

# **Congressional Investigations Outlook in the 114th Congress**

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The new Republican majority in the Senate and expanded Republican majority in the House of Representatives are poised to make their mark on Congress's investigative agenda in the last two years of President Obama's administration. The shift in focus of congressional investigations will be most pronounced in the Senate, where Republicans assume control for the first time in eight years. The elections will have less impact on the House's oversight agenda, but leadership changes on key committees may bring some change in priorities and style.

While Senate and House investigators will undoubtedly focus on the Obama administration, private sector entities in a number of areas will face scrutiny as well. In particular, companies and individuals that have participated in or benefited from a range of administration programs and activities – for example, the implementation of the Affordable Care Act, financial reforms, federal contracts, grants, and loans, Environmental Protection Agency (EPA) regulations, and recent executive actions – will likely find themselves in Congress's crosshairs. Other issues likely to be on the new Congress's agenda, and that could pose risks to corporations, include contracting and procurement practices at the Department of Veterans Affairs and other agencies, privacy and data security, and the response to the Ebola crisis.

One new potential focus for congressional oversight may be companies that seek to take advantage of the President's new policy toward Cuba, which is unpopular among some Senate and House Republicans. Any company looking to rush into Cuba ought to be cognizant of the risk that congressional committees may take an interest in how and why they are doing so.

## **Senate Investigative Agenda**

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Republican control of the Senate will mean a change in the oversight agenda and a shuffle of committee chairmen pursuing new legislative priorities. Although every Senate committee has oversight and investigations authority, we anticipate that the most active Senate committees in conducting oversight will be the Judiciary Committee, the Homeland Security and Government Affairs Committee (HSGAC) (especially its Permanent Subcommittee on Investigations), the Finance Committee, and the Environment and Public Works Committee (EPW). The agenda will include a broad range of issues, including health care and the Affordable Care Act, financial services, tax reform, privacy and data protection, energy and environmental policy, and foreign affairs.

Senator Charles Grassley (R-Iowa) will be the new chairman of the Senate Judiciary Committee. In a statement announcing his leadership post, Senator Grassley revealed: "My goal is to promote transparency and accountability and restore the committee's role as a true check on the massive and powerful federal bureaucracy." An active and long-term Judiciary Committee member, Senator Grassley is renowned for his focus on oversight and his

concentration, even as a minority committee member, on waste, fraud, and abuse in federal agencies and support for federal whistleblowers who report wrongdoing or misuse of public dollars. Senator Grassley was also the Senate author of the False Claims Act of 1986 and, as such, an aggressive overseer of government contractors and grantees. The Department of Justice and FBI have also long been targets of Senator Grassley. An investigation into the IRS scandal is also possible under his leadership.

Senator Ron Johnson (R-Wis.) will wield the gavel at HSGAC, the chief Senate committee of oversight jurisdiction with broad subpoena power. Senator Johnson has said that he is interested in using the committee's investigative powers to pursue "border security and illegal immigration, cybersecurity, homegrown terrorist threats, securing the electrical grid, streamlining oversight of the DHS and the regulation of American businesses – particularly the energy sector." This agenda is obviously focused on federal agencies, but companies that have suffered data breaches and cyber intrusions, banks and insurers who have had to bear the costs of such intrusions, and utilities are all potential targets of the committee's oversight efforts.

HSGAC's Permanent Subcommittee on Investigations is likely to be chaired by Senator Rob Portman (R-Ohio). For 10 of the last 14 years, this subcommittee has been under the leadership of Senator Carl Levin (D-Mich.), who focused sharply on corporations and financial institutions. Under Senator Portman's leadership, the subcommittee is likely to focus its scrutiny on federal agencies, but also the private contractors hired to promote or implement the administration's policies in health care and energy and green initiatives. Senator Portman, who is up for reelection in 2016, is expected to be a very active chairman of the subcommittee.

Senator Orrin Hatch (R-Utah) will move from ranking member to chairman of the Senate Finance Committee, which has jurisdiction over tax legislation, trade, and entitlement programs such as Medicare and Medicaid. Senator Hatch has said the Republican Senate should pursue tax-law changes and "strike away" at Obama's health care law, two areas that will also be the focus of his committee's agenda. Senator Hatch has also identified trade, regulatory reform, and entitlement reform as policy areas he would like to address in the committee.

EPW will undergo a major ideological shift as the chairmanship passes from Senator Barbara Boxer (D-Cal.) to Senator James Inhofe (R-Okla.), a climate change critic, friend of fossil fuels, and vocal opponent of the EPA. Senator Inhofe has called global warming "the greatest hoax ever perpetrated on the American people" and, during his previous tenure as EPW chairman (2003-2007), sharply targeted the EPA's regulatory agenda. Incoming Senate Majority Leader Mitch McConnell (R-Kentucky) has also specifically targeted EPA for oversight and legislative action because of the effects that its efforts have had on Kentucky's coal industry. In addition to the scrutiny of EPA regulations and use of science, we expect EPW to focus oversight on tax breaks and federal funding provided to the green industries in implementing those regulations. Companies in the green industry sector should be especially alert to congressional oversight developments.

## House Investigative Agenda

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While drastic shifts in the Republican oversight agenda in the House are unlikely, leadership changes within a few key oversight committees in the new Congress may bring changes in style and priorities.

## House Committee on Oversight and Government Reform

Most prominently, Rep. Jason Chaffetz (R-Utah) will take over as chairman of the House Committee on Oversight and Government Reform, replacing the term-limited Rep. Darrell Issa (R-Cal.). Rep. Chaffetz has begun to give indications about his investigative priorities in the new Congress, promising a less adversarial style than his predecessor and close cooperation on oversight with committees having legislative jurisdiction on the issues. He has also promised that the committee's efforts will lead to more reports and fewer press releases. We expect that the new chairman and his staff will focus the committee's activities on the government reform portion of its name and use oversight in support of that effort. Rep. Chaffetz has specifically identified embassy security, the Secret Service, and U.S. Postal Service reform as issues on which his committee will focus. Rep. Chaffetz is very tech-savvy and tech-friendly. We expect the committee will conduct oversight on government IT infrastructure and procurement and cyber-security. A key indication of this prospect is the announcement that the committee is creating a new subcommittee to deal with these specific issues.

Rep. Chaffetz has already started to shape the committee. In December, he named his senior staff: Sean McLaughlin, a former House Judiciary Committee staff director and Justice Department official under President George W. Bush, will serve as staff director; Andrew Dockham, previously counsel to Senator Tom Coburn (R-Okla.) on HSGAC, as general counsel; Rachel Weaver, a former staff director on the HSGAC Subcommittee on Financial and Contracting Oversight, as deputy staff director; and Steve Castor, a long-time investigations counsel for the committee, as deputy general counsel. In a move that has gotten attention on Capitol Hill, Rep. Chaffetz has said he will not be retaining most of the existing staff, another sign that he will be seeking to strike a path different from his predecessor.

Rep. Chaffetz has also announced the committee's subcommittee structure, which largely tracks a more functional approach to federal agencies, and chairmen:

- Subcommittee on Government Operations – Rep. Mark Meadows (R-N.C.)
- Subcommittee on Health Care, Benefits, and Administrative Rules – Rep. Jim Jordan (R-Ohio)
- Subcommittee on Information Technology – Rep. Will Hurd (R-Tex.)
- Subcommittee on Interior – Rep. Cynthia Lummis (R-Wyo.)
- Subcommittee on National Security – Rep. Ron De Santis (R-Fla.)
- Subcommittee on Transportation and Public Assets – Rep. John Mica (R-Fla.)

On the Democratic side, Rep. Elijah Cummings (D-Md.) will maintain his position as ranking member of the committee.

## Other Committees

A number of other House committees are likely to conduct investigations or hold hearings in areas that could pose risks to corporations. The House Ways and Means Committee, which has broad jurisdiction over taxation and health care entitlement programs, has played an important role in investigating the IRS scandal and the implementation of the Affordable Care Act. It will likely continue to do so under the leadership of Rep. Paul Ryan (R-Wis.), who will take the reins from retiring Rep. Dave Camp (R-Mich.), and Rep. Peter Roskam (R-Ill.), who will replace Rep. Charles Boustany (R-La.) as chairman of the committee's Oversight Subcommittee. Roskam has promised "vigilant, fact-based and fair investigations into the administration and its sprawling bureaucracy." The committee announced that its chief

oversight counsel, Mark Epley, will retain his position. Rep. Sander Levin (D-Mich.) will remain ranking member on the House Ways and Means Committee.

The House Energy and Commerce Committee is also likely to maintain an active investigative agenda in the new Congress. The committee is already involved in investigating a range of issues, including the response to the Ebola crisis, the automobile airbag recalls, EPA regulations, and the implementation of the Affordable Care Act. The committee's agenda is unlikely to change significantly given that Rep. Fred Upton (R-Mich.) will retain the gavel in the new Congress and Rep. Tim Murphy (R-Penn.) will stay as chairman of the committee's Subcommittee on Oversight and Investigations. Rep. Frank Pallone (D-N.J.) will take over from retiring Rep. Henry Waxman (D-Cal.) as ranking member on the committee.

The House Financial Services Committee will likely continue its focus on financial reform, including Dodd-Frank implementation and the activities of the Consumer Financial Protection Bureau and the Financial Stability Oversight Council. While Rep. Jeb Hensarling (R-Tex.) will continue as chairman of the committee, Rep. Sean Duffy (R-Wis.) will take over from Rep. Patrick McHenry (R-N.C.) as chairman of the committee's Oversight and Investigations Subcommittee. Uttam Dhillon, chief oversight counsel, will remain in his position. On the Democratic side, Rep. Maxine Waters (D-Cal.) will continue as ranking member of the committee.

Finally, incoming House Veterans Affairs Committee Chairman Mike Coffman (R-Colo.) has promised a series of hearings to investigate contracting mismanagement at the Department of Veterans Affairs. Companies that have received large procurement contracts from the VA could be swept into these inquiries.

## Covington & Burling's Congressional Investigations Practice

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We draw on the firm's significant experience in white collar litigation, government relations, political law, and specific regulated industries. Our lawyers are particularly adept at balancing the risks associated with parallel congressional investigation, civil and criminal litigation, and regulatory enforcement actions. Our practitioners include veterans of the House and Senate, the White House, and numerous federal agencies, on a bipartisan basis, including former senior staff and Members of Congress who have run congressional investigations.

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

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