

Divided Government, Disruptive President:

Congressional Oversight of the Executive Branch in the 116th Congress

By Molly E. Reynolds and Jackson Gode



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Introduction

Shortly after Democrats took control of the House of Representatives in January 2019, [TIME magazine ran a cover](#) that depicted Speaker of the House Nancy Pelosi using a trebuchet to send subpoenas to President Donald Trump (who, for his part, was portrayed as flinging Tweets with a slingshot in the Speaker’s direction).¹ This notion—that a new Democratic majority would engage in vigorous oversight of the executive branch—[had been a major theme of reporting during and immediately after the 2018 midterm elections](#).² [Pelosi and Trump certainly had a contentious relationship](#) during the first two years of Trump’s term, but even beyond their interpersonal dynamics, scholarly work on the history of congressional oversight suggests that a switch in partisan control of the House from Republicans to Democrats would have consequences for the volume of oversight of the executive branch.³ [Research by political scientists Douglas Kriner and Eric Schickler](#), for example, finds that, between 1898 and 2014, when one party controlled the House and the other the presidency, House committees investigated the executive branch more aggressively.⁴ [Work by Frances Lee](#), meanwhile, demonstrates that under divided government, Congress has carried out more investigations of “executive misbehavior.”⁵

This historical evidence and the combative nature of the relationship between President Trump and House Democrats (captured well by the imagery of weapons on the *TIME* cover) certainly suggested that we would see substantial oversight activity in the House in the 116th Congress. To investigate whether legislators actually conformed to our expectations—and to answer other questions about how, and on what issues, Congress engages in oversight—we launched the Brookings House Oversight Tracker in March 2019. Using data on both hearings held by and letters sent on behalf of House committees and subcommittees, this report analyzes the quantity, type, issue focus, and quality of oversight of the executive branch in the House of Representatives during the 116th Congress (2019–2020). We conclude with some observations about developments related to congressional oversight and the federal courts that have implications for how investigations might proceed in the future.

Measuring Oversight in the House

The Brookings House Oversight Tracker captures [two indicators of congressional oversight](#) of the executive branch: hearings held by House committees and subcommittees, and letters sent on behalf of those panels.⁶ While hearings are often the mechanism popularly associated with congressional investigations of misconduct, letters also serve as an important tool for obtaining information and documents and for requesting the appearance of witnesses for testimony at future hearings. To determine how much oversight of the executive branch took place in the House in the 116th Congress, we began by recording information about every hearing held by, and about every publicly available letter sent by, a House committee or subcommittee. Once we had information on hearings and letters, we moved on to categorizing each hearing and letter in two ways: First, did it constitute oversight of the executive branch, and second, in which policy area did it deal? Drawing on previous work on [categorizing](#) congressional hearings and on [defining oversight](#), we developed a two-tiered “keyword and key witness” approach to identifying oversight.⁷ (For more details on how we collected and coded information, please see the Appendix.)

In addition, to be considered oversight of the executive branch, the federal government, and not a state government or agency or private company, needed to be the target of the oversight. Second, the activity being investigated must have occurred since November 8, 2016, and be related to executive branch conduct and not campaign activity. A more expansive definition of oversight would certainly capture a broader set of investigations—including investigation of private sector entities. Indeed, oversight of corporate actors, ranging from [the tobacco industry](#) to [Major League Baseball](#), has been an important and productive focus of congressional attention.⁸ But because our analysis is motivated by the consequences of a change in partisan control of the House for investigations into executive branch operations, such inquiries are beyond the scope of our analysis.

To determine what policy area each hearing or letter dealt with, we applied a coding scheme developed by the [Policy Agendas Project](#).⁹ Because the Project applies these codes to a broad set of media, legislative, executive, political party, and public opinion content, using them to categorize oversight activity allows us and other researchers to compare trends in oversight to other issue-based outcomes. (Our analysis below of how House oversight compares to the problems identified by the public as most important is one such use of this data.) In order to make our data most useful for non-research audiences, we chose to collapse the Policy Agendas Project’s topic areas into [10 general policy areas](#).¹⁰

Trends in Oversight in the 116th Congress

To begin our examination of the amount of oversight of the executive branch engaged in by House committees and subcommittees in the 116th Congress, Figures 1 and 2 display the number of hearings held in each month of 2019 and 2020, respectively. The yellow bars correspond to the number of oversight hearings, while the dark blue bars represent non-oversight hearings.

Figure 1: House Hearings By Month (2019)

Percentage labels refer to the share of hearings each month that were oversight.

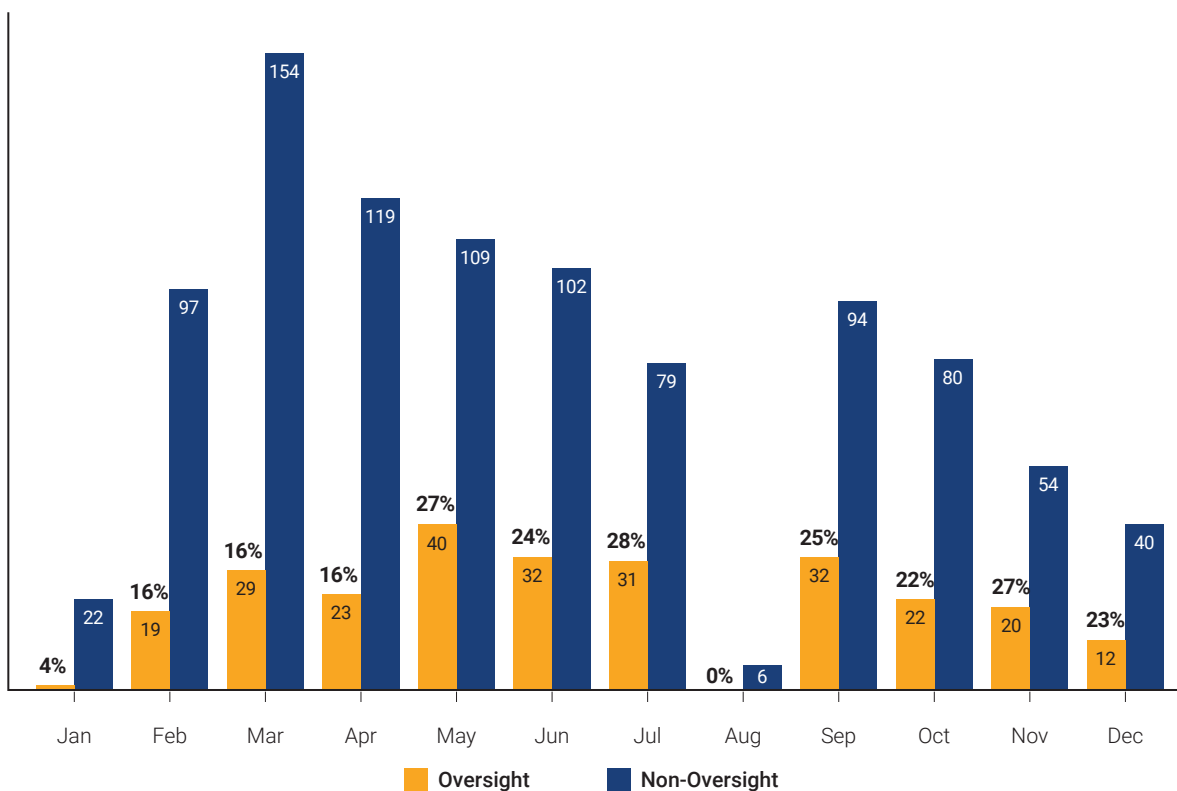
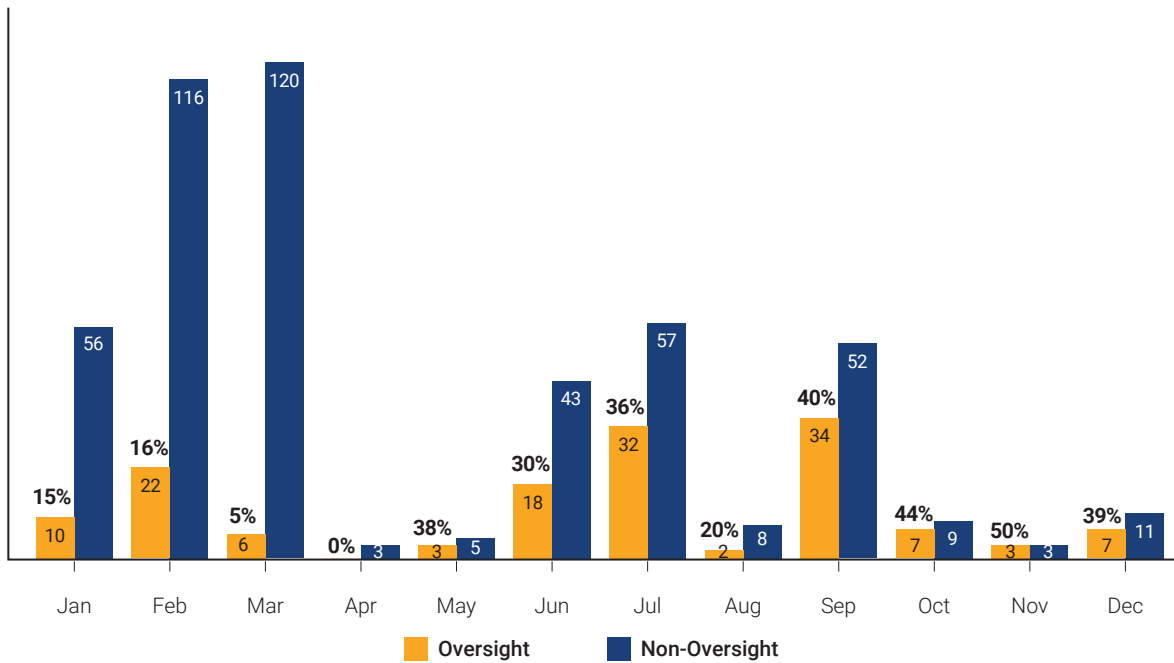


Figure 2: House Hearings By Month (2020)

Percentage labels refer to the share of hearings each month that were oversight.



Overall, 22 percent of hearings held in the House during the 116th Congress dealt with oversight of the executive branch. In 2019 (Figure 1), the first four months of the year generally saw committees devoting a smaller share of their calendars to executive branch oversight hearings. Beginning in May (and excluding August, when the House was largely on recess), committees spent more of their hearing time on executive branch oversight—but even then, the percentage of hearings that examined executive branch operations topped out at 28 percent, in July. The same trend repeats in 2020 (Figure 2), with larger shares of each month’s hearings focused on oversight between May and December. This includes several months where more than a third of hearings examined the executive branch.

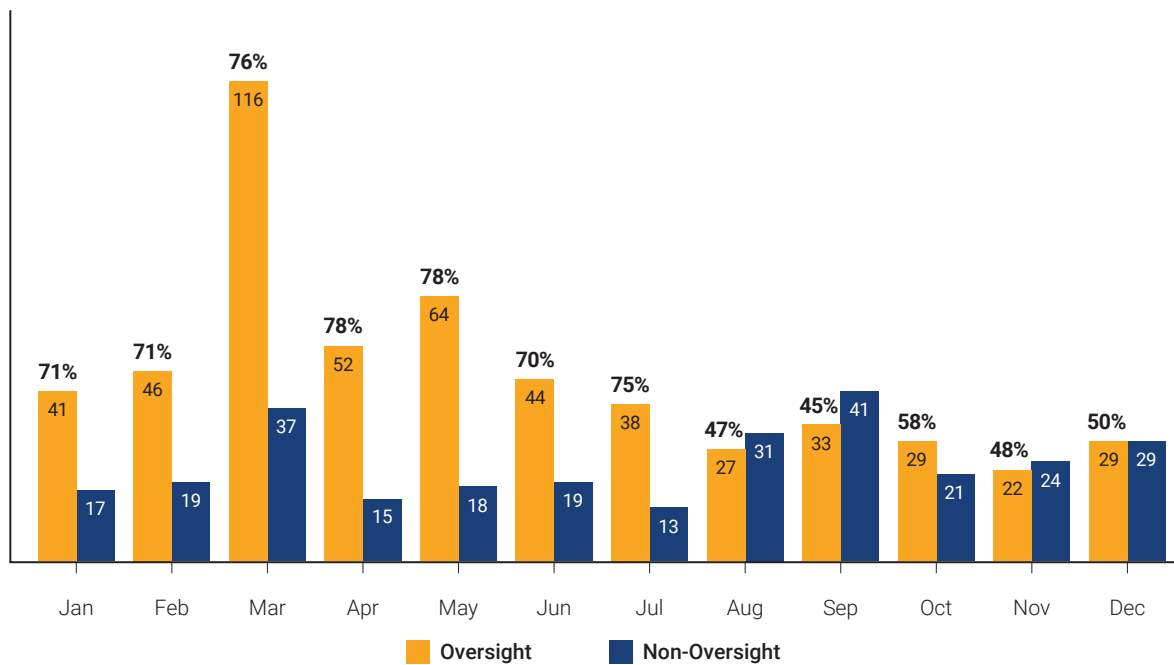
Importantly, while the *share* of hearing activity that focused on executive branch oversight was similar in both sessions, the *number* of oversight hearings fell by almost 45 percent between 2019 and 2020, from 261 to 144. This drop is consistent with the overall 48 percent reduction in the number of hearings in the House between the two sessions of the 116th Congress and is due, in large part, to changes in congressional operations necessitated by the COVID-19 pandemic.

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A decline in the number of oversight hearings does not, however, necessarily mean that House committees did less oversight in 2020 than 2019. Indeed, data on letters sent by committees and subcommittees in 2019 (Figure 3) and 2020 (Figure 4) suggest that when members were limited in their ability to conduct oversight via hearings after March 2020, they responded by sending more oversight letters. The number of oversight letters in 2020 was roughly 44 percent higher than in 2019 (780 vs. 541).

Figure 3: House Letters By Month (2019)

Percentage labels refer to the share of letters each month that were oversight.

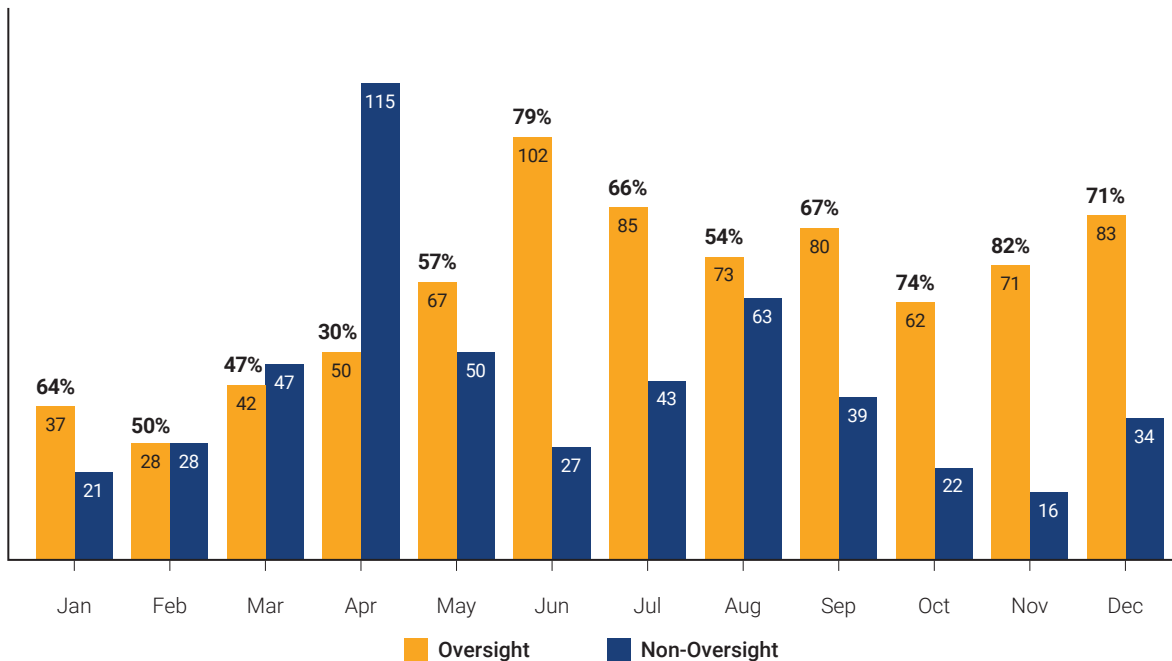


We see a similar pattern, also suggesting the transfer of committee energy from hearings to letters at least in part due to COVID-19, in non-oversight activity. In 2020, committees and subcommittees sent 505 non-oversight letters, as compared to 284 in 2019—a 78 percent increase. A closer look at the subjects of these letters indicates that not only was COVID-19 driving the manner of congressional engagement, but also the topics. The number of letters dealing with matters other than executive branch oversight sent in April 2020 was 667 percent higher than in April 2019 (115 vs. 15). This sizable increase was driven by an effort by the House Homeland Security Committee to obtain information from each state about their [medical supply stockpiles](#) and by an investigation by the House Oversight and Reform Committee into [assisted living facilities' operations](#) during the pandemic.¹¹ Both of these inquiries represent important work by the committees, but do not involve examining the operations of the executive branch and thus are not included in our exploration of executive branch oversight.

(In addition to letters seeking information from entities outside the executive branch, non-oversight letters can take a number of other forms, including acknowledging a recent accomplishment by an executive branch actor or a request for an executive branch agency to take a specified action in the future. Because this latter kind of entreaty is forward- rather than backward-looking, we do not treat it as oversight.)

Figure 4: House Letters By Month (2020)

Percentage labels refer to the share of letters each month that were oversight.



The allocation by committees and subcommittees of their efforts to non-hearing oversight in 2020 is reflected in other aspects of our data as well. While letters must be signed by either a House committee or subcommittee chair in order to qualify as oversight under our definition, they may be signed by additional House members of either party, including both the ranking member and rank-and-file members of the panel. In addition, letters are sometimes signed by members of both the House and Senate as part of a joint oversight effort. Both of these behaviors increased significantly in 2020. Before the start of limitations on in-person House activities as a result of COVID-19 in March 2020, approximately 19 percent of oversight letters had at least one signatory beyond the chair or ranking member of the committee or subcommittee; once in-person activities were limited, that increased to 32 percent. Legislators, left without as many opportunities to obtain information, signal positions, or otherwise participate in the oversight process via questioning witnesses in hearings, appear to have transferred their individual efforts to committee sponsored letters as well.

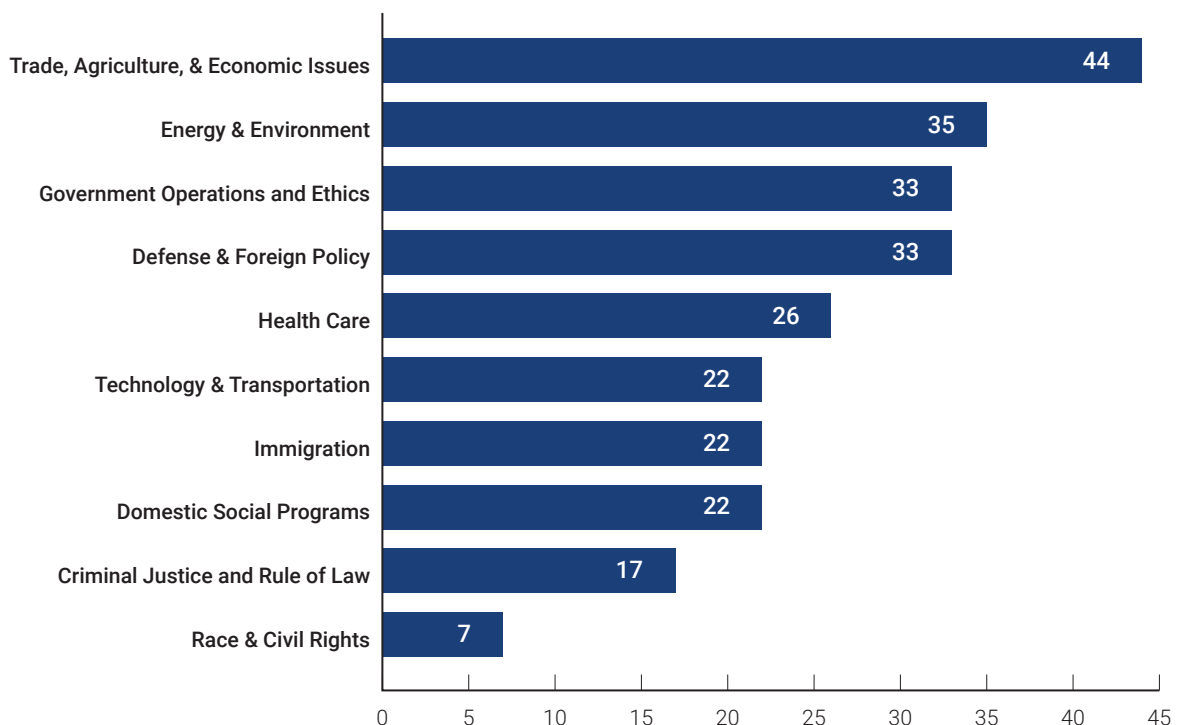
Across the entire 116th Congress, 63 percent of letters sent by committees and subcommittees involved executive branch oversight, which is nearly triple the share of hearings that were similarly focused.

More generally, we can also see that letters are more likely to be used to oversee the executive branch than hearings are. Across the entire 116th Congress, 63 percent of letters sent by committees and subcommittees involved executive branch oversight, which is nearly triple the share of hearings that were similarly focused. In 2019—which we should consider to be a more typical year, since operations were not affected by COVID-19—almost two-thirds of all letters were

aimed at obtaining information about the executive branch; even with the unusual circumstances of 2020, however, the degree to which letters were used more extensively for oversight than hearings is clear.

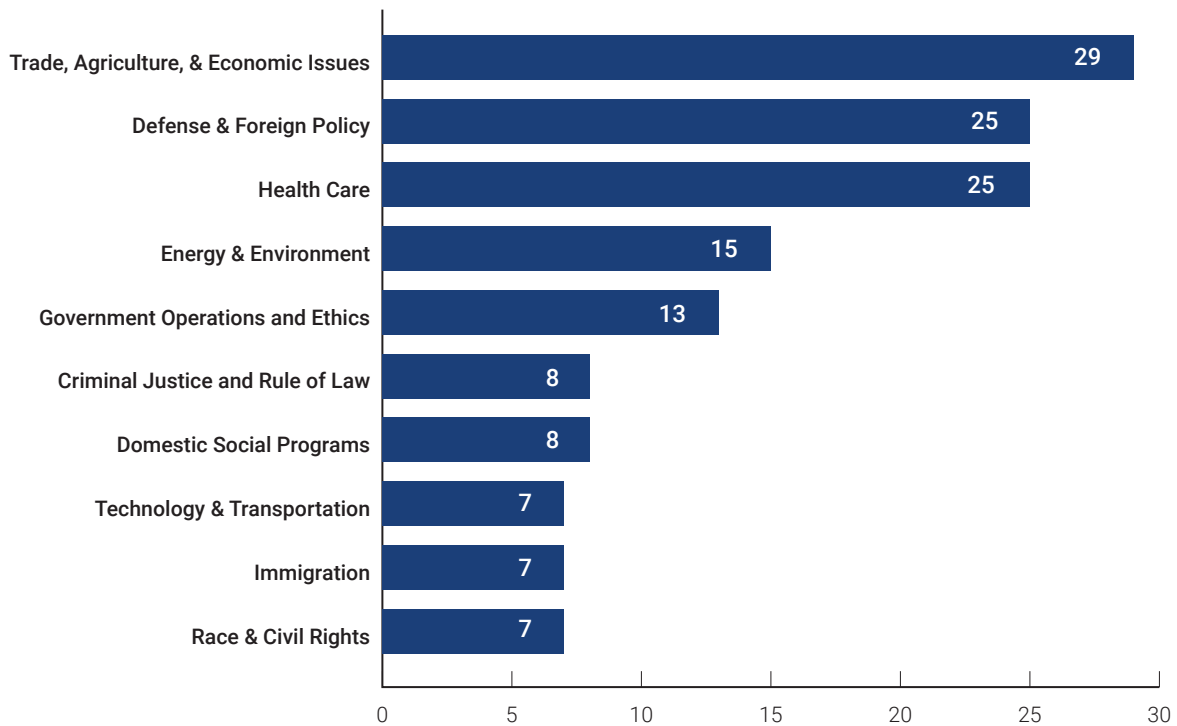
Our data also allows us to examine the issues on which House committees and subcommittees focused their oversight attention across the two years of the 116th Congress. Beginning with hearings in Figure 5, we see that in 2019, trade, agriculture, and economic issues were the most frequent topic of oversight hearings in the House, with 44 hearings; common hearing topics in this issue category were related to [Small Business Administration program management](#) and [federal government preparedness for natural disasters](#).¹² The next three most common issues—energy and environment; defense and foreign policy; and government operations and ethics—all saw roughly equal numbers of hearings, 35, 33, and 33 respectively. Together, hearings on these four issues comprised over 55 percent of all oversight hearings held in the House in 2019.

Figure 5: House Oversight Hearings By Policy Area, 1st Session, 116th Congress



When we look at comparable data for 2020 in Figure 6, there are both similarities and differences. Trade, agriculture, and economic issues remains the top issue, followed by defense and foreign policy and health care. The increased prominence of health care as a focus of oversight hearings is unsurprising given the COVID-19 pandemic. In addition, we also note a modest drop off (from 19 percent to 15 percent) in the combined share of hearings devoted to government operations and ethics and criminal justice and the rule of law. These two issue areas include a range of specific investigations related to alleged misconduct by President Trump and various other administration officials connected to both the investigation by Special Counsel Robert Mueller and to the inquiry culminating in President Trump’s first impeachment trial in early 2020. (While the subject of the Mueller probe was principally the 2016 campaign, much of the related activity was oversight of the investigation itself, which occurred within the Special Counsel’s office at the Justice Department, and thus meets our definition of executive branch oversight.) We discuss the impeachment inquiry at greater length in the next section, but it is unsurprising that the relative frequency of hearings in those issue areas were less prominent after the completion of the first impeachment trial.

Figure 6: House Oversight Hearings By Policy Area, 2nd Session, 116th Congress



A similar shift is displayed in Figures 7 and 8, which depict the number of letters sent by House committees and subcommittees by policy area in 2019 and 2020, respectively. In 2019, a significant portion (43 percent) of letters fell into the criminal justice and rule of law and government operations and ethics issue areas, driven, in part, by a wave of [81 letters](#) by the House Judiciary Committee related to a “Threats Against the Rule of Law” investigation into actions by various Trump Administration officials and Trump associates in March 2019.¹³ In 2020, government operations and ethics remained the top issue focus, but importantly, the specific content of the letters in that policy area was different than in 2019. The 2020 government operations and ethics letters tended to focus on operational issues related to the federal government’s pandemic response efforts, such as the [impact of the pandemic on Census collection efforts](#) and [public relations contracts at the Department of Health and Human Services to “defeat despair and inspire hope”](#).¹⁴ As with committee efforts connected to the Mueller investigation and the impeachment inquiry in 2019, oversight of the COVID-19 response in 2020 occasionally involved large batches of connected letters, such as a [June 2020 batch](#) of letters by the House Oversight and Reform Subcommittee on Government Operations regarding an investigation to ensure the health and safety of the federal workforce.¹⁵

Figure 7: House Oversight Letters By Policy Area, 1st Session, 116th Congress

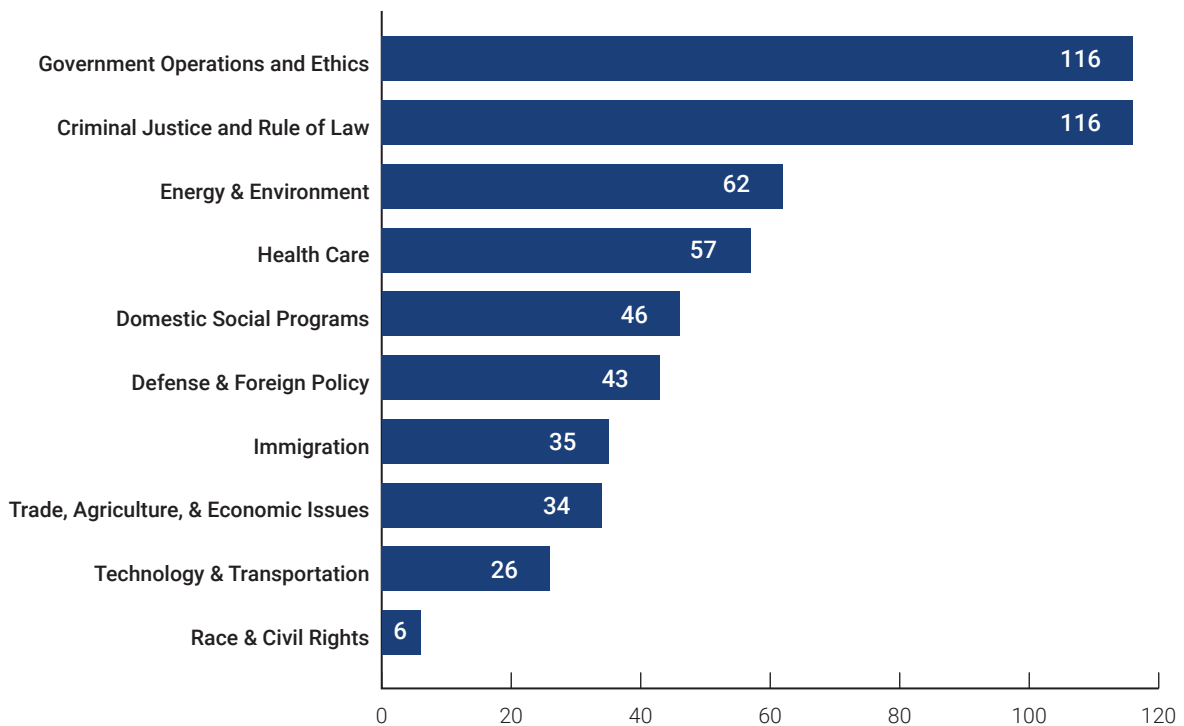
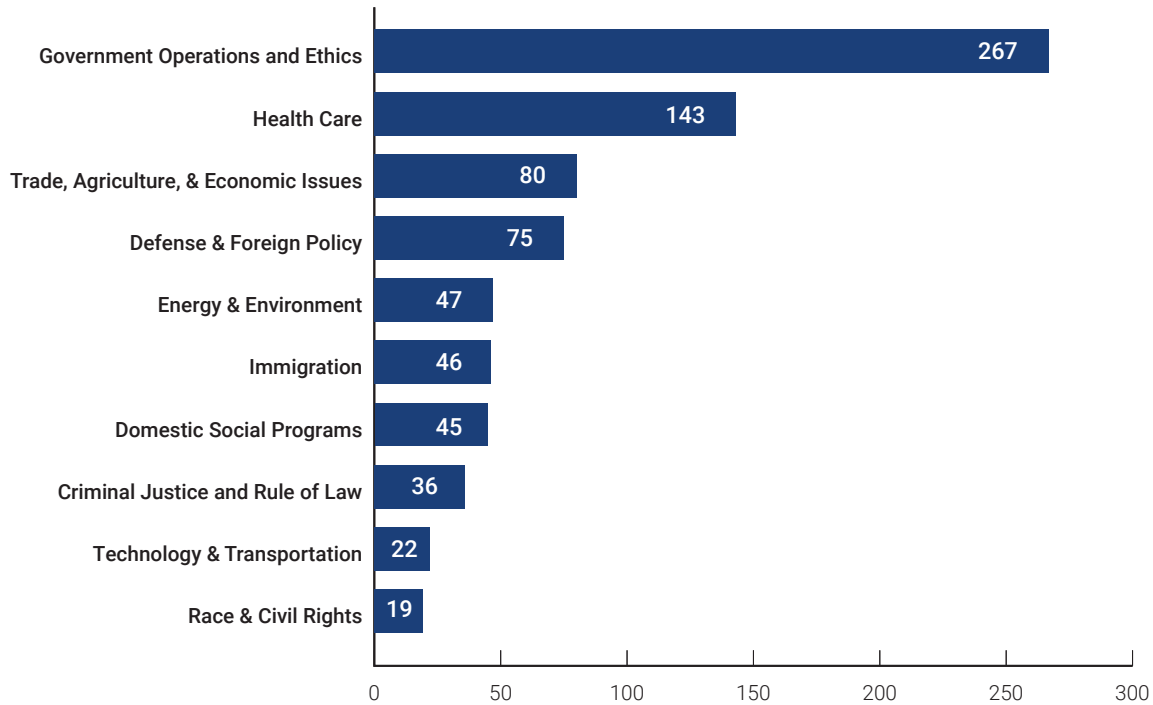


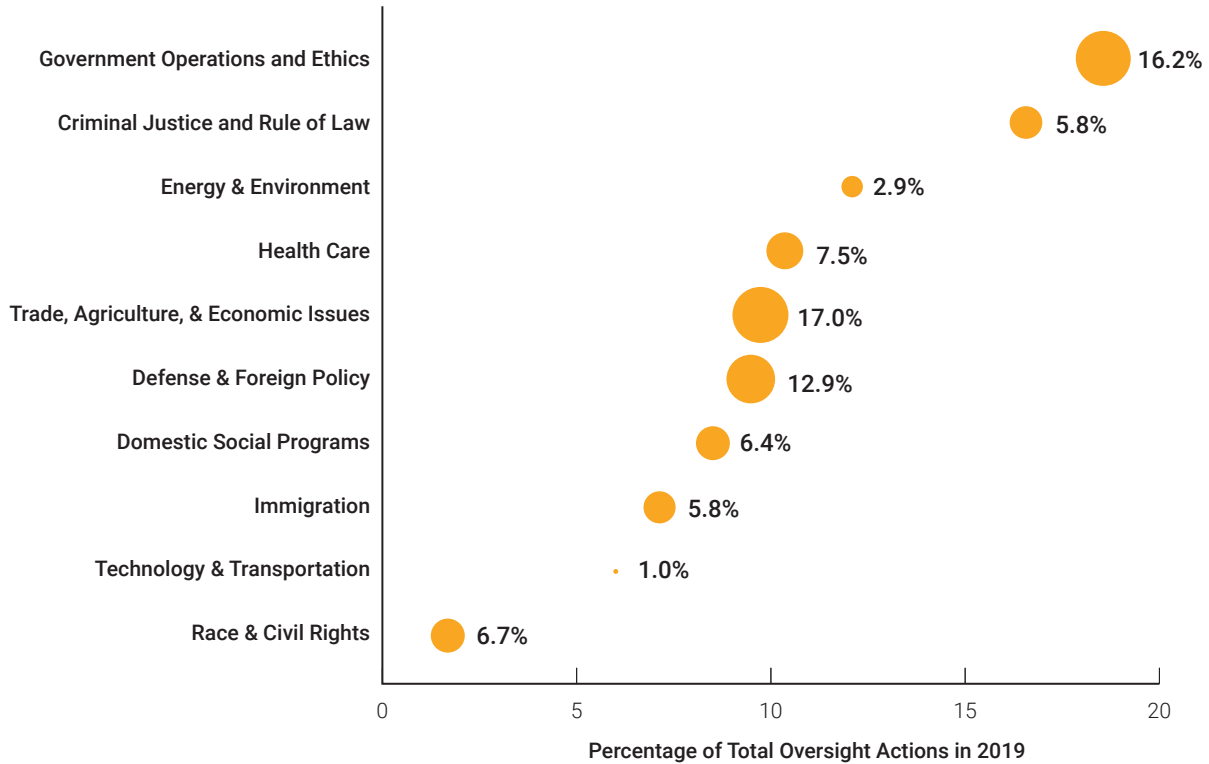
Figure 8: House Oversight Letters By Policy Area, 2nd Session, 116th Congress



Analyzing oversight activity by issue area also allows us to explore some questions about the *quality* of the oversight. As former Senator Carl Levin, D-Mich., and congressional oversight expert (and longtime key oversight staffer) Elise Bean [have argued](#), systematically evaluating the quality of oversight can be difficult, but one useful indicator is whether Congress is investigating issues that are important to the public.¹⁶ Using data from the Gallup Poll, made available by the [Policy Agendas Project](#), Figures 9 (for 2019) and 10 (for 2020) compare the percentage of oversight activity in each of the policy areas we examine with the share of survey respondents identifying that issue as the “most important problem” facing the country in the prior year (2018 and 2019, respectively).¹⁷ In each figure, the x-axis indicates the share of all oversight hearings and letters, taken together, that involved each topic. The policy areas are arrayed along the y-axis, and the size of the circle marker corresponds to the percentage of individuals naming that issue as the most important problem.

Figure 9: House Oversight by Policy Area (2019) with Gallup Most Important Problem Polling (2018)

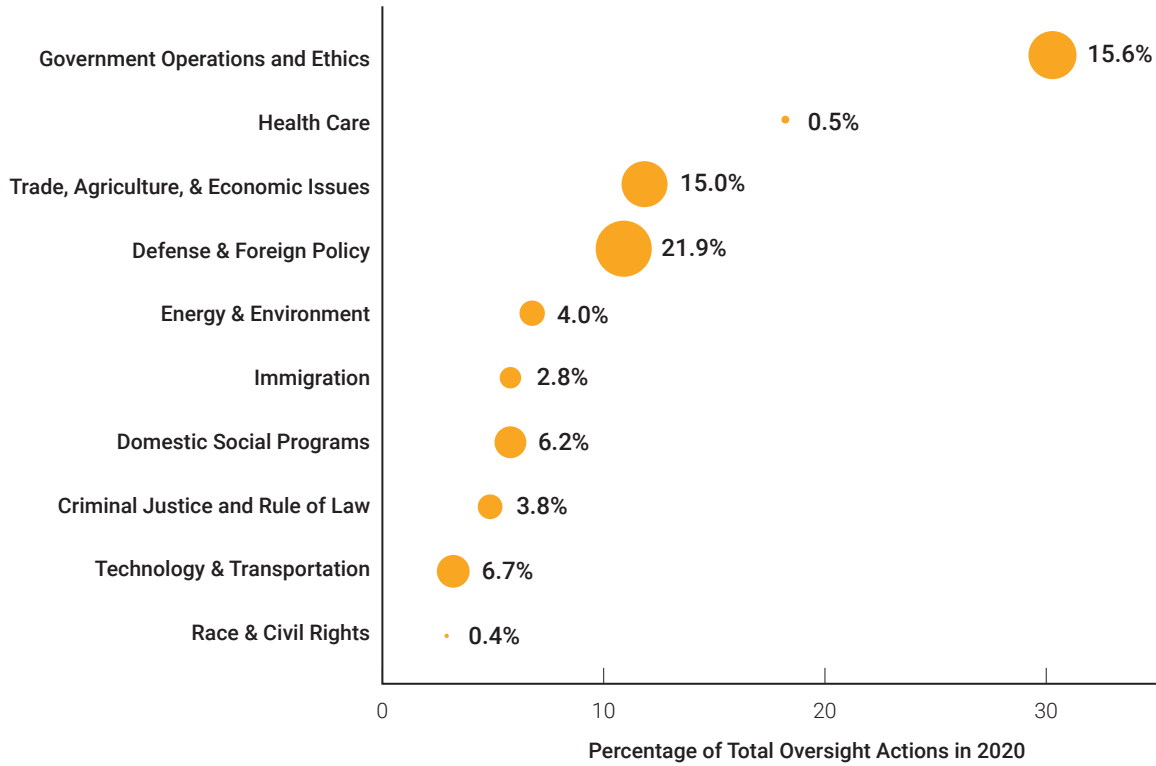
Circle size and label indicate percentage of survey respondents identifying issue area as most important problem.



If the amount of oversight engaged in by House committees and subcommittees across policy areas was perfectly correlated to the degree to which the public considered those same issues to be the most important problem facing the country, the largest circles would be in the upper right portion of each graph. Moving down the y-axis and across the x-axis from right to left, the circles would get progressively smaller, and the smallest circles would be in the lower left. Neither the data from 2019 nor 2020 display this relationship perfectly; the correlation coefficient for 2019 is 0.43, while for 2020, it is 0.32. But we do see a modest relationship between the issues rated by the public as problems and those to which House committees tended to pay more attention. (Given that the public opinion data is from the year prior to the oversight activity, it is likely that the lower correlation for 2020 is due to the fact that congressional attention was largely directed toward COVID-19—an issue that was not on the public’s mind in 2019. In addition, using the previous year’s public opinion data means that we do not capture the significant increase in public attention to racial justice issues in 2020.)

Figure 10: House Oversight by Policy Area (2020) with Gallup Most Important Problem Polling (2019)

Circle size and label indicate percentage of survey respondents identifying issue area as most important problem.



A Tale of Two Major Issues: Impeachment and COVID-19

As the data on oversight by policy area discussed above indicates, House committees and subcommittees explored the executive branch's handling of a wide range of issues during the 116th Congress. Given their historic nature, however, two specific investigations deserve particular attention: the inquiry culminating in the first impeachment trial of President Trump and oversight of the federal response to the COVID-19 pandemic.

Among the major lessons from the 2019 impeachment inquiry is that it can be difficult to define clearly what constitutes a single, unified congressional investigation; this is especially true when multiple committees are involved in examining a single issue or closely related set of issues. On September 24, 2019, Speaker Pelosi gave a speech in which she announced that [“the House of Representatives \[was\] moving forward with an official impeachment inquiry.”](#)¹⁸ She indicated that six separate House committees—Judiciary, Intelligence, Oversight and Reform, Foreign Affairs, Financial Services, and Ways and Means—would [“proceed with their investigations under that umbrella of impeachment inquiry.”](#)¹⁹ Indeed, each of these committees had been pursuing various lines of inquiry into conduct by President Trump that some considered “impeachable.” In May and July 2019, for example, between the Judiciary and Intelligence Committees, there were seven separate hearings held to follow up on components of the report issued by Special Counsel Robert Mueller into Russian interference in the 2016 election. Between March and June, meanwhile, there were 17 letters related to the aftermath of the Mueller probe sent by these six committees either individually or jointly (and, in one case, with the Armed Services Committee). In the case of the House's 2019 investigations of President Trump, moreover, the definition of what constituted an “impeachment inquiry” was of more than conceptual importance; the question of whether House Democrats were pursuing impeachment [was relevant, at least to the president's lawyers, in a number of disputes over requests for information](#) from the executive branch by House committees.²⁰

If we define the beginning of the “official” impeachment investigation as September 24, House committees sent 22 letters and conducted 10 hearings during the course of the inquiry. In practice, the “umbrella” of shared responsibility to which Pelosi referred took the form of three committees (Intelligence, Foreign Affairs, and Oversight and Reform) sending the majority (72 percent) of the associated letters. The central investigative hearings, however, which featured testimony from various

high-profile witnesses, were conducted by a single committee, Intelligence. Only the final two hearings, including one featuring the presentation of the aggregated evidence from the inquiry, were in front of the Judiciary Committee, which has jurisdiction over impeachment.

The first Trump impeachment trial concluded in February 2020—followed closely by the start of congressional investigations into the executive branch’s handling of the COVID-19 pandemic. Even with the overall reductions in the number of hearings, House committees and subcommittees held 51 hearings examining issues related to the executive branch’s COVID-19 response, which represented more than a third (35 percent) of all oversight hearings in 2020 and approximately 8 percent of all total hearings in 2020. In context, the 339 letters sent regarding the pandemic tell a similar story, making up 43 percent of oversight letters, and 26 percent of all letters, sent in 2020. If COVID-19 had been its own policy area in our coding scheme, it would have ranked first in terms of all oversight hearing and letter activity in 2020.

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The approach the House took to engaging in this oversight stands as an interesting comparison to its posture toward the impeachment inquiry. For COVID-19, the House used a combination of its existing committees and subcommittees and a new, special Select Subcommittee on the Coronavirus Crisis, which was under the auspices of the Oversight and Reform Committee. (In addition to investigations done within the House’s committee structure, three other special oversight bodies were also created to oversee various aspects of federal spending in response to the crisis: [the Congressional Oversight Commission](#), made up of individuals chosen by congressional leaders; the [Pandemic Response Accountability Committee](#), comprised of specific agency inspectors general; and a [Special Inspector General for Pandemic Recovery](#).²¹) Speaker of the House Nancy Pelosi [announced in early April](#) that she supported forming a panel devoted to investigating the COVID-19 crisis, and the select subcommittee [was created on April 23, 2020](#).²² The subcommittee [was given a relatively broad COVID-related mandate](#), including examining both the use of existing federal authorities and the implementation of new spending enacted in response to the crisis.²³ It was also charged with investigating developments outside the federal government, like price gouging; the economic consequences of the pandemic; and the disparate effects of the crisis on different populations, including communities of color.

One of Speaker Pelosi’s goals in creating a special panel was to provide a single focal point for the House’s oversight work since a number of different committees, including Financial Services, Homeland Security, Intelligence, and the full Oversight panel, [had expressed interest in conducting their own investigations](#).²⁴ Among the Republican criticisms of the select subcommittee was that, rather than being a centerpiece that would elevate oversight of the crisis, it would be [duplicative of existing committee efforts](#).²⁵

Ultimately, what unfolded fell somewhere in between. In 2020, House committees and subcommittees held 51 hearings examining the executive branch's handling of the COVID-19 crisis. Of these, only six, or roughly 12 percent, were conducted by the Select Subcommittee on the Coronavirus Crisis. (It is important to remember that our analysis focuses only on oversight of the executive branch. The subcommittee held four additional hearings that investigated aspects of the COVID-19 crisis, but that did not focus specifically on the executive branch's handling of the pandemic.) The subcommittee did send a larger share—86, or roughly a quarter—of all the letters examining the federal government's handling of the pandemic. The rank-and-file Democratic members of the select subcommittee, however, also continued to use their pre-existing, permanent committee posts to engage in oversight. All six rank-and-file members also held full or subcommittee chairmanships, and their panels held an additional 11 hearings and sent an additional 50 letters related to the pandemic.

In addition, because [appointing members to a select committee is among the powers of the Speaker](#), convening a special panel stood to give Pelosi more power over which individuals took a lead role in COVID-19 oversight than if the work was left only to regular committees.²⁶ In practice, needing to select members for a new entity slowed the start of its work slightly. Pelosi, who had indicated that Representative Jim Clyburn, D-S.C., would chair the panel before it was formally constituted, named the Democratic members of the subcommittee on April 29, six days after the measure creating it was adopted. House Minority Leader Kevin McCarthy, R-Calif., [took another week to name the Republican members of the panel](#), however.²⁷

Pelosi and other congressional leaders could have taken a number of approaches to establishing a panel devoted exclusively to COVID-19 oversight. One option would have been to create a new select *full* committee, like the one created by Republicans in 2014 [to investigate the attack on the U.S. consulate in Benghazi, Libya](#).²⁸ Approved by the House on May 8, the committee [hired its first full-time staff member roughly two weeks later](#) and [added 22 more full-time staff members](#) by the time [it held its first hearing in September](#).²⁹ Creating a select *subcommittee* of an existing standing committee, however, provided a streamlined process for standing up a new panel in terms of various staffing and operational resources, potentially allowing it to start its work more quickly. The subcommittee was able to hold its first briefing (on testing, tracing, and “targeted containment”) on [May 13](#), and its first full hearing, on job losses resulting from the pandemic, on [June 18](#)—roughly eight weeks after the subcommittee was formed; a press release announcing its staff was sent out a week prior, [on June 10](#).³⁰ As [the House stands up a new targeted oversight panel](#) to investigate the January 6 insurrection at the Capitol, then, it is important to remember that there are various tradeoffs between different institutional approaches to high profile oversight efforts.³¹

The Role of Committees in the Oversight Process

Congressional oversight does not exist in a vacuum; as we saw above in the analysis of hearings and letters during the pandemic-affected period in 2020, members' choices of oversight tools were shaped by factors external to the chamber. Examining the role of different committees in the oversight process similarly helps us understand how oversight efforts fit into the larger congressional context.

From the perspective of individual members, committees serve as an opportunity to devote sustained attention to particular issues—often those important to one's constituents or that are connected to the expertise that a member brings to the chamber. From the standpoint of House leaders, meanwhile, exerting influence on which legislators are appointed to which panels is one of a set of tools available to help achieve strategic objectives. Central among the goals of majority party leaders is to maintain control of the chamber after the next election, which often manifests in a particular focus on creating opportunities for so-called “frontline” members, or those from electorally vulnerable districts, to generate a record on which they can successfully run for re-election. We would expect, then, that members from marginal districts would be steered toward plum committee assignments—including, potentially, those panels where they might have a chance to chair a subcommittee.

Under the House Democratic Caucus's rules, [subcommittee chairs are selected through a bidding process that follows committee seniority](#), so Congresses that have larger numbers of new members—like the 116th, where [nearly 20 percent of members](#) were in their first term—are likely to have more freshmen members leading subcommittees simply by virtue of the supply of seats.³² But reporting on the 116th Congress suggests that Speaker Pelosi influenced the committee assignment process with this specific goal in mind. John Lawrence, her former chief of staff, [was quoted as saying](#), “I do understand that the Speaker guided freshmen onto committees very strategically so that they would find themselves with chairmanship opportunities.”³³

Indeed, as the first column of Table 1 indicates, the 116th Congress did feature a relatively large number of first-term members chairing subcommittees—18, the most since the last time party control of the House switched in 2011. Of these 18, 17 were considered by the Democratic Congressional Campaign Committee to be in [vulnerable districts](#).³⁴ (Rep. Debra Haaland of New Mexico, who chaired the Subcommittee of the National Parks, Forests, and Public Lands of the Natural Resources

Committee and is now the first Native American to serve in the cabinet as Secretary of the Interior, was the exception.)

Given that divided government was expected to make legislating difficult, we might expect that oversight subcommittees would be particularly prime assignments among these chairmanships available to first-term members. In addition, [research by Jonathan Lewallen](#) suggests that committees with oversight-specific subcommittees tend to legislate less than committees without them; if the expectations about how much legislating was likely to happen in the 116th Congress were already low, first-term members might also have been more interested in serving on panels that were more oriented toward oversight.³⁵

Indeed, in the fourth column of Table 1, we that see that the 116th Congress was an outlier in one respect: First-term members chaired a full 50 percent of the House’s oversight subcommittees. (Here, an oversight subcommittee is defined as any subcommittee with “oversight” and/or “investigations” in its name, as well as the subcommittees of the Committee on Oversight and Reform.) But, as the fifth column indicates, oversight subcommittees were not more heavily represented among the chairmanships secured by first-term members than in prior recent Congresses. Despite a range of reasons for expecting oversight to be especially important in the 116th Congress, then, it does not appear that being particularly active on those issues—at least in the form of chairing an oversight subcommittee—was viewed as exceptionally valuable for electorally vulnerable first-term members.

Table 1: First-Term Members and Subcommittee Chairmanships, 110th–116th Congresses

Congress	Number of First-Term Members Chairing Sub-committees	Number of First-Term Members Chairing Oversight Subcommittees	Share of All Oversight Subcommittees Chaired by First-Term Members	Share of All Sub-committees Led by First-Term Members that are Oversight
110th (2007–2008)	6	2	18%	33%
111th (2009–2010)	4	1	9%	25%
112th (2011–2012)	18	4	31%	22%
113th (2013–2014)	4	0	0%	0%
114th (2015–2016)	11	3	27%	27%
115th (2017–2018)	4	1	10%	25%
116th (2019–2020)	18	5	50%	28%

Another component of effective oversight, [as identified by Levin and Bean](#), involves the level of bipartisanship within an investigation conducted by committees.³⁶ While the bipartisanship of hearings is difficult to measure, whether a letter is signed by members of both parties is a clear indicator of collaboration across parties. In total, 74 oversight letters sent by House committees were signed by at least one committee or subcommittee ranking member, representing only six percent of all oversight letter activity. Thirty-seven committees or subcommittees were involved in at least one bipartisan oversight letter in the 116th Congress, which represents about 35 percent of all committees and subcommittees that sent oversight letters. While bipartisan efforts generally began with the chair and ranking member of a full committee, a majority of bipartisan letters (58 percent) had additional bipartisan signatories.

While many panels had at least one bipartisan letter, one committee had an especially large share of them, as seen in Table 2: the Energy and Commerce Committee. Chairman Frank Pallone Jr., D-N.J., and Ranking Member Greg Walden, R-Ore., signed 24 oversight letters together, accounting for roughly a third of all bipartisan oversight letter activity in the 116th Congress. Unsurprisingly, the topics these letters addressed largely avoided partisan issues such as impeachment and COVID-19; subjects reflected the committee’s broad jurisdiction and included maternal mortality rates, prescription drug policies, the opioid epidemic, and federal spectrum management and broadband. Many—approximately three-quarters—of the letters also engaged at least one of the committee’s subcommittee chairs and ranking members as signatories.

Table 2: Number of Bipartisan Oversight Letters, by Committee, 116th Congress

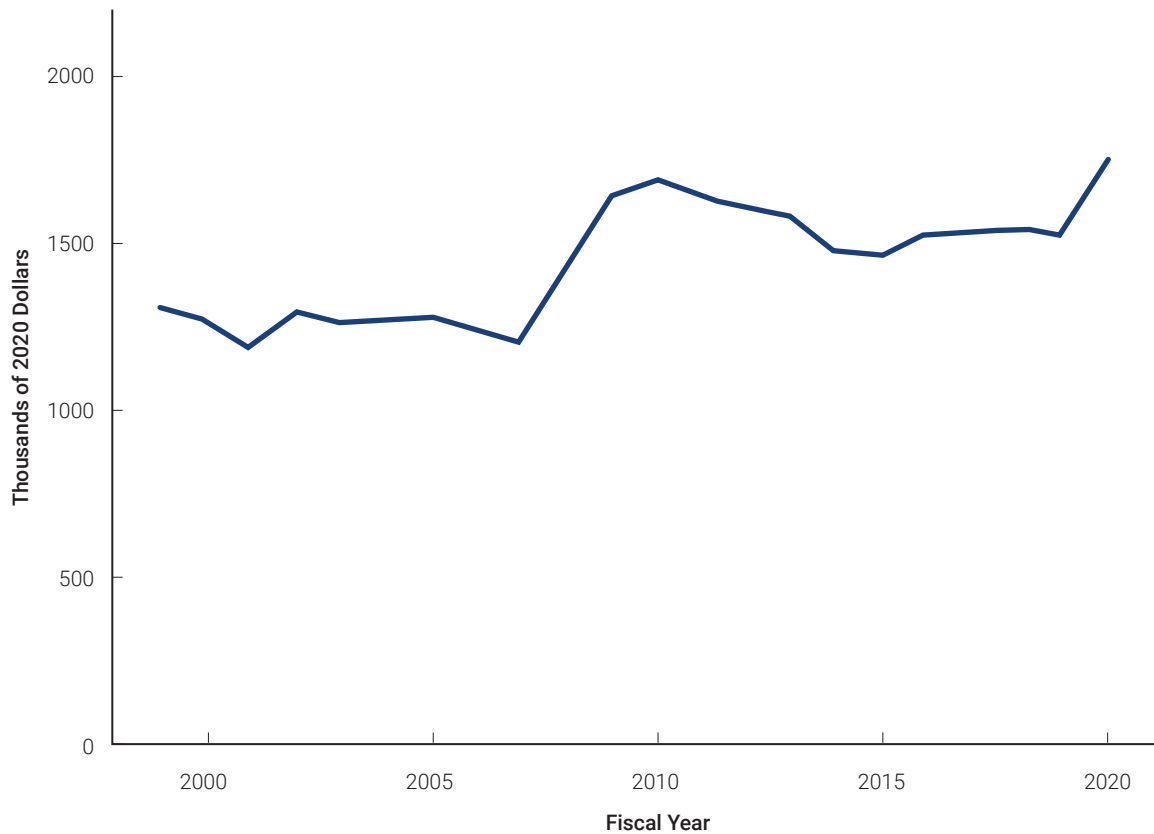
Committee	Number of Bipartisan Letters
Committee on Energy and Commerce	24
Committee on Oversight and Reform	8
Committee on Science, Space, and Technology	7
Committee on Ways and Means	6
Committee on Veterans Affairs	5
Committee on Homeland Security	4
Committee on Foreign Affairs	4

The Legal Legacy of the 116th Congress

Understanding the techniques used by committees, and the issues on which those committees focused, only tells part of the story of executive branch oversight in the House in 2019 and 2020; the 116th Congress also featured several legal disputes over access to information from the executive branch. One of these cases, *Trump v. Mazars*, was decided by the Supreme Court in July 2020. The case involved a subpoena that was issued to the accounting firm Mazars USA by the House Oversight and Reform Committee for certain financial records related to the president and several associated businesses. (It was argued and decided with a second case, *Trump v. Deutsche Bank*, which arose after similar subpoenas from the House Committee on Financial Services and the House Permanent Select Committee on Intelligence to Deutsche Bank and Capital One.) In deciding the case, the Supreme Court asserted for the first time, that the [“president is not entirely immune from congressional process.”](#)³⁷ It also held, however, that when Congress is attempting to access the president’s personal records, it creates heightened separation of powers concerns and, as a result, lower courts should apply [a specific four-part test to balance the “legislative interests of Congress” against “the ‘unique position of the President.’”](#)³⁸

While the decision in *Mazars* most clearly applies to the president’s *personal* records, there are reasons to believe that the executive branch [could use the holding to tie up future requests for information in court.](#)³⁹ Indeed, the Court itself noted in the opinion that [“there is not always a clear line between his personal and official affairs;”](#) future administrations may well find it in their interest to argue in court that that line is *always* fuzzy.⁴⁰ Whether we take the test set forth in *Mazars* as, [in the words of the Congressional Research Service,](#) “ultimately provid[ing] congressional committees with a roadmap to satisfy the Court’s separation of powers concerns” or as a recipe for more frequent litigation, the House may well find itself needing increased legal capacity to contend with this new landscape.⁴¹ The House’s Office of the General Counsel, as the entity with primary responsibility for litigating subpoena disputes on behalf of the House in court, is a key repository of this capacity. As Figure 11 indicates, the Office has seen its funding increase in recent years, but only in fiscal year 2020 did it exceed the levels in fiscal year 2010—prior to significant cuts in large parts of the legislative branch’s budget—in inflation-adjusted terms. Ensuring that the Office and other stores of legal expertise in the House are well-resourced will be an important part of building a strong oversight infrastructure going forward. (Other options, like continuing to utilize pro bono outside counsel, is also an available strategy.)

Figure 11: Budget for the House Office of General Counsel, 1999–2020⁴²



Notably, the Supreme Court’s ruling in *Mazars* did not immediately grant the Oversight and Reform Committee access to the materials it sought; [that component of the litigation is still ongoing as of this writing](#).⁴³ In addition, several other disputes between Congress and the executive branch were left unresolved at the end of the Trump administration. This includes both the effort by the House Judiciary Committee to enforce a subpoena to former White House Counsel Don McGahn for testimony related to the Mueller report, and a request from the House Ways and Means Committee to obtain six years of President Trump’s business and personal tax returns. The former case [was settled in May 2021](#).⁴⁴ Under the agreement, [McGahn subsequently appeared before the Judiciary Committee for a private interview](#), with the subject matter limited to the already public portions of the Mueller report.⁴⁵ The latter case remains unresolved as of this writing, with the two sides (the Committee and the now-Biden Justice Department) [continuing to negotiate](#).⁴⁶

In addition to these high-profile disputes, some lower profile conflicts also remained open when control of the White House shifted. The House Transportation and Infrastructure Committee, for example, had issued a subpoena—[the panel's first in nearly a decade](#)—to the General Services Administration in October 2019 for documents related to the lease of the Old Post Office Building in Washington, D.C. to be used as a Trump International Hotel.⁴⁷ This subpoena came after an initial request, via letter, to GSA with which the agency partially complied, supplying [roughly 10,000 pages of documents](#).⁴⁸ The agency did not, however, turn over the requested financial records or legal memos regarding the lease before the expiration of the Trump administration—and in March 2021, [the Committee requested those documents again, this time from the Biden administration](#).⁴⁹

The length of these cases is a reminder that, even in situations where the federal courts are likely to agree with Congress, using the federal courts as a backstop for congressional oversight is not likely to be especially effective in securing information in a particular dispute in a timely manner. This is not a new lesson: The two previous highest-profile cases involving oversight disputes between the legislative and executive branches ([one from the George W. Bush administration and one from the Obama era](#)) similarly dragged on until the administration in question was no longer in office.⁵⁰

The length of these cases is a reminder that, even in situations where the federal courts are likely to agree with Congress, using the federal courts as a backstop for congressional oversight is not likely to be especially effective in securing information in a particular dispute in a timely manner.

But the slow speed at which the federal courts adjudicate disputes over requests for information from the executive branch does not only have consequences for how quickly Congress is able to access that material. As the settlement in the McGahn case illustrates, the ability of the executive branch to run out the clock on a given conflict can cause Congress to change its tune due to a shift in the partisan circumstances. We know from research discussed above that having one party control the White House and another the House of Representatives is associated with more vigorous oversight of the executive branch by Congress, but the shift from divided to unified control following

the 2020 presidential election illustrates how shared partisanship can shape Congress's approach to resolving legal disputes as well. By settling the McGahn case in the manner that Congress and the executive branch did, significant questions about not just the contours of testimonial immunity but also about the courts' jurisdiction and the existence of a congressional cause of action remained unresolved. The partisan incentives for the House not to push heavily to assert the chamber's institutional prerogatives are clear; [as law professor Jonathan Shaub wrote of the McGahn case](#), "even the Biden administration, which includes numerous lawyers who criticized Trump's obstruction of Congress, understands the value of retaining the doctrines on which Trump relied given the very real possibility that Republicans will take over the House in the 2022 elections and start issuing subpoenas."⁵¹ In addition, even when Congress is trying to assert its institutional prerogative and presses the executive

branch to comply with a request for information about a previous administration's actions, a co-partisan president may *still* be reluctant to set a more cooperative precedent. In the dispute with the GSA over the Old Post Office lease, for example, the Biden administration [has turned over some of the requested documents](#) withheld by the Trump administration, but, as of May 2021, was still declining to share the legal memos requested by the Transportation Committee.⁵²

As Congress contemplates these lessons, it would be well-served to consider possible reforms to enhance its ability to ensure compliance with its subpoenas. The House has [repeatedly expanded committees' subpoena power in recent decades](#), but it has not taken similar steps to make it easier to enforce those subpoenas.⁵³ A number of [proposals](#), for example, for [expediting the associated judicial proceedings](#) and [streamlining privilege disputes](#) have been offered in recent Congresses.⁵⁴ To be clear, there are tradeoffs in outlining exactly how subpoena disputes should play out; prescribing detailed procedures for use in every situation may ["push the Congress toward an adversarial process more akin to civil litigation over liability issues instead of a congressional process geared to gathering information for policy purposes."](#)⁵⁵ But given that Congress may find itself litigating subpoenas often in the future, process changes may be useful.

Conclusion

The 116th Congress began with high expectations for oversight of the executive branch by the House of Representatives. Our analysis of comprehensive data of how House committees and subcommittees used two principal oversight tools—letters and hearings—suggests that the chamber certainly attempted to engage in significant fact-finding about how the Trump administration was implementing policy and conducting its operations. Letters were used more heavily than hearings, which is consistent with our understanding that hearings can be quite effective at drawing attention to a particular issue, but are not always the most productive arena for obtaining information from witnesses. While the relationship between the salience of issues among the public and the policy areas on which the House focused its oversight efforts could be stronger, congressional attention is not completely detached from public opinion.

Attempted oversight, however, often did not translate into actually obtaining the information that House committees sought from the executive branch. While our data is unable to speak to questions about the success of letters as a tool of obtaining information from the executive branch in a systematic way, the 116th Congress was marked by several, high profile legal fights over the Trump administration's refusal to comply with congressional requests for information—and by countless lower profile conflicts that left House committees unable to get the information they sought in a timely manner.

Analyzing oversight is valuable not just for what it tells us about how the House investigated the executive branch in the 116th Congress, however; it also provides useful pieces of the broader story about how the House did its work more generally during an especially eventful two years. In particular, the shift in *how* committees tended to do oversight—increasing the number of letters they sent in the months where holding hearings was more difficult due to the COVID-19 pandemic and drawing more rank-and-file signatories onto said letters—is an important component of the overall adaptation of the legislative branch to unusual circumstances. Indeed, oversight is intimately connected to Congress's other functions, and examining how Congress fulfills this constitutional responsibility helps us understand how it functions more broadly.

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Appendix: Additional Details on Data Collection

While an overview of our approach to data collection is provided above, interested readers may find additional details useful. For hearings, we used the hearings calendar available in the House of Representatives [Committee Repository](#) to obtain information about the title of each hearing, the committee or subcommittee holding the hearing, and the identities and affiliations of all witnesses appearing at the hearing. For letters, we compiled a list of the web pages on which House committees post press releases and additionally, in some instances, a specific list of the letters the panel has sent. (While committees are not required to make the letters that they send public, on only a very few occasions over the course of the two sessions of the 116th Congress were we made aware of the existence of a letter that was not captured through our data collection strategy.) For each available letter, we recorded information about the sending committee or committees, the individual members of Congress who signed the letter, the topic of the letter, and the identity and affiliation of the recipient. Importantly, we only collected letters sent on behalf of a committee or subcommittee and that were signed by the chair of the panel in question. When a letter was also signed by other members of either party, we recorded that information. But we do not include letters sent by only members of the minority party. [As oversight expert Morton Rosenberg explains](#), “...no ranking minority members or individual members can start official committee investigations, hold hearings, issue subpoenas, or attend informal briefings or interviews held prior to the institution of a formal investigation...Individual members may also seek the voluntary cooperation of agency officials or private persons. But no judicial precedent has recognized the right of an individual member, other than the chair of a committee, to exercise the authority of a committee in the oversight context.”

Our two-tiered “keyword/key witness” approach was applied as follows. Primary keywords included “oversight,” “investigate,” “examine,” “review,” “supervision,” “inefficiency/efficiency,” “abuse,” “transparency,” “accountability,” “waste,” “fraud,” “abuse,” “mismanagement,” and “implementation,” as well as variants of these words. (If a hearing involved an agency budget review, we did not consider it to be oversight.) GAO officials and officials in agency Offices of the Inspector General were primary witnesses or letter recipients.

We also compiled secondary keywords and key witness/recipients, which signaled possible inclusion as oversight but warranted more scrutiny. These included “update,” “effects,” “preparation,” “improve,” and agency “actions,” as well as, for witnesses/recipients, current and former heads of agencies or agency subunits; individuals affected by program mismanagement; and individuals or organizations with knowledge of White House or executive branch operations. To apply this definition consistently and carefully, each piece of potential oversight material was reviewed by two coders working independently; a third coder adjudicated any disputes.



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