

A HEARING A DAY

MCDERMOTT WILL & EMERY LLP

With the start of the new Congress this month, many in the business community have uttered a sigh of relief. Gone are many House committee chairs who had strained relationships with industry. For the most part, they have been replaced by members who view increased government regulation as the main obstacle to growth. But if those in the business community believe that the new Congress means the end of congressional hearings, requests for documents or subpoenas, they should think again. With most indicators pointing toward gridlock on matters of policy, investigations will likely be a major export of Capitol Hill over the next two years.

For the most part, these investigations will come from the House of Representatives -- a body that dramatically changed with the November elections. In many ways, the Republican takeover of the House will result in a climate that is friendlier to industry. Take, for instance, the change of leadership on the House Energy and Commerce Committee. Outgoing Chairman Henry Waxman, D-Calif., built his career as Capitol Hill's primary inquisitor of alleged corporate malfeasance. Under the leadership of the new chair, Rep. Fred Upton, R-Mich., Energy and Commerce will no longer focus on the misdeeds of corporations, and businesses can worry less about the possibility that an unfavorable news report will be immediately followed by a subpoena for documents. Similarly, control of the Committee on Oversight and Government Reform will pass from Edolphus Towns, D-N.Y., to Darrell Issa, R-Calif. Issa has been a steadfast promoter of the view that the Obama administration is openly hostile to business. Under this new leadership, the pace of attacks on the business community will certainly slow.

This does not mean, however, that the business community is free from Congress' prying eyes. Although he will focus less on corporate misdeeds, Issa nonetheless intends to have his committee hold a hearing a day while the Congress is in session, resulting in more than 280 hearings in 2011 alone. Already, Issa has identified topics for investigation that will implicate those in the business community. For instance, he

intends to investigate the role of **Fannie Mae** and **Freddie Mac** in the housing crisis, the causes of the financial crisis and specific Food and Drug Administration recalls. When other committees are added to the mix, the total number of hearings by House committees in 2011 could surpass 1,000.

This means that large companies still have reason for caution. Admittedly, many corporate executives will be called as "friendly" witnesses. But those same executives may face examination from members hostile to their industry. In the course of investigating various policies from the previous Congress, the new Republican majority will likely seek documents from companies that received money from the Troubled Asset Relief Program, obtained money connected to the stimulus package or lobbied in favor of healthcare reform. And with the new majority determined to eradicate "waste, fraud and abuse," all companies with government contracts should prepare for at least the possibility of a congressional inquiry.

On the Senate side, Democratic chairs will retain their gavels. Faced with the need to excite their base in advance of the 2012 elections, these committee chairs may also turn to investigations. In sharp contrast to the House, however, many of these Senate investigations will aim at the traditional villains of the Democratic agenda, such as oil companies, investment banks and health insurers.

Already, much has been written about last year's elections. But we cannot yet understand the full scope of the Republican victory and its impact on American policy. Nonetheless, whether the White House and Congress give us several major policy initiatives over the next two years or simply more gridlock, there is one thing that both Democrats and Republicans will rely on to make their point: congressional investigations. Some in the business community may view the changes in Congress as a good sign, but a hearing a day will likely cause its own headaches for American business.

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