

Evaluating Congressional Investigation Risk In Deal Diligence

By **Brian Smith and Perrin Cooke** (April 21, 2026, 7:02 PM EDT)

Congressional investigations of corporate activities have become increasingly common and more sophisticated in recent years.[1]

In just the last few weeks:

- Sen. Jeff Merkley, D-Ore., launched an investigation of private equity investments in the childcare industry;
- Sen. Chris Murphy, D-Conn., published a report about similar investments in healthcare companies;
- Rep. Jim Jordan, R-Ohio, acting as chairman of the House Committee on the Judiciary, released a report examining the organization that operates the residency match program for hospitals; and
- Sen. Josh Hawley, R-Mo., requested that Fair Isaac Corp. produce voluminous information regarding its business with credit bureaus.[2]

As these recent examples demonstrate, congressional investigators are also increasingly scrutinizing routine business practices of corporations, such as mergers and acquisitions, pricing and contracting, and the launches of new products.

Companies large and small are therefore more focused than ever on the potential effects of congressional inquiries into business activities, goals and strategies.

In this new reality, the most sophisticated companies, private equity firms, and other corporate players are adding congressional investigations and other risk diligence into existing procedures for assessing mergers, acquisitions, asset purchases, joint ventures, new product launches, and other major business actions.

This article describes the general risks associated with congressional investigations, as well as the attributes of transactions and other business activities that can draw the attention of investigators on Capitol Hill, along with best practices for integrating consideration of these risks into existing due diligence.



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Congressional Investigations: Unique Challenges and Wide-Ranging Risks

Congressional oversight can be a disorienting mix of legal, public relations and investor relations issues, even for companies that are well accustomed to civil litigation and other government investigations.

In congressional investigations, exceedingly broad and sweeping document requests and impractical response deadlines are the norm: A typical congressional request will demand compliance in two weeks — or sooner. Traditional protections from discovery, such as protective orders or respect for confidential information, are largely absent.

Any objections to such demands are not heard by a neutral judge, but are instead the purview of the same congressional committee leaders that have imposed the requests.

In addition, Congress' long-standing position is that it is not bound by common law protections such as the attorney-client privilege or protections for confidential business information. Congressional investigators also often work closely with other adversaries, and it is not uncommon for sensitive materials to be shared freely with plaintiffs' lawyers or other government investigators.

The risks associated with a congressional inquiry can be significant. For example, failure to comply with a request for documents or testimony is often met with a scathing press offensive and allegations of stonewalling. Even good faith efforts to cooperate are not always enough to avoid combative and widely publicized escalation tactics, such as members issuing a subpoena accompanied by an aggressive press release and a public cover letter full of criticisms and allegations. In addition, congressional inquiries frequently spur ancillary legal and regulatory investigations that bring further legal risks.

In sum, though not every congressional investigation will make national or industry news, those that do can become all-absorbing crises that can derail corporate strategies, devour senior executives' time, and have immediate and lasting effects on a company's bottom line.

The Consequences of Ignoring Congressional Oversight Risk

Many major congressional investigations have been prompted by corporate transactions, new products releases and other business decisions. For example, following the financial crisis, Congress closely examined Bank of America Corp.'s 2008 merger with Merrill Lynch and broader consolidation in the financial sector.[3]

In more recent years, Congress' wide-ranging investigations of prescription drug pricing focused extensively on price increases that followed major acquisitions of products or subsidiaries, launches of new products and corporate mergers.[4]

Other recent examples include congressional hearings focused on the proposed merger between grocers Kroger Co. and Albertsons in 2022,[5] media giant Omnicom Group Inc.'s bid in late 2024 to acquire The Interpublic Group of Cos.,[6] the competitive effects of acquisitions in digital markets[7] and the bankruptcy of genetic-testing company 23andMe Inc.[8]

Similarly, congressional scrutiny has increasingly focused on companies owned or controlled by private equity firms. For example, beginning in 2023, the Senate Budget Committee conducted an extensive, bipartisan investigation into private equity ownership of hospital systems, issuing sweeping document requests to portfolio companies and their private equity sponsors.[9]

Congressional scrutiny of private equity-owned companies has also extended well beyond the healthcare sector, with investigators targeting small and medium-sized portfolio companies operating in a wide variety of industries. In the current Congress, for example, investigators have launched inquiries targeting corporate owners of mobile home parks, among many others.[10]

As these examples illustrate, it is easy for parties on all sides of a transaction to become ensnared in burdensome, headline-grabbing investigations that potentially could have been mitigated or avoided entirely if issues were identified and addressed at the outset. Skepticism of corporate mergers and acquisitions has become more common on Capitol Hill, and major transactions have attracted regular attention across Congress.

In recent years, Congress has conducted significant oversight of corporate mergers and acquisitions to look at market effects, antitrust considerations, and the implications for consumers.

Private equity ownership can serve as an independent trigger for congressional scrutiny, increasing the likelihood that a portfolio company — or a transaction involving such a company — will attract investigative attention regardless of whether the underlying conduct would otherwise have drawn interest from Congress. And even if the transaction itself does not prompt congressional scrutiny, companies should consider the risks for the postdeal company.

Identifying and Mitigating Risk Through Targeted Diligence

In this new reality, it is important that companies incorporate congressional investigations risk into standard transactional due diligence. As a general matter, congressional investigations diligence should be designed to identify, assess and mitigate the particular vulnerabilities that may arise out of future scrutiny on Capitol Hill.

Though each transaction or major business decision is unique, such diligence would typically begin with a few fundamental questions.

- Is the target company, new product or line of business currently the subject of a congressional investigation — whether a one-off request from an individual member or a formal investigation by a major oversight committee?
- Has the company previously been the target of such an inquiry and, if so, how was that investigation resolved? Even congressional outreach that never escalated can be a signal of things to come.
- Has the company or industry been referenced in other congressional investigations, hearing transcripts, floor statements or committee reports?
- Does the company have existing procedures in place to identify and respond to congressional oversight inquiries? Do these procedures address congressional investigations risks, and do they quickly and effectively identify early warning signs to elevate potential issues? Is it possible that an inquiry is in the works or has already begun, but not yet percolated to senior management?
- Does the business, acquisition or planned activity touch on topics that are likely to be of interest to members of Congress and congressional staff? Is the underlying issue likely to gain media attention, which will itself feed congressional interest?

- Is there media coverage, litigation or other regulatory exposure that could attract congressional oversight interest?

To answer these questions, it is helpful to understand a company's past interactions with Congress, as well as any outstanding inquiries that will demand an immediate response. For example, in a corporate transaction, before consummating a deal, the acquiring company or private equity firm should consider obtaining the following materials from all parties involved.

- Copies of any recent congressional inquiries, including, but not limited to, requests for congressional testimony and any subsequent questions for the record, document request letters, and congressional subpoenas.
- Any letters or materials produced to Congress in response to such requests, as well as any materials prepared in connection with the company's response that were not provided to Congress.
- Copies of any existing policies, procedures or training materials related to responding to congressional inquiries.

Recognizing and assessing possible exposure to a congressional investigation is an important component of evaluating a potential transaction or business decision. Too frequently, executives overlook the real legal risks associated with congressional investigations, misdiagnosing the inquiry as a relationship issue that should be addressed by government relations and lobbying teams.

In addition to the risks presented by congressional inquiries themselves, these investigations also frequently act as force multipliers for federal regulators, state attorneys general and class action plaintiffs. There is a significant risk of statements or productions to congressional investigators later being used out of context in enforcement actions or litigation.

For these reasons, incorporating an assessment of both the immediate and secondary risks associated with congressional oversight is an increasingly important aspect of a diligence review.

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