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# Congressional Oversight and Investigations

Congress engages in oversight of the executive branch through the review, monitoring, and supervision of the implementation of public policy. The first Congresses inaugurated these oversight techniques through special investigations, reporting requirements, and the use of the appropriations process to review executive authority. Today, congressional oversight can occur in virtually any legislative activity and through a wide variety of channels, organizations, and structures. These activities range from formal committee hearings to informal Member or staff contact with executive officials; from staff studies to support-agency reviews; and from casework conducted by Member offices to studies prepared by non-congressional entities such as commissions and inspectors general.

## Legal Authority for Oversight

Congress's power to obtain information from either the executive branch or the general public is very broad. While there is no express constitutional provision authorizing congressional oversight or investigations, the Supreme Court has firmly established that such power is so essential to the legislative function as to be implied from the general vesting of legislative powers in Congress in Article I of the Constitution.

### The Supreme Court on Congressional Oversight

*Watkins v. United States*: The "power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes."

*Barenblatt v. United States*: The "scope of the power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."

*Trump v. Mazars USA, LLP*: "Without information, Congress would be shooting in the dark, unable to legislate 'wisely or effectively.'"

Oversight and investigative authority rests with both houses, which in turn have delegated this authority to the committees of each chamber. Committees possess only those powers that have been delegated to them by their parent bodies. Committee investigations must:

- be within the committee's jurisdiction as defined in House or Senate rules, and
- serve a valid legislative purpose.

If these criteria are met, a committee's investigative purview is substantial and wide-ranging.

## Major Purposes of Oversight

Oversight is an implicit constitutional power of Congress. There are a number of overlapping purposes associated with oversight, which can be divided into three basic types: programmatic, political, and institutional.

**Programmatic purposes** include making sure agencies and programs are working in a cost-effective and efficient manner and fulfilling their statutory mission; ensuring executive compliance with legislative intent; evaluating program performance; investigating waste, fraud, and abuse; reviewing the agency rulemaking process; and acquiring information useful in future policymaking.

**Political purposes** include generating favorable publicity for lawmakers, winning electoral support from constituents and outside groups, and rebutting criticisms of favorite programs or agencies. Oversight occurs in an ever-present political context in which Congress's relationship with administrative entities can range from cooperation to conflict. Moreover, there are inherent constitutional and political tensions between Congress and the President even during periods of unified government.

**Institutional purposes** include checking the power of the executive branch, investigating how a law is being administered, and informing Congress and the public. These purposes may merit special mention because they serve to protect congressional prerogatives and strengthen the American public's ability to evaluate executive activities and actions.

## Fostering Effective Oversight

Although there may be disagreements as to what constitutes "quality" oversight, there are a number of components that appear to foster effective oversight, including:

- a committee chair committed to doing oversight on a sustained basis,
- the involvement of committee Members despite the intensive use of time and resources,
- bipartisanship—more is likely to be achieved when both parties work together rather than against each other,
- an experienced professional staff with investigatory skills,
- capacity to identify and obtain necessary information from agencies and other sources,
- preparation and documentation before hearings,

- coordination with other relevant committees of jurisdiction, and
- follow-through to ensure that any committee recommendations are acted upon.

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### Congressional Subpoenas

House and Senate rules delegate the authority to issue subpoenas to every standing committee. How subpoenas are issued varies by committee and by chamber. In the House, almost all committees now empower their chairs to issue subpoenas, while in the Senate most committees require that the chair first obtain the consent of the ranking member.

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### Limitations on Congressional Authority

**Constitutional limits** apply to Congress's oversight and investigative powers. This includes the protections of the First, Fourth, and Fifth Amendments but does not include the trial-related rights of the Sixth Amendment.

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### The Supreme Court on Oversight Limitations

*Barenblatt v. United States*: "Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action," including "the relevant limitations of the Bill of Rights."

*Trump v. Mazars USA, LLP*: The "recipients of legislative subpoenas retain their constitutional rights throughout the course of an investigation."

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**Executive Privilege** can also act as a significant limitation on Congress's authority to obtain information from the executive branch. The privilege, aspects of which are constitutionally rooted, has been invoked when Congress asks the executive branch to produce documents or testimony that reflect presidential decisionmaking and deliberations that the President believes should remain confidential. But executive privilege is qualified, not absolute, and a presidential assertion of the privilege can be overcome by an adequate showing of need.

**Other constitutional considerations** may impose further restrictions on some investigations of the President. The Supreme Court held in *Trump v. Mazars USA, LLP* that congressional subpoenas involving "the President's personal information implicate weighty concerns regarding the separation of powers." As a result, the Court outlined a series of applicable "special considerations" that take into account "both the significant legislative interests of Congress and the 'unique position' of the President."

### Information Access Issues and Enforcement of Requests for Information

Congressional oversight and investigations can become adversarial. This is especially true when the targeted entity—whether a private individual, corporation, or

executive branch agency—refuses to provide information that Congress considers necessary to its inquiry. In those situations, the targeted entity may attempt several methods to avoid disclosure, such as asserting that the information cannot be disclosed due to a specific law, rule, or executive decision. Congress has a number of tools at its disposal both to obtain information through negotiations and to force compliance with committee subpoenas.

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### Enforcement Mechanisms

**Contempt of Congress**: Congress may seek to have an individual criminally prosecuted for noncompliance with a subpoena.

**Civil enforcement of subpoenas**: Congress may seek a federal court decision declaring that the individual in question is legally obligated to comply with the congressional subpoena.

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### Minority Party and Individual Member Authority to Conduct Oversight

The role of minority party Members in the oversight process is governed by the rules of each chamber and its committees. Minority Members are specifically accorded some rights. For example, House and Senate rules provide the minority on a committee a limited right to call witnesses of their choosing at a hearing, and all members of House committees are guaranteed up to five minutes to question each witness.

Ranking members and individual Members (other than committee chairs) are not authorized by chamber or committee rules to initiate official committee hearings or investigations or issue subpoenas. However, individual Members may seek the voluntary cooperation of agency officials or private persons and perform their own oversight, though these activities may be more difficult without the compulsory powers belonging to the committee.

### Oversight in Recent Congresses and Beyond

The past several years have been a dynamic period for the rules and practices governing congressional oversight. Congress has taken on a variety of investigations that have generated substantial public attention, and both the executive branch and Congress have developed new tools and legal arguments to contest oversight disputes. Courts have answered some questions on the scope of the oversight power while leaving others unresolved. In the coming years, the decisions made by Congress as it pursues its oversight goals may continue to shape the balance of power among the branches.

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