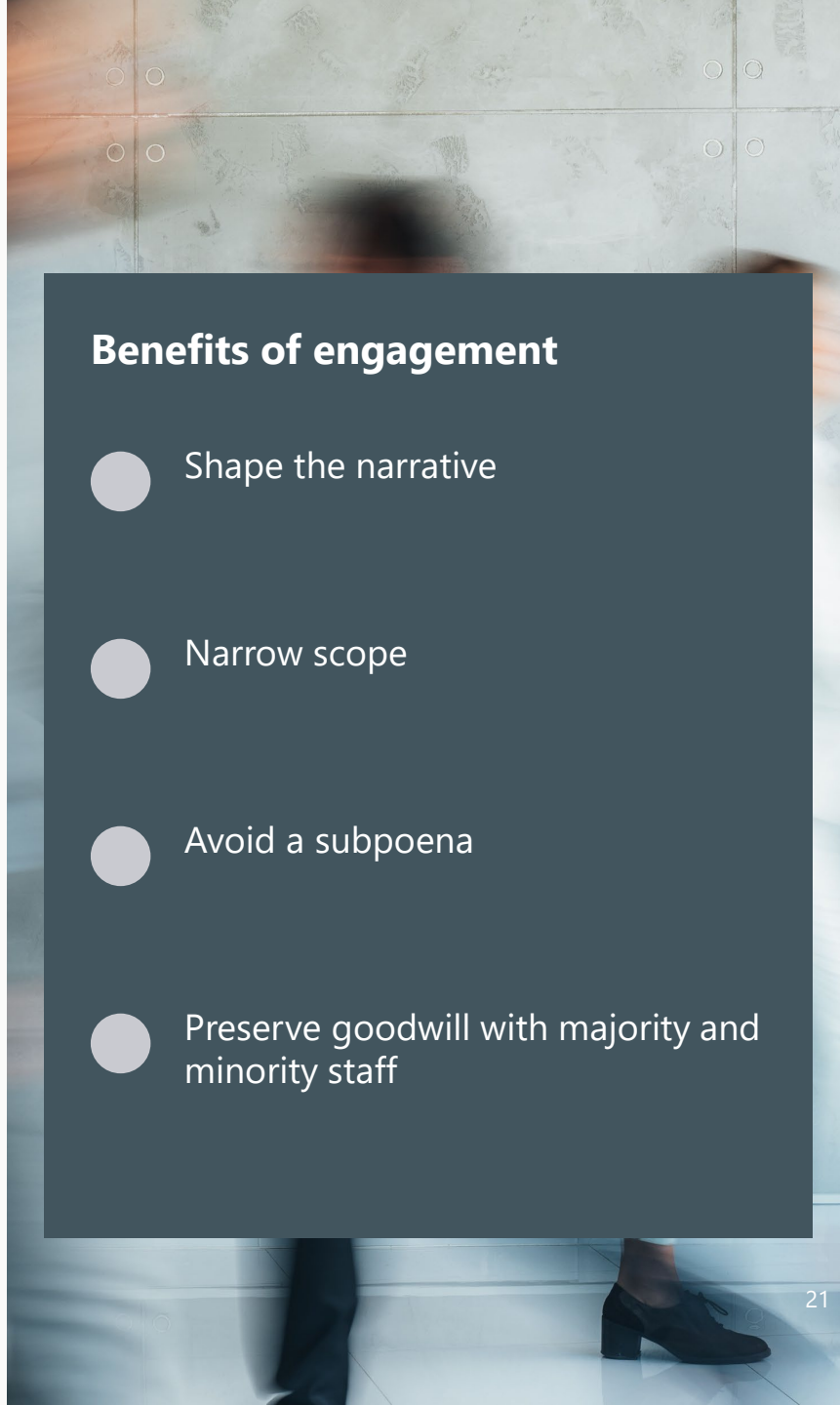
No confidentiality guarantee
Produced documents may be quoted or released in reports or hearings.

Waiver risk
Voluntary production of privileged material may waive privilege in litigation; a subpoena can mitigate (not eliminate) that risk.

False statements exposure
Written responses and staff interviews are subject to § 1001.

Expanding scope
Cooperation often leads to follow-up requests and transcribed interviews.

Precedent and consistency
Responses become the baseline against which later testimony is measured.



Benefits of engagement

- Shape the narrative
- Narrow scope
- Avoid a subpoena
- Preserve goodwill with majority and minority staff

PART II

Interplay with enforcement, litigation, and disclosure

Regulatory / criminal

Committees can make referrals to DOJ or agencies; productions can be shared with regulators; staff reports frequently prompt enforcement inquiries.

Private litigation

Plaintiffs use hearing transcripts, released documents, and staff reports as roadmaps; privilege waiver may carry over.

Securities disclosure

Evaluate whether an inquiry is material or triggers Reg FD considerations; consistency between congressional statements and SEC filings is essential.

Parallel proceedings

Coordinate privilege positions, witness preparation, and messaging across all forums; individuals may need separate counsel and Fifth Amendment advice.

Reputation, communications, and internal coordination

- **Public first.** Much of the action happens through public letters, press releases, and staff reports, often before the company sees the request.
- **Prepare for day one.** Holding statements, designated spokespeople, and protocols for press inquiries about a congressional letter.
- **Hearing readiness.** Executive testimony preparation, mock hearings, and anticipating Member questions drawn from company documents.
- **Staff reports.** Request an opportunity to review factual assertions; prepare a response for release.
- **Internal coordination.** Legal, government affairs, communications, investor relations, compliance, and the board must share one narrative; coordinate lobbying contacts with investigation counsel.
- **Employees and customers.** Prepare internal messaging; leaks are common.



03

PRACTICAL STEPS CLIENTS CAN TAKE NOW

PART III

Before the election and before any letter arrives

1. **Map vulnerabilities** against the priority topics in Part I; review minority letters sent to the company and peers.
2. **Monitor** committee press releases, letters, RFIs, and staff reports from likely chairs.
3. **Build a response playbook:** intake protocol, decision tree for voluntary versus compelled responses, outside counsel and consultants on standby.
4. **Collection readiness:** identify likely custodians and data sources (including regulator communications and messaging apps); confirm holds where appropriate.
5. **Develop privileged narratives:** talking points, key facts, and supporting evidence; pressure-test them; fix weak facts now.
6. **Strengthen compliance** in AI, digital assets, prediction markets, fraud and financial crime, fair lending, account closures.
7. **Factor oversight risk into decisions:** charter applications, acquisitions, and new products should be defensible to investigators of either party.

PART III

Coordinating legal, government affairs, communications, and the board

Response team

Designate a team with a single decision-maker; include legal, government affairs, communications, IR, and compliance.

Government affairs

Maintain bipartisan staff relationships; route all contact on an active inquiry through counsel.

Communications

Align public statements with legal positions; prepare for hearing and report days.

Board oversight

Brief the board on exposure and readiness; document oversight (*Caremark* considerations); plan for potential CEO or director testimony.

Individuals

Identify executives likely to be called and evaluate separate counsel needs early.

After the response

Monitor for follow-up, referrals, and litigation; capture lessons learned.

Questions & Discussion

Thank you



Our Team



PARTNER

MICHELLE CEREZO-NATAL

NEW YORK+1 212 506 2143
MNATAL@MAYERBROWN.COM



PARTNER

KEN WAINSTEIN

WASHINGTON DC+1 202 263 3050
KWAINSTEIN@MAYERBROWN.COM



PARTNER

ANDREW OLMEM

WASHINGTON DC
AOLMEM@MAYERBROWN.COM

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