

Financial Services Industry Congressional Investigations

April 17, 2015

White Collar Defense and Public Policy & Government Affairs

The congressional investigations environment in the 114th Congress is beginning to heat up. Major investigations committees are largely done standing up their organizations and selecting their priorities. This client advisory provides an overview of the emerging congressional investigations landscape for financial services companies.

Led by Rep. Jeb Hensarling (R-TX) and Sen. Richard Shelby (R-AL), respectively, the House Financial Services Committee and Senate Banking, Housing, and Urban Affairs Committee are expected to focus their investigative energies on “regulatory overreach” and waste by the administration and agencies overseeing and regulating the financial services industry. Although the Republican-led committees of the 114th Congress are generally thought to be less likely to target companies in the financial services sector in large-scale investigations, banks remain politically unpopular, so targeted inquiries cannot be ruled out. In addition, unpredictable events and headlines will often prompt congressional committees to change or expand their investigative attention rapidly. Finally, financial services firms must be aware of the real possibility of becoming ensnared in the committees’ oversight of the administration.

Rep. Hensarling is in his second term as Chairman of the House Financial Services Committee. Like his mentor, former Texas Senator Phil Gramm, Chairman Hensarling is deeply suspicious of regulations and government programs that he believes distort the workings of the free market. Chairman Hensarling’s free-market beliefs, like his opposition to many regulations resulting from the Dodd–Frank Wall Street Reform and Consumer Protection Act, generally manifest themselves in ways that are popular in the business community, although others are less popular, such as his resistance to the reauthorization of the Terrorism Risk Insurance Act and the Export-Import Bank. This conservative economic viewpoint will likely help drive the panel’s choice of investigations, in addition to the Committee’s already announced probe of programs administered by the Department of Housing and Urban Development (“HUD”) and its agencies, including the Federal Housing Administration (“FHA”). Meanwhile, Wisconsin Republican Sean Duffy replaces Rep. Patrick McHenry as Chairman of the Oversight and Investigations Subcommittee. Rep. Duffy, whose legislation restricting the activities of the Consumer Financial Protection Bureau (“CFPB”) passed the House last Congress, is expected to continue the Subcommittee’s aggressive focus on the CFPB and other federal agencies.

On the Democratic side, California Representative Maxine Waters is in her second term as Ranking Member of the full Committee and Representative Al Green of Texas continues as Ranking Member of the Oversight and Investigations Subcommittee. Both Ranking Members Waters and Green will likely push back on the Republicans’ investigative focus of federal agencies and try to steer the Committee to look at consumer-facing business practices by banks and other financial institutions, programs and policies affecting the availability of affordable

housing and access to credit, and other issues such as pay at large banks. Although Chairman Hensarling is unlikely to accommodate these interests, Waters and Green may pursue unofficial inquiries on behalf of the committee's Democratic members, and potential targets of such inquiries should give consideration to how best to respond.

In the Senate, Alabama Senator Richard Shelby takes over as Chairman of the Banking Committee, which he previously led from 2003 to 2007. Among his early acts as chairman has been to establish an investigations unit, run by a highly experienced Senate lawyer with prior experience on the Homeland Security and Government Affairs, Intelligence, and Appropriations Committees. Chairman Shelby is known as a vocal critic of Dodd-Frank and particularly the CFPB, which the law created. The panel will likely spend a fair amount of its investigative time looking at the CFPB very closely. Additionally, Chairman Shelby, a former chairman of the Senate Intelligence Committee, recently appointed a Committee national security counsel, so investigations regarding foreign flows of funds, including financial transactions to avoid taxes and sanctions, terrorist financing, cybersecurity, and money laundering are quite possible. This line of investigations is likely to target financial services firms and require them to turn over documents and explain their business practices.

Chairman Shelby has also expressed disapproval of the growth of large banks. Ohio Senator Sherrod Brown, the Ranking Member of the Banking Committee, is one of the Senate's most vocal critics of Wall Street and big banks. While the two Senators have very different political philosophies and approaches to regulation, their concerns about the largest banks should be of concern to those institutions.

Of particular note is the fact that just as Chairman Shelby is establishing an investigations unit, Senator Brown is also bringing on one of the most experienced investigators from the staff of the Permanent Subcommittee on Investigations, long chaired by retired Senator Carl Levin. The creation of a dedicated investigations unit and the beefing up of the minority investigations staff can only presage a more active oversight agenda for the Senate Banking Committee.

The following are some of what we expect to be particular areas of focus of the House and Senate financial services panels:

Housing Programs

The House panel recently held full committee hearings on alleged legal and ethical violations at HUD and on capital reserve shortfalls in the FHA's Mutual Mortgage Insurance Fund, and we expect the Committee to keep looking at HUD, the FHA, and their programs for waste, fraud, and abuse. The Senate Banking Committee may also start its own investigations into these programs. Additionally, with both Chairman Shelby and Chairman Hensarling long suspicious of government-sponsored enterprises like Fannie Mae and Freddie Mac and an uncertain path to reform of the housing finance system, the committees may consider proposals to privatize the companies and will in any event spend some time on oversight of Fannie and Freddie and their regulator and conservator, the Federal Housing Finance Agency ("FHFA").

The Consumer Financial Protection Bureau

The CFPB will almost certainly be a major focus of both committees, which are expected to look extremely closely at all aspects of the Bureau. Last Congress saw the House Oversight and Investigations Subcommittee hold three hearings on employment practices at the CFPB, and no program, action, or other activity of the Bureau is safe from the committees' notice.

Securities and Exchange Commission

The activities and employment practices of and spending by the Securities and Exchange Commission (“SEC”) have, through the years, provided much fodder for the House and Senate banking committees’ investigations. We would not be surprised to see the SEC back in the committees’ sights, including with regard to the SEC’s [Tick Size Pilot Program](#).

Cybersecurity

Cybersecurity is to be a major topic of interest this Congress, and financial institutions continue to be targeted in increasingly sizable and complex cyberattacks. Widely publicized hacks and data breaches will likely draw the panels’ attention to the cybersecurity policies and practices of individual financial institutions.

“Operation Choke Point”

Operation Choke Point is a Department of Justice initiative aimed at preventing banks and other financial institutions from providing services to merchants suspected of consumer abuse. The initiative has reportedly focused on pressuring banks to refuse services to certain “high risk” industries and has apparently caused financial institutions to terminate banking relationships with legal businesses. The Oversight and Investigation Subcommittee looked at Operation Choke Point last Congress and has already commenced its review of the program with a March 24 hearing on the involvement of the Federal Deposit Insurance Corp. with Operation Choke Point. Additional hearings will likely follow.

Foreign Flows of Funds

The committees will likely look very closely at a variety of issues regarding foreign flows of funds, including financial transactions to avoid taxes and sanctions, terrorist financing, and money laundering. This is one area of investigation that could see financial institutions forced to turn over documents and testify in front of the Committee, particularly given recent probes into banks’ alleged complicity in money laundering schemes.

The Federal Reserve

Chairman Shelby and Chairman Hensarling have both voiced concern regarding the Federal Reserve’s extraordinary measures taken since the financial crisis, and Chairman Shelby cosponsored an audit-the-Fed bill in the 112th Congress. Both panels will likely look into some aspect of the Federal Reserve System’s activities, including those of Federal Reserve Banks.

The Export-Import Bank

Chairman Hensarling is no fan of the Export-Import Bank, and while Chairman Shelby has expressed some inclination to support its reauthorization, it would not be surprising to see the Bank in both committees’ investigative crosshairs this Congress alongside the fight on whether it should be reauthorized. Private businesses that participate in the Bank’s program may also find themselves facing committee inquiries.

The above are just some of the topics on which the committees, which have wide jurisdiction over a number of federal programs, are expected to focus. And, of course, committees’ interests can shift very rapidly due to external events. Even if private-sector businesses are not currently the focus of the committees, just one investigative news article can change that almost immediately. Any business that receives a phone call from a reporter asking about things that

could catch the eye of a congressional committee should be proactive in preparing for an investigation.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our congressional investigations practice group:

Robert Kelner	+1 202 662 5503	rkelner@cov.com
Richard Hertling	+1 202 662 5669	rhertling@cov.com
Brian Smith	+1 202 662 5090	bdsmith@cov.com
Dan Bryant	+1 202 662 5620	dbryant@cov.com
Edward Yingling	+1 202 662 5029	eyingling@cov.com
Derek Lawlor	+1 202 662 5091	dlawlor@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.