

What if ... your organization is the subject of a congressional investigation?

JULY 2025

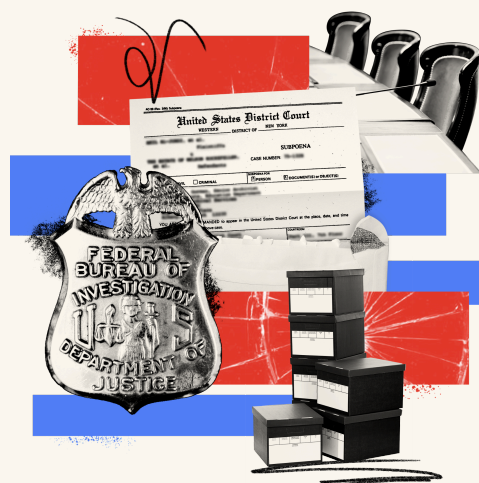
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What to know about congressional investigations

Congress has broad authority to conduct investigations and, in recent years, members of Congress have increasingly wielded their oversight authority to investigate civil society actors, including nonprofits. This primer offers an overview of best practices for nonprofits on responding to congressional inquiries.

Congress' authority is broad but not unlimited.

Congressional committees — not individual members — wield the oversight power of Congress, and each committee exercises that power through a chairperson. Overarching House and Senate rules govern how committees in each chamber conduct investigations and hold hearings.

Courts have repeatedly taken the view that Congress has a wide purview when it comes to actions that fall within the sphere of legitimate [legislative activity](#), which includes investigation and oversight. Thus, the congressional committees that carry out such investigations have broad authority to request and, at times, to *demand* that private parties turn over documents and information, sit for a deposition, or testify at a hearing.

There are limits to Congress' investigative authority. For example, Congress must actually have a legislative purpose to investigate; the Supreme Court has [noted](#) that Congress cannot “expose for the sake of exposure” — meaning the purpose of investigations cannot be to punish or expose an organization for political reasons. Nevertheless, Congress defines its “legislative purpose” broadly and previous attempts to challenge a committee's request on these grounds have typically been unsuccessful.

Congress can also refer matters to executive branch entities for investigation or potential criminal prosecution. However, Congress is not a law enforcement agency and cannot use its oversight powers to effectively prosecute an organization during an investigation. Furthermore, as explained below, the Supreme Court has affirmed that constitutional rights still apply to congressional investigations, though the exact contours of those rights will depend on the particular circumstances.

Congressional rules may vary.

The rules that govern congressional investigations vary not only between the House of Representatives and the Senate, but also between individual Senate [committees](#) and House [committees](#). Each congressional committee operates under slightly different rules, which is why it is important to consult with an attorney well-versed in congressional inquiries.

Congress is not a court.

The rights that individuals and organizations have during a congressional inquiry differ from those that apply in court. Individuals and organizations retain their Constitutional rights, including those guaranteed under the 1st, 4th, and 5th Amendments.

However, the scope of protections with regard to participation by legal counsel may be more limited. During witness testimony, many committees allow only a limited role for counsel; attorneys are sometimes not allowed to attend transcribed interviews and/or depositions. That said, counsel are often able to negotiate these constraints on their role with committee staff.

The [attorney-client privilege](#) may also be treated differently in congressional investigations. Organizations should work closely with legal counsel to preserve privilege whenever possible.

Congressional investigations are inherently political.

Congressional inquiries are often more public than other kinds of investigations. Because Congress's core purpose is policymaking, its investigations are inherently political and committee members may try to use an inquiry to score political points or land soundbites during witness testimony. Congress may request testimony from an organization at a public hearing for these very purposes. Additionally, even if an organization produces documents or participates in a private interview with staff, that information may still be made public later.

A strategic response to an investigation may require organizations to engage in both legal and communications planning to deal with any resulting publicity. Congressional investigations also may raise security concerns for organizations, as they may invite unwanted attention from bad actors. Organizations should assess potential security needs in their advance planning and encourage staff to be vigilant about potential threats.

More on what an inquiry from Congress might look like

Not all requests are the same.

Initial outreach from a congressional committee may be **informal and voluntary**. Congress may request information, interviews, witness testimony, or documents from an organization. A committee may send organizations their request(s) via mail, e-mail, or telephone.

You have options when responding to informal requests.

An organization has various options for responding to an informal request as well as an opportunity to negotiate the scope and timing of its response. In some circumstances, an organization may choose not to respond to a voluntary request from Congress, but there are risks associated with doing so. **An organization should immediately obtain legal counsel if it receives any inquiry from Congress; counsel — particularly those experienced in congressional investigations — are best positioned to assess risks associated with responding, and negotiate the scope of any response on behalf of an organization.**

It is common to seek additional time to respond.

Congressional requests for information often include a deadline by which to respond. This deadline is often negotiable. It is common to seek additional time from the committee to respond to a request, including to retain legal counsel.

Organizations should consider reaching out to the committee's minority staff before responding.

Generally, an organization's attorney will negotiate the terms of a congressional request with the staff of the committee that issued it — usually the Senate or House majority staff on a committee who wield investigatory power. In many cases, an organization's attorney may also be able to work with minority staff on the committee to learn more about the inquiry. Minority staff can, for example, provide helpful intel on whether other organizations have received similar inquiries from the committee's majority staff.

An Overview of Congress' Investigatory Tools

Request Type	Description
Letter inquiries and document requests	Congressional committees often send letters requesting documents or information from private parties. These easy-to-send, informal requests are typically the first tool congressional committees wield. They can help a committee put pressure on multiple parties to produce documents or information of interest for a particular investigation.
Interviews	Congress can ask a witness to sit for a voluntary interview. Because informal interviews are voluntary and not subject to the same requirements as formal depositions (discussed below), organizations (via legal counsel) may have broader parameters to negotiate, for example, whether the interview will be in person, who will be present at the interview, and the scope of the questioning. Committing perjury (<i>i.e.</i> making untruthful statements), even in an informal interview is subject to prosecution .
Subpoenas	Congressional subpoenas are formal legal demands with detailed terms for compliance; they may compel the production of documents or require witnesses to appear at a deposition or hearing. They are issued with the implicit threat of sanctions for noncompliance, including being held in contempt of Congress. Longstanding practice is for parties who receive a subpoena to negotiate terms of compliance, usually with the staff of the committee that issued the subpoena.
Depositions	A deposition is a formal interview during which a congressional committee can elicit sworn testimony from a witness in a non-public setting, similar to depositions that occur in the context of civil litigation. Depositions are subject to formal regulations promulgated by the House or Senate Rules Committee, including that depositions be taken under oath and transcribed.
Witness Hearings	Hearings are opportunities for congressional committees to publicly question witnesses on policy issues with political salience. If an organization receives a request for a representative to appear at a hearing, provide documents or give testimony, they should consult with counsel to assess the request. Counsel may be able to negotiate directly with the committee staff to narrow the scope of investigative requests.

Organizations can be subpoenaed.

A congressional committee may follow an informal request to an organization with a formal subpoena (or begin with a subpoena in the first place). As with voluntary requests, an organization may be able to negotiate (via legal counsel) the terms of a response to a congressional subpoena. However, congressional subpoena power is strong. Responses to subpoenas are **not voluntary**, and refusing to comply with a subpoena may result in legal action against an organization to enforce the subpoena, potentially including civil or criminal contempt proceedings. The rules for issuing subpoenas and holding an individual or organization “in contempt” vary by chamber and committee.

Outside of the negotiation process, there are opportunities to challenge a congressional subpoena. Affirmative challenges may be possible, but can be difficult to bring (and such challenges are beyond the scope of this primer). An organization may also have an opportunity to challenge the purpose or scope of a subpoena during the course of enforcement (*i.e.*, contempt) proceedings. But it is important for organizations to make informed decisions from the start in order to avoid unintended consequences, which requires working with experienced attorneys as soon as organizations receive any form of congressional inquiry. (To learn more about responding to subpoenas, read [What if ... your organization is served with a subpoena](#)).

Congress can escalate its response.

A congressional committee may escalate its inquiry in several ways — either because of a lack of response, an insufficient response, and/or a decision to ramp up its investigation that may be related to shifting priorities. Sometimes if the receiving party does not respond to the committee’s satisfaction, there will be follow-up requests via email or phone call. Issuing and enforcing subpoenas after initial informal outreach is another form of escalation. So are demands for transcribed interviews, depositions, or testimony at a public hearing, all of which carry potential penalties for any witness that is not truthful.

And although Congress itself usually cannot impose direct penalties on entities it investigates, it can enforce its own civil contempt findings (by filing civil litigation) and also refer matters to other authorities, such as the Department of Justice or the Internal Revenue Service. Such referrals could result in criminal enforcement actions.

Congress may initiate contempt proceedings against organizations for failure to comply with a request.

Congress can hold organizations “[in contempt](#)” for refusing to comply with a subpoena. The specific rules for holding someone in contempt vary by chamber and committee. However, Congress generally has to [vote](#) to hold someone in contempt. These votes can result in two types of contempt citations: [criminal](#) citations (which require the Department of Justice to agree to prosecute the entity held in contempt, and may lead to financial penalties or [jail time](#)) or [civil](#) citations (which usually involve Congress seeking a federal court judgement ordering compliance with a subpoena). The voting process is typically two-fold, requiring a vote first at the committee level and then a referral to the House or Senate floor for a full vote. In both circumstances, a simple majority is needed to approve the contempt charge.

This voting process can be long, and requires the investigating committee to convince House or Senate leadership to bring a contempt vote to the floor — which leadership may be hesitant to do given time constraints and potential political implications for noncommittee members. With all of these factors at play during the voting process, there may be opportunities for an organization to re-negotiate its response to an inquiry and come to a resolution with the investigating committee before receiving a contempt citation.

Common considerations when responding to a congressional investigation

Organizations will have to assess various factors when deciding how to respond to a congressional investigation. Discussing the following questions with legal counsel can help an organization determine how it wants to respond, as well as understand the risks that could come with those decisions.

- What are the risks to the organization from responding?
- What are the organization's goals in responding? Does the organization see this as an opportunity to educate Congress or push back against politically-motivated investigations? And if so, what additional risk does that invite?
- Has the organization already been the subject of a congressional inquiry in the past? If so, that may affect the organization's assessment of its risk profile.
- Is this investigation targeting the organization specifically, or have other organizations received similar inquiries? If so, how have they/how are they planning to respond?
- Does the organization want to respond substantively to some or all of the request(s) as written?
- Does the organization want to object to some or all of the request(s)?
- Does the organization need more time or want to negotiate before responding to the request(s)?
- Is there alternative information — either written or oral — the organization could offer to the investigatory committee that would meet its needs while preserving the organization's interests?

Best practices for organizations when ...

Responding to an inquiry

- ✗ **DO NOT panic.** Remember, it is common for organizations to seek additional time from the committee to respond and negotiate the terms of a response. Remaining level-headed from the start will help ensure good decision-making and avoid disrupting core work.
- ✓ **DO involve an attorney.** Find counsel with expertise in congressional investigations. With rules and conventions that vary widely across committees (and differ from other government investigations), it is important to get advice from someone with experience in this field of practice.
- ✓ **DO communicate with the committee through legal counsel.** Organizations should communicate via an attorney rather than responding to requests on their own. The scope of an inquiry can often be negotiated, but this is best done by counsel.
- ✓ **DO consider asking legal counsel to reach out to minority staff on the committee,** attorneys representing other organizations who are the subjects of similar inquiries, or other interested parties to learn more about the investigation.
- ✓ **DO refer to our [primer](#) on subpoenas** if an organization receives a subpoena rather than an informal request for documents, testimony, or information, etc.

Communicating about an inquiry

- ✓ **DO consider retaining a crisis communications professional.**
- ✓ **DO communicate clearly with organizational staff, board, and donors about the inquiry**, particularly if the congressional committee has made it public.
- ✓ **DO consider informing peer organizations about receiving an inquiry.** This may help notify others of a committee's interest in a particular topic or sector. It may also provide them an opportunity to express support privately or publicly.
- ✗ **DO NOT make any public statements about the investigation** prior to consulting with legal counsel and communications specialists.
- ✓ **DO communicate carefully within the organization about the investigation.** Remember that **anything in writing could be disclosed or discoverable.** Even emails and text messages on platforms that promise encryption may qualify as discoverable documents. Ideally, all communications about a government inquiry should include legal counsel.

Continuing operations

- ✓ **DO continue to do work that advances the organization's mission.**
- ✓ **DO continue to operate in accordance with all organizational policies** ensuring compliance with legal and tax regulations
- ✗ **DO NOT delete documents or electronic data in response to the request.** Make sure staff is aware that they should continue to follow regular document retention policies unless told otherwise based on advice from legal counsel (including if specific documents must be retained).

Further Reading

- Protect Democracy | [Protecting Civic Space - How to prepare your organization for government investigations](#) (September 2024)
- ICNL | [Congressional Investigations Targeting Nonprofits: Analysis](#) (June 2025)
- Congressional Research Service | [Congressional Oversight and Investigations](#) (December 2024)
- Charity and Security Network | [Webinar: Congressional Investigations](#) (November 2018)



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