

# CRS Report for Congress

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## Congressional Oversight

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### Summary

Congressional oversight of policy implementation and administration, which has occurred throughout the U.S. government experience under the Constitution, takes a variety of forms and utilizes various techniques. These range from specialized investigations by select committees, to annual appropriations hearings, to informal communications between Members or congressional staff and executive personnel, and to the use of extra congressional mechanisms, such as offices of inspector general and study commissions. Oversight, moreover, is supported by a variety of authorities—the Constitution, public law, and chamber rules—and is an integral part of the system of checks and balances between the legislature and the executive.

## Organization and Operations

Congressional oversight refers to the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation. Congress exercises this power largely through its standing committee system. However, oversight, which dates to the earliest days of the Republic, also occurs in a wide variety of congressional activities and contexts. These include authorization, appropriations, and legislative hearings by standing committees; specialized investigations by select committees; and reviews and studies by congressional support agencies and staff.

Congress's oversight authority derives from its "implied" powers in the Constitution, public laws, and House and Senate rules. It is an integral part of the American system of checks and balances.

## Principles and Purposes

Underlying the legislature's ability to oversee the executive are democratic principles as well as practical purposes. John Stuart Mill, the British Utilitarian philosopher, insisted that oversight was the key feature of a meaningful representative body: "The proper office of a representative assembly is to watch and control the government."<sup>1</sup> Woodrow Wilson—a future President—describing *Congressional Government*, as a young scholar in 1885, equated oversight with lawmaking, which was usually seen as the supreme function of a legislature. He wrote, "Quite as important as legislation is vigilant oversight of administration."<sup>2</sup>

The philosophical underpinning for oversight is the Constitution's system of checks and balances among the legislature, executive, and judiciary. James Madison, known as the "Father of the Constitution," described the system in *Federalist* No. 51 as establishing "subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner that each may be a check on the other."

Oversight, as an outgrowth of this principle, ideally serves a number of overlapping objectives and purposes:

- improve the efficiency, economy, and effectiveness of governmental operations;
- evaluate programs and performance;
- detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct;
- protect civil liberties and constitutional rights;
- inform the general public and ensure that executive policies reflect the public interest;
- gather information to develop new legislative proposals or to amend existing statutes;
- ensure administrative compliance with legislative intent; and
- prevent executive encroachment on legislative authority and prerogatives.

In sum, oversight is a way for Congress to check on, and check, the executive.

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<sup>1</sup> John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourn, 1861), p. 104.

<sup>2</sup> Woodrow Wilson, *Congressional Government* (Boston: Houghton Mifflin, 1885), p. 297.

## Powers and Prerogatives

### The U.S. Constitution

Although the Constitution grants no formal, express authority to oversee or investigate the executive or program administration, oversight is implied in Congress's impressive array of enumerated powers.<sup>3</sup> The legislature is authorized to appropriate funds; raise and support armies; provide for and maintain a navy; declare war; provide for organizing and calling forth the national guard; regulate interstate and foreign commerce; establish post offices and post roads; advise and consent on treaties and presidential nominations (Senate); and impeach (House) and try (Senate) the President, Vice President, and civil officers for treason, bribery, or other high crimes and misdemeanors.

Reinforcing these powers is Congress's broad authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The authority to oversee derives from these constitutional powers. Congress could not carry them out reasonably or responsibly without knowing what the executive is doing; how programs are being administered, by whom, and at what cost; and whether officials are obeying the law and complying with legislative intent. The Supreme Court has legitimated Congress's investigative power, subject to constitutional safeguards for civil liberties. In 1927, the High Court found that, in investigating the administration of the Department of Justice, Congress was considering a subject "on which legislation could be had or would be materially aided by the information which the investigation was calculated to elicit."<sup>4</sup>

### Statutes

The "necessary and proper" clause also allows Congress to enact laws that mandate oversight by its committees, grant relevant authority to itself and its support agencies, and impose specific obligations on the executive to report to or consult with Congress, and even seek its approval for specific actions.

Broad oversight mandates exist for the legislature in several significant statutes. The Legislative Reorganization Act of 1946 (P.L. 79-601), for the first time, explicitly called for "legislative oversight" in public law. It directed House and Senate standing committees "to exercise continuous watchfulness" over programs and agencies under their jurisdiction; authorized professional staff for them; and enhanced the powers of the Comptroller General, the head of Congress's investigative and audit arm, the General Accounting Office (GAO). The Legislative Reorganization Act of 1970 (P.L. 91-510) authorized each standing committee to "review and study, on a continuing basis, the application, administration and execution" of laws under its jurisdiction; increased the professional staff

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<sup>3</sup> Article I, Sec. 8 and Article II, Secs. 2 and 4.

<sup>4</sup> *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927); see also *Watkins v. United States*, 354 U.S. 178, 187 (1957), and *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

of committees; expanded the assistance provided by the Congressional Research Service; and strengthened the program evaluation responsibilities of GAO. The Congressional Budget Act of 1974 (P.L. 93-344) allows committees to conduct program evaluation themselves or contract out for it; strengthens GAO's role in acquiring fiscal, budgetary, and program-related information; and upgrades GAO's review capabilities.

Besides these general powers, numerous statutes direct the executive to furnish information to or consult with Congress. For example, the Government Performance and Results Act of 1993 (P.L. 103-62) requires agencies to consult with Congress on their strategic plans and report annually on performance plans and results. In fact, more than 2,000 reports are submitted each year to Congress by federal departments, agencies, commissions, bureaus, and offices. Offices of inspector general, for instance, report their findings about waste and abuse, and their recommendations for corrective action semiannually; they are also instructed to issue special reports concerning particularly serious problems. In addition, Congress creates commissions to study and make recommendations for select policy areas that can also involve examination of executive operations and organizations.

There is a long history behind executive reports to Congress. Indeed, one of the first laws of the First Congress—the 1789 Act to establish the Treasury Department (1 Stat. 66)—called upon the Secretary and the Treasurer to report on public expenditures and all accounts. The Secretary was also required "to make report, and give information to either branch of the legislature ... respecting all matters referred to him by the Senate or House of Representatives, or which shall appertain to his office."

Separate from such reporting obligations, public employees may provide information to Congress on their own. In the early part of the 20<sup>th</sup> century, Congress enacted legislation to overturn a "gag" rule, issued by the President, that prohibited employees from communicating directly with Congress (5 U.S.C. 7211 (1994)). Current "whistleblower" statutes guarantee the right of government employees to petition or furnish information to Congress or a Member.

## **House and Senate Rules**

Chamber rules also reinforce the oversight function. House and Senate rules, for instance, provide for "special oversight" or "comprehensive policy oversight," respectively, for specified committees over matters that relate to their authorizing jurisdiction. In addition, House rules direct each standing committee to require its subcommittees to conduct oversight or to establish an oversight subcommittee for this purpose. House rules also call for each committee to submit an oversight agenda, listing its prospective oversight topics for the ensuing Congress, to the House Committee on Government Reform and Oversight, which compiles and prints them.

The House Government Reform and Oversight Committee and the Senate Governmental Affairs Committee, which have oversight jurisdiction over virtually the entire federal government, moreover, are authorized to review and study the operation of government activities to determine their economy and efficiency and to submit recommendations based on GAO reports. House rules also require that the findings and recommendations from its Government Reform and Oversight Committee be considered by authorizing panels, if presented to them in a timely fashion.

## Activities and Avenues

Oversight occurs through a wide variety of congressional activities and avenues. Some of the most obvious are highly publicized investigations by select committees into a major scandal or into executive branch operations gone awry. Temporary select committee inquiries into the Iran-Contra affair in 1987, intelligence agency abuses in 1975-1976, and "Watergate" in 1973-1974 are cases in point. The precedent for this kind of oversight actually goes back two centuries: in 1792, a special House committee investigated the ignominious defeat of an Army force by confederated Indian tribes. By comparison, congressional inquiries in the 104<sup>th</sup> and 105<sup>th</sup> Congresses into Whitewater, access to Federal Bureau of Investigation files, White House Travel Office firings, and campaign financing have relied upon standing committees.

Although such highly visible endeavors are significant, they usually reflect only a small portion of Congress's total oversight effort. More routine and regular review, monitoring, and supervision occur in other congressional activities and contexts. Especially important are appropriations hearings on agency budgets as well as authorization hearings for existing programs. Separately, staff and support agency examinations of executive operations and the implementation of programs provide for additional oversight.

## Selected References

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