



Please contact any member of our **Legislative and Government Affairs Practice Group** or one of the contributors listed below if you have questions regarding this alert.

## Editor

### Katie M. Cochran

Washington, DC  
kmcochran@Venable.com  
202.344.4283

## Contributors

### William J. Donovan

Washington, DC  
wjdonovan@Venable.com  
202.344.4939

### Gregory M. Gill

Washington, DC  
gmgill@Venable.com  
202.344.4615

### William R. Nordwind

Washington, DC  
wrnordwind@Venable.com  
202.344.4964

### Robert L. Smith, II

Washington, DC  
rlsmith@Venable.com  
202.344.4077

## Introduction

The 112th Congress has been sworn in, [committees](#) are finalizing their rosters and laying out their agendas, and 106 new members are slowly getting adjusted to their new lives on Capitol Hill. With 87 of those newly elected members being Republicans, the House of Representatives has been given quite a makeover. With new leadership comes change, which is what newly elected Speaker of the House John Boehner (R-OH) has promised. After a weeklong pause in the House to reflect on the shooting in Arizona that left six people dead and Rep. Gabrielle Giffords (D-AZ) critically injured, lawmakers were back to work last week starting with a debate over the repeal of the health care reform law. The health care debate will weigh heavily on the agenda of the House Energy and Commerce Committee while the House Financial Services Committee will look to breakdown the Dodd-Frank Act. The highly debated issue of earmarking in Congress continues with a whole lot of uncertainty surrounding it. With Republicans taking the majority in the House, and Democrats retaining their power in the Senate, the 112th Congress will look to strike some sort of balance in order to accomplish their agenda items over the next two years.

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## Boehner Elected Speaker, Promises More Transparent Leadership Style

On January 5, 2011, Republican John Boehner (OH) was elected Speaker of the House of Representatives for the 112th Congress. Boehner's election came as a result of the Republican electoral wins in November. Republicans now hold a 242-193 majority in the House.

Boehner promised a more open and transparent operational style than Republicans thought was available to them under former Speaker Nancy Pelosi (CA). To that end, new House rules now require that every piece of legislation considered on the House floor must be cross-referenced with a citation in the U.S. Constitution that provides authority to do so. Additionally, Boehner added one elected leadership position to an incoming member of the Freshman class which went to newly elected Rep. Kristi Noem (SD).

Speaker Boehner has repeatedly stressed during interviews that the election was not about him or the Republican House Conference. Rather, it was about the electorate sending a message that they want Congress to focus less on partisan politics and more on jobs and the economy. As a result, Speaker Boehner has directed his newly elected committee chairmen to focus on guiding legislation through the process that will help stimulate the economy and create jobs for the unemployed. Look for those same committee chairmen to focus on two or three jurisdictional issues they believe can both garner consensus in the House and receive attention in the Senate.

From a staff perspective, House Republican leadership has brought back many senior and experienced hands from the private sector to help handle the day-to-day operations of the House. Early legislative goals

will include roll backs of some of the legislation passed in the 111th Congress under Democratic control, including the health care reform bill. Primary focus will be on cutting spending across the board, beginning with a vote this week to roll back spending for cabinet agencies to 2008 levels. Once House Republicans have followed through on some of their campaign promises, they intend to slowly and systematically look for legislative opportunities to cut spending through the budget and appropriations processes, including a ban on congressional earmarks..

*Rob Smith is a Senior Legislative Advisor in Venable's Legislative Practice Group. Mr. Smith can be reached at 202.344.4077 or at [rsmith@Venable.com](mailto:rsmith@Venable.com).*

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## **Energy and Commerce: A flurry of activity for Congress's most active committee**

There is no need to pay attention to this article -- unless your company or association has any issues related to energy; health care; environment; telecommunications; technology; e-commerce; advertising, consumer product safety; food, drug and cosmetic safety; the Department of Health and Human Services (including the Food and Drug Administration); the Department of Commerce; the Department of Energy; the Federal Trade Commission; the Federal Communications Commission; the Environmental Protection Agency; or the National Highway and Traffic Safety Administration.

If your company or association does have an interest in any of the above, then you will likely be interested in the changes in leadership and agenda at the House Energy and Commerce Committee, which has jurisdiction over all of the above. In fact, the House Energy and Commerce Committee has the broadest jurisdiction of any authorizing committee in the House.

With the Republican takeover in the House, Rep. Fred Upton (R-MI) was selected to become the Chairman of the House Energy and Commerce Committee in the 112th Congress. Rep. Upton has stated that his "vision for the Energy and Commerce Committee is a conservative agenda that focuses on cutting spending, removing regulatory burden, restoring freedom, keeping government accountable through rigorous oversight, and jobs." Upon his selection to head the Committee, Chairman Upton stated that "the [Obama] administration's . . . unfettered, two-year assault on the health, energy, and telecommunications sectors is now over."

Since the curtain on the 112th Congress went up, Chairman Upton has announced his early agenda, much of which is at the center of the national political stage.

Perhaps most prominently, Chairman Upton has announced his intention to move legislation to "repeal and replace" last year's health care law, known colloquially as "Obamacare." In conjunction with this, we expect a host of early hearings designed to highlight what Republicans believe to be the flaws within the new law and alternative approaches. In terms of environmental issues, we anticipate significant oversight of the EPA and significant opposition to new EPA regulations, such as those related to greenhouse gas pollution standards, that the Republican majority view as the Obama Administration's attempt "to regulate what they have been unable to legislate" by way of failed "cap and trade" legislation in the previous congress.

Also, we expect early hearings in the Committee on the FCC's recently-adopted "network neutrality" regulations, which Republican leaders oppose, and Committee consideration of a resolution of disapproval of net neutrality, a parliamentary tool by which Congress can reject a federal regulation by passage of a joint-resolution. All in all, in addition to the immediate priorities mentioned above, we expect additional and significant oversight of the agencies within the Committee's jurisdiction and review of regulations and laws passed during the last couple of congresses under Democratic control.

No doubt, much of the Committee's agenda will be carried out at the Subcommittee level, and the following are the new Subcommittee chairmen:

- Commerce, Manufacturing, and Trade Subcommittee: Rep. Mary Bono-Mack (R-CA)
- Communications and Technology Subcommittee: Rep. Greg Walden (R-OR)
- Energy and Power Subcommittee: Rep. Ed Whitfield (R-KY)
- Environment and Economy Subcommittee: Rep. John Shimkus (R-IL)
- Health Subcommittee: Rep. Joe Pitts (R-PA)
- Oversight and Investigations Subcommittee: Rep. Cliff Stearns (R-FL)

*Will Nordwind is a partner in Venable's Legislative Practice Group. Mr. Nordwind can be reached at 202.344.4964 or at [wnordwind@Venable.com](mailto:wnordwind@Venable.com).*

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## Health Care Repeal Efforts

Last week, members of the House of Representatives voted 245-189 in favor of H.R. 2, "Repealing the Job-Killing Health Care Law Act." The vote, which is the Republicans first major step at rolling back health care reform, was split along party lines with just three Democrats voting to support the repeal. It is no surprise that the bill passed the Republican-controlled chamber, but does not stand much of a chance of reaching the Democratic-controlled Senate floor, let alone President Obama's desk. The House also voted and passed H. Res. 9, which will provide guidelines to committees on how to draft replacement legislation to fulfill the GOP pledge to "repeal and replace" health care reform. In the 112th Congress, we can expect to see an abundance of stand-alone legislation introduced with the intent to repeal specific provisions of the health care reform accompanied by hearings on the legislation.

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## What's Next for the Dodd-Frank Bill?

Among the top-tier issues from the 111th Congress that will be re-visited in the 112th is the landmark *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Public Law 111-203). If anyone had any doubt that this comprehensive 16-Title, 849-page tome would get a second look from the Republican-controlled House, those doubts were put to rest on the first day of the new Congress, when Rep. Michelle Bachmann (R-MN) introduced legislation to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act. There is nothing ambiguous about her 1-sentence bill (H.R. 87), which reads in its entirety: "The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Public Law 111-203) is repealed and the provisions of law amended by such Act are revived or restored as if such Act had not been enacted." The repeal measure is cosponsored by four of Bachmann's Republican colleagues (Reps. Darrell Issa (CA), Bill Posey (FL), Todd Aiken (MO) and Tom McClintock (CA)), and has been referred to the following eight House Committees: Financial Services; Agriculture; Energy & Commerce; Judiciary; Budget; Oversight & Government Reform; Ways & Means; and Small Business – ensuring an extensive and protracted hearing schedule.

However, even prior to the introduction of Rep. Bachmann's repeal bill, incoming House Financial Services Committee Chairman Spencer Bachus (R-AL) had indicated that he intends on reviewing the Dodd-Frank Act "provision by provision" while Rep. Randy Neugebauer (R-TX), the incoming Chairman of the House Financial Services Subcommittee on Oversight and Investigations, reportedly was considering the introduction of legislation that would push back all regulatory deadlines contained in the Dodd-Frank Act by one year. Given the Republican take-over of the House coupled with the fact that only three Republicans voted in favor of passage of the Dodd-Frank Act (Reps. Joseph Cao (LA), Mike Castle (DE) and Walter Jones (NC)) – and two of the three (Cao and Castle) did not return to the 112th Congress – the Republican majority may well be able to push a roll back of effective dates through the House; however, with Democratic control (albeit by a slim margin) in the Senate and President Obama likely to veto such a roll back if it were to pass Congress, prospects for such a roll back being enacted into law are at best a very long-shot.

While the Republican-dominated House Financial Services Committee is expected to spend substantial amounts of time considering legislation to repeal, roll back and/or delay all or some of the provisions contained in the Dodd-Frank Act, the Democratic-controlled Senate Banking Committee's first responsibility regarding the Dodd-Frank Act may not involve looking at undoing the work of the 111th Congress, but rather equipping the Consumer Financial Protection Bureau (CFPB) to assume its statutory responsibilities come July 21, 2011. The Senate Banking Committee has responsibility for conducting confirmation hearings on President Obama's nominees to fill vacant positions at a number of the federal regulatory agencies who oversee, examine, and regulate various segments of the financial services industry. Leading the list of high-profile nominations that will come before the Senate Banking Committee will be the President's nominee to be the first director of the CFPB. While former Harvard Law professor and current Assistant to the President and Special Advisor to the Secretary of the Treasury on the CFPB, Elizabeth Warren, was the favorite of many to serve as the initial Director of the CFPB (which she nurtured from concept to reality), former Senate Banking Committee Chairman Christopher Dodd's (D-CT) view that his former Senate colleagues would likely find her "unconfirmable" seems to be a view shared by many. As a result, a broader net has been cast for a CFPB Director who shares the vision of the authors of the Dodd-Frank Act but would also be likely to receive a favorable nod from a majority of the Senate. Reportedly now under consideration for the post are Iowa Attorney General Tom Miller; New York Banking Commissioner Richard Neiman; and former director of the Office of Thrift Supervision Ellen Seidman.

Congress is just getting organized and the agenda is still being formulated. But be prepared to see many of the more controversial elements of the Dodd-Frank Act, including the Volcker Rule, the Durbin interchange fee amendment, the scope of authority of the Consumer Financial Protection Bureau and many other provisions revisited in the weeks and months ahead.

*Bill Donovan is a partner in Venable's Legislative Practice Group. Mr. Donovan can be reached at 202.344.4939 or at [wjdonovan@Venable.com](mailto:wjdonovan@Venable.com).*

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## Earmarking Debate Continues

The fate of earmarking in this Congress remains unresolved and will continue to be debated without much of a resolution in sight. House Republicans adopted a moratorium on earmarks, which led to members of the new majority seeking for clarification on what defines an "earmark." Senate Republicans followed suit by taking the same position as the House majority, while Senate Democrats have yet to formally announce their position. Just last week, several new cardinals questioned how long the ban would be in place—a question for which no one seems to have an answer for.

Even with the uncertainty surrounding earmarks themselves, there is greater uncertainty over the actual earmarking process, meaning that appropriations bills will likely continue to present challenges and opportunities for the 112th Congress. The debate will certainly continue over the actual definition of an earmark, and spending will almost certainly be reduced. The continuing resolution (CR) that will fund the government until March 4, 2011, will likely become a full year CR with some additional cuts. Members of Congress have reacted to strong public opinion that, albeit misguided at times, is opposed to earmarks. On the other hand, some members see value in earmarks, such as the ones that created the Iraq Study Group, body armor for U.S. troops, and not ceding total authority over spending to the White House. The one certainty that remains is that the earmark debate will continue.

*Greg Gill is a partner in Venable's Legislative Practice Group. Mr. Gill can be reached at 202.344.4615 or at [gmgill@Venable.com](mailto:gmgill@Venable.com).*

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## President Obama Issues Executive Order

Last week, President Barack Obama signed an Executive Order that directs Federal agencies to "ensure regulations protect our safety, health and environment while promoting economic growth." When it comes to matters of regulatory policy, the goal of President Obama's administration for the past two years has been "to strike the right balance" according to an Op-Ed piece in the Wall Street Journal written by the President. The order also directs a review of federal rulebooks to rid them of outdated agency regulations that are making our economy less competitive, which President Obama stated would help to ensure that we "avoid excessive, inconsistent, and redundant regulation."

There has been a very positive reaction to the order from both sides of the aisle. House Minority Whip Steny Hoyer (D-MD) described the order as a "positive step" and believes that Republicans and Democrats will be able to work together on the issue. House Oversight and Government Reform Chairman Darrell Issa (R-CA) has made it known that his Committee will exercise its power to investigate government agencies that are believed to have overstepped their bounds through rulemaking and has applauded the announcement of the administration's executive order.

[Fact Sheet: The President's Regulatory Strategy](#)

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**Click here** for a current list of House of Representatives committee assignments for the 112th Congress.

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