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Congressional Investigations in the 117th Congress: U.S. Senate Oversight Activities Ramp Up

Six months into the 117th Congress, the U.S. Senate has recently increased its oversight activities following a slow start. Since April, newly empowered Democratic Members have launched or requested more than 20 inquiries targeting the private sector. Many of these inquiries align with the policy priorities of the Biden Administration, and Democratic oversight committee leaders and individual Members are continuing or revisiting investigations from prior sessions of Congress including investigations of the Trump Administration.

Certain Industry Sectors Continue to Receive the Greatest Scrutiny

Pharmaceutical Manufacturers

Drug pricing remains a top Democratic legislative priority in the 117th Congress, and the Senate Committee on Finance has a particularly active oversight and legislative agenda. Three weeks before outlining his drug pricing legislative priorities on June 22,¹ Committee Chairman Ron Wyden (D-OR) had already launched an investigation focused on international tax practices in the pharmaceutical industry, requesting information on tax strategies and domestic and foreign pre-tax earnings, as well as information specific to U.S. drug sales and price increases.²

Sen. Elizabeth Warren (D-MA) has used her authority as chair of the Subcommittee on Fiscal Responsibility and Economic Growth, on the Committee on Finance, to also scrutinize pharmaceutical manufacturers. On June 4, Sen. Warren requested testimony for a pending Subcommittee hearing focused on competition in the pharmaceutical industry, including the impact of alleged “anti-competitive behaviors” and “high prices” on patients and taxpayers.³ Subsequently, Sen. Warren, joined by Sens. Tammy Baldwin (D-WI), Sheldon Whitehouse (D-RI), and Bernie Sanders (D-VT), criticized the pharmaceutical industry’s “efforts to block drug pricing proposals” and requested information regarding industry lobbying practices.

Most recently, on June 24, Sen. Warren and Sen. Bill Cassidy (R-LA) wrote a bi-partisan letter to Chairman Wyden and Ranking Member Mike Crapo (R-ID) requesting a hearing to “examine questions and



challenges arising from the Food and Drug Administration's (FDA) recent approval of ... the first new drug approved to treat Alzheimer's disease in two decades."⁴

The Committee on the Judiciary has also focused on drug pricing issues, as Antitrust Subcommittee leaders Sens. Amy Klobuchar (D-MN) and Mike Lee (R-UT) recently announced bi-partisan plans to hold a series of competition policy hearings, including a hearing focused on how "consolidation and anticompetitive practices have contributed to skyrocketing drug prices."⁵ On June 17, Chairman Dick Durbin (D-IL) and Ranking Member Chuck Grassley (R-IA) announced the release of a Government Accountability Office report, prepared at their request, on the impact of direct-to-consumer advertising on Medicare spending on prescription drugs.⁶ In their accompanying press release, Sens. Durbin and Grassley stated, "We plan to introduce new legislation to bring transparency to Pharma's unfair drug advertising practices by requiring the disclosure of the product's cost, which will lower drug spending and empower patients."⁷

Technology and Social Media Companies

As noted in our January alert, the tech industry continues to face increased congressional oversight on a wide range of issues.⁸ Both the Senate Committee on Commerce and Committee on Judiciary have been particularly active, with Judiciary's Antitrust Subcommittee recently holding a hearing entitled "Protecting Competition and Innovation in Home Technologies," featuring testimony from tech company representatives.⁹

In addition to committee-led oversight, Sens. Edward Markey (D-MA) and Richard Blumenthal (D-CT) partnered with Representatives Kathy Castor (D-FL) and Lori Trahan (MA-D), to send a letter to tech companies requesting information regarding children's use of social media platforms.¹⁰ Sen. Warren individually sent letters focused on consumer protection, including a letter questioning internet sales of counterfeit personal protective equipment during the COVID-19 pandemic,¹¹ and also questioning the FTC regarding proposed tech company acquisitions and alleged anticompetitive business practices.¹²

Oversight Continues on Diversity & Inclusion in the Financial Sector

Congressional leaders have made it clear that diversity and inclusion (D&I) will remain a top priority in their oversight of the financial sector, with Senate and House committees continuing to scrutinize financial companies' D&I performance. Senator Sherrod Brown (D-OH), chair of the Committee on Banking, Housing, and Urban Affairs, has taken a leadership role by focusing on the Centers for Disease Control and Prevention moratorium on residential evictions during the pandemic and alleged evictions that disproportionately affect renters from minority groups.¹³

On May 26, Chairman Brown held the first hearing of what he billed as "Annual Oversight of Wall Street Firms," with testimony from executives of the six largest U.S. banks.¹⁴ At the hearing, Chairman Brown told the executives that it was "past time" for the industry to step up and help struggling workers.¹⁵ The Committee questioned the executives on topics including workforce diversity, minority lending during COVID-19, and executive pay.

Revisiting Hearing Testimony

In addition to launching new inquiries targeting the private sector, congressional committees have continued an increasing trend toward revisiting prior hearing testimony and responses to congressional investigations. These developments are particularly concerning for corporate respondents and witnesses, given the substantial legal risks that accompany alleged false and misleading statements to Congress.

On April 13, the Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy, held a hearing on student debt issues, featuring testimony from multiple witnesses, including loan service providers. On June 23, Subcommittee Chair Warren and Ranking Member John Kennedy (R-LA) sent a letter to a witness alleging: "it



appears that you failed to provide accurate information about your company, undermining our Subcommittee’s fact-finding role, and potentially misleading committee members and the public.”¹⁶ A number of federal criminal statutes govern witness testimony and responding to congressional inquiries. Given their broad statutory language, the need for accuracy and attention to detail in testifying before Congress, or responding to congressional requests, cannot be overemphasized.

What’s Next?

Congressional oversight is likely to continue ramping up during the 117th Congress on bipartisan issues, such as drug pricing and spending on coronavirus pandemic relief. In addition, continuing oversight of high-profile policy issues such as infrastructure reform, climate change, cryptocurrency and cybersecurity is likely.

Finally, in February, the Chairman of the Homeland Security & Governmental Affairs Committee, Gary Peters (D-MI), announced that a freshman Senator would serve as Chairman of the Permanent Subcommittee on Investigations (“PSI”).¹⁷ Citing Sen. Ossoff’s (D-GA) background as an investigative journalist, Chairman Peters said that he “looked forward to working with [Sen. Ossoff] to shed a light on fraud, financial crimes, and other kinds of malpractice whether they take place in the public or private sector.” Historically, PSI has been considered the Senate’s top oversight body, given its broad jurisdiction and investigative powers. We expect that to continue.

¹ *Wyden Releases Principle for Lowering Drug Prices in America*, U.S. Senate Committee on Finance (June 22, 2021), available [here](#).

² *Wyden Launches Investigation into AbbVie Tax Practices*, U.S. Senate Committee on Finance (June 2, 2021), available [here](#).

³ *Warren Seeks Gilead CEO’s Testimony on Competition and High Drug Costs at June 16th Finance Subcommittee Hearing, Letter (June 4, 2021)*, available [here](#).

⁴ *Cassidy, Warren Call for Hearing on New Alzheimer’s Disease Drug Aduhelm, Letter (June 24, 2021)*, available [here](#).

⁵ *Klobuchar, Lee Announce Three Competition Policy Hearings on Smart Home Devices, Pharmaceuticals, and Food Supply*, Press Release (May 27, 2021), available [here](#).

⁶ *Prescription Drugs: Medicare Spending on Drugs with Direct-to-Consumer Advertising*, U.S. Government Accountability Office (June 17, 2021), available [here](#).

⁷ *Durbin, Grassley Statement On GAO Report On Prescription Drug Advertising’s Impact On Medicare Spending*, Press Release (June 17, 2021), available [here](#).

⁸ *New Drivers, Same Bumpy Ride*, King & Spalding (Jan. 29, 2021), available [here](#).

⁹ *Protecting Competition and Innovation in Home Technologies*, U.S. Senate Committee on the Judiciary (June 15, 2021), available [here](#).

¹⁰ *Senator Markey, Rep. Castor, Senator Blumenthal, and Rep. Trahan Press Facebook on Plans to Develop Instagram for Children*, Letter (Apr. 5, 2021), available [here](#).

¹¹ *Warren Investigation Finds Amazon.com Provides Consumers with Misleading and Potentially Dangerous Search Results for FDA Authorized COVID-19 Masks*, Letter (Apr. 1, 2021), available [here](#).

¹² *Warren Calls For a Broad and Meticulous FTC Review of Amazon’s Acquisition of MGM Studios*, Letter (June 3, 2021), available [here](#).

¹³ *Brown Presses Private Equity Firm on Evictions Filed During Moratorium*, U.S. Senate Committee on Banking, Housing, and Urban Affairs (June 10, 2021), available [here](#).

¹⁴ *Annual Oversight of Wall Street Firms*, U.S. Senate Committee on Banking, Housing, and Urban Affairs (May 26, 2021), available [here](#).

¹⁵ *Brown to Wall Street CEOs: Prove to Us You’ll Change the System to Make the Economy Work for Everyone*, U.S. Senate Committee on Banking, Housing, and Urban Affairs (May 26, 2021), available [here](#).

¹⁶ *Letter to James H. Steeley, Chief Executive Officer of the Pennsylvania Higher Education Assistance Agency*, U.S. Senate Committee on Banking, Housing, and Urban Affairs (June 23, 2021), available [here](#).

¹⁷ *Sen. Ossoff to Chair Permanent Subcommittee on Investigations*, Press Release (Feb. 17, 2021), available [here](#).