

**U.S. House of Representatives**  
**Committee on Oversight and Government Reform**  
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**A Constitutional Obligation:  
Congressional Oversight of the Executive Branch**

**STAFF REPORT**  
**U.S. HOUSE OF REPRESENTATIVES**  
**111<sup>TH</sup> CONGRESS**  
**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**  
**SEPTEMBER 22, 2010**

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*Quite as important as legislation is vigilant oversight of administration.* – Woodrow Wilson, *Congressional Government*, 1885

### **A Constitutional Obligation: Congressional Oversight of the Executive Branch**

Hand-in-hand with the powers expressly granted to Congress by the Constitution – among others, to legislate, to appropriate funds, to declare war, to raise armies, and to impeach – is the implicit responsibility to perform rigorous oversight of the Executive Branch.<sup>1</sup> As one historian noted, “it was not considered necessary to make an explicit grant of such authority. The power to make laws implied the power to see whether they were faithfully executed.”<sup>2</sup>

Both the Legislative Reorganization Act of 1946 (P.L. 79-601), which directed House and Senate Committees to “exercise continuous watchfulness” over Executive Branch programs under their jurisdiction, and the Legislative Reorganization Act of 1970 (P.L. 91-510), which authorized committees to “review and study, on a continuing basis, the application, administration and execution” of laws,<sup>3</sup> have codified the oversight powers of Congress.

Moreover, the U.S. Supreme Court has recognized this Congressional power on numerous occasions. For example, the Court held that “the power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function .... A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change, and where the legislative body does not itself possess the requisite information -- which not infrequently is true -- recourse must be had to others who do possess it.”<sup>4</sup> Further, in *Watkins v. United States*, Chief Justice Warren wrote for the majority:

We start with several basic premises on which there is general agreement. The power of Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in the social, economic, or political system for the purpose of enabling Congress to remedy them. It comprehends probes into departments of the federal government to expose corruption, inefficiency, or waste.<sup>5</sup>

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<sup>1</sup> CRS Report R41079, *Congressional Oversight: An Overview*, by Walter J. Oleszek, 2010.

<sup>2</sup> Arthur M. Schlesinger, Jr. and Roger Burns, eds., *Congress Investigates: A Documented History, 1792-1974*, vol. I (New York: Chelsea House, 1975), p. xix.

<sup>3</sup> CRS Report 97-936, *Congressional Oversight*, by Frederick M. Kaiser, 2006.

<sup>4</sup> *McGrain v. Daugherty*, 273 U.S. 135 (1927).

<sup>5</sup> *Watkins v. United States*, 354 U.S. 178, 187 (1957).

## **A Need Greater Now Than Ever – Vigorous Oversight of an Expanding Executive**

The vast expansion of the power and reach of the Executive Branch of government under both Republican and Democratic administrations has only increased the need for vigorous, unflinching Congressional oversight. As the nonpartisan research and analysis arm of Congress, the Congressional Research Service, stated earlier this year in a report:

A fundamental objective of congressional oversight is to hold executive officials accountable for the implementation of delegated authority. This objective is especially important given the huge expansion of executive influence in the modern era .... Clearly, given the role and scope of the federal establishment, the importance of Congress’s review function looms large in checking and monitoring the delegated authority that it grants to federal departments and agencies.<sup>6</sup>

The unparalleled encroachment of the federal government in the private sector and the lives of individual Americans that began during the Bush Administration and continues in the Obama Administration (see, for example, the Troubled Assets Protection Program, the American Recovery and Reinvestment Act, the rapid growth of the federal workforce, and the health care and financial overhauls) has led to concerns of an oncoming tsunami of opacity, waste, fraud, and abuse. This trend must be met by vigorous Congressional oversight of the massive federal bureaucracy.

## **Congressional Democrats in the Minority – Support for Aggressive Oversight of the Executive Branch**

During the Bush Administration, Congressional Democrats were vocal advocates for fulfillment of this oversight responsibility. Leading up to the 2006 Congressional midterm elections, Congressional Democrats decried what they viewed as the Republican-led Majority’s “blind eye to the problems created in the executive branch.”<sup>7</sup>

Central to the House of Representatives’ oversight powers is the Committee on Oversight and Government Reform (“Oversight Committee”). The Oversight Committee is the main investigative committee in the U.S. House of Representatives and has the authority to conduct oversight of virtually everything the federal government does.<sup>8</sup> During the first six years of the Bush Administration, the Ranking Member of the Committee, Rep. Henry Waxman, “established himself as the Democrats’ chief pursuer of purported wrongdoing within the Bush Administration” and became known as “the

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<sup>6</sup> See Note 1, *supra*.

<sup>7</sup> Rep. Edolphus Towns, Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives. Speech on Oversight Priorities. The Willard Hotel, Washington DC, January 14, 2009.

<sup>8</sup> See Rules of the House of Representatives, Rule X, Clause (4)(c)(2).

Democrats' Eliot Ness" for his barrage of reports on Executive Branch activities, information requests from the Administration, and hearing requests to the Oversight Committee's Majority.<sup>9</sup>

In the year leading up to the 2006 midterm elections, Ranking Member Waxman intensified his attacks on the Republican Majority for what he considered their negligent oversight of the Bush Administration. In January 2006, his staff issued a report stating the following:

[T]he Republican-controlled Congress has failed to meet this constitutional oversight responsibility. On issue after issue, the Congress has failed to conduct meaningful investigations of significant allegations of wrongdoing by the Bush Administration.... [A] large "accountability gap" has emerged. Despite repeated requests by Democratic members and news reports raising allegations of serious misconduct, the Congress has failed to convene hearings, issue subpoenas, and take the other steps necessary to fulfill its constitutional oversight role.<sup>10</sup>

As Ranking Member, Waxman was fond of telling the following story, recounted in *The Nation*, which highlights his belief in unbending oversight of the Executive Branch:

While lamenting the decline of Congressional oversight and pondering the work to be done in Bush's second term, Waxman recalls a recent meeting he had with a member of the Israeli Knesset. The legislator had mentioned he was in charge of the committee that handles oversight. But how could this be, Waxman asked him, since he was in the opposition? The Israeli explained that in Israel the committee that oversees the national government is traditionally chaired by a member of the opposition. After recounting this conversation, Waxman pauses for a moment, then wistfully says, "It's an interesting idea."<sup>11</sup>

Waxman's sentiment is echoed by Dr. James Thurber, director of the Center for Congressional and Presidential Studies at American University, who said that "[w]hen you have divided party government, you have more vigorous oversight."<sup>12</sup>

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<sup>9</sup> David Corn, "Waxman: democrats' Eliot Ness: his headline-grabbing investigations are enough to give the GOP heartburn." *The Nation*. February 14, 2005.

<sup>10</sup> Minority Staff, Committee on Government Reform, *Congressional Oversight of the Bush Administration*, January 17, 2006.

<sup>11</sup> *Id.*

<sup>12</sup> Peter Grier, "Democrats Unrelenting in Oversight of Bush Administration," *The Christian Science Monitor*, August 5, 2008.

## **A Democratic Majority in Congress and a Republican White House – Continued Support for Aggressive Oversight**

When the Democrats regained Congress in the 2006 elections, Rep. Waxman became Chairman, and the Congressional obligation to conduct vigorous oversight of the Executive Branch became a central priority of Congressional Democrats. In February 2007, Chairman Waxman told *The New York Times* that “There has been no cop on the beat. And when there is no cop on the beat, criminals are more willing to engage in crimes.”<sup>13</sup> Without constant Congressional oversight, Chairman Waxman said, “the bad actors feel they can get away with anything.”<sup>14</sup>

Following the 2006 elections, it was noted in *Time* magazine that, “Come January ... the man that the liberal *Nation* magazine once called the 'Eliot Ness of the Democrats' can do even more, thanks to the two words that strike fear in the heart of every government official: subpoena power. As the new chairman of the House Government Reform Committee, Waxman will have free rein to investigate, as he puts it, ‘everything that the government is involved with.’”<sup>15</sup> In an interview, Chairman Waxman seemed to relish the power of the subpoena, asking “Do they want to litigate this? If we’re doing our constitutional duty of oversight, how can they refuse to give us information? If they withhold information and try to get away with it, I think it will be very unfortunate for them.”<sup>16</sup>

The Oversight Committee under Democratic Chairman Waxman was not alone in its defense of aggressive oversight of the Executive Branch. Six months after becoming Speaker of the House, Rep. Nancy Pelosi explained to a group of progressive bloggers how the new Democratic Majority was reinstating Congressional oversight:

They [the Bush Administration] had been going for six and a half years with no oversight, just absolutely zero accountability. And when people talk about this Congress, they have to recognize that there's a big distinction between this Congress and previous Congresses in terms of shedding the light of oversight and accountability on this administration.<sup>17</sup>

Then-House Democratic Caucus Chairman and current White House Chief of Staff Rahm Emanuel also sounded the need for an uncompromising Oversight

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<sup>13</sup> Philip Shannon, “As New ‘Cop on the Beat,’ Congressman Starts Patrol,” *The New York Times*, February 6, 2007.

<sup>14</sup> *Id.*

<sup>15</sup> Karen Tumulty, “The Scariest Guy in Washington,” *Time*, November 27, 2006.

<sup>16</sup> See Note 8, *supra*.

<sup>17</sup> Bob Geiger, “Pelosi on Bush Lawlessness: ‘The American People Really Don’t Even Know the Half of It.’” *The Huffington Post*, June 29, 2007. Available at [http://www.huffingtonpost.com/bob-geiger/pelosi-on-bush-lawlessnes\\_b\\_54315.html](http://www.huffingtonpost.com/bob-geiger/pelosi-on-bush-lawlessnes_b_54315.html).

Committee, stating that “We want to be the party that is ferreting out waste and fraud, and Henry's [Waxman’s] committee is the point of the spear for us.”<sup>18</sup>

With a Republican in the White House, the position of Congressional Democrats on the obligation of Congress to conduct oversight was very clear. As summarized by Oversight Committee Chairman Waxman, “It's part of the checks and balances of our Constitution – it's a way for us to see whether the laws are working or not and need to be changed. It's as important a function for the Congress as is passing legislation.”<sup>19</sup>

### **Democratic One-Party Rule: Congressional Democrats’ Abandonment of its Oversight Obligations**

The ascension to the presidency of Barack Obama in January 2009 brought little change in Congressional Democrats’ support of oversight of the Executive Branch, at least in its rhetoric. Rep. Waxman left his post as Chairman of the Oversight Committee (the Democratic party’s “point of the spear” on oversight matters) to become Chairman of the Energy and Commerce Committee. The new Democratic Chairman, Rep. Edolphus Towns, said in his first major speech as Chairman:

Let me be clear to everyone – our committee will provide vigorous oversight of the new administration, corporate wrongdoing and other timely issues.... I feel strongly – as does the new President Elect – that Congressional oversight should not go away just because the Administration and Congress are run by the same party. Constructive oversight can expose and solve small challenges before they become national catastrophes. Congress has a responsibility to the citizens of this nation – to be a check on the executive branch.<sup>20</sup>

Under one-party rule in Washington, with Democrats controlling both chambers of Congress and the Executive Branch, the Majority reiterated its commitment to Congressional oversight.

Unfortunately, since President Obama took office 19 months ago, the country has seen the emergence of a large accountability gap. Congress’ chief watchdog committee has failed repeatedly to conduct meaningful and sustained investigations and hold federal executives and bureaucrats responsible for the unprecedented levels of waste, fraud, and abuse that such rapid growth has nurtured.

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<sup>18</sup> Jonathan Weisman, “White House Feels Waxman’s Oversight Gaze,” *The Washington Post*, October 25, 2007.

<sup>19</sup> Michael Collins, “Dems’ Eliot Ness Now an Even Bigger Thorn in Bush’s Side,” *Scripps News*, April 2, 2007.

<sup>20</sup> See Note 8, *supra*.

Despite repeated requests by the Republican Minority for oversight hearings, joint investigations, and subpoenas, and despite myriad news reports raising allegations of waste, fraud, and other misconduct, the Oversight Committee and the Democratic-controlled Congress have overwhelmingly shunned responsible but tough oversight of the Obama Administration.

Comparisons between a Democratic-controlled Oversight Committee with a Republican in the White House or with a Democrat in the White House tell an interesting tale. In his first full year as Chairman of the Oversight Committee (2007), then-Chairman Waxman sent approximately 455 letters seeking information from a federal, state, or private citizen or a witness's presence at a Committee hearing, according to copies that were provided to the Minority. In 2009, with a Democrat in the White House, Chairman Towns sent a total of 173 similar letters seeking information from the Administration and outside groups, or inviting individuals to testify before the Committee, again according to copies that were provided to the Minority. This represents a staggering decline of more than 61 percent. Chairman Towns' two-year informational request letters total is approximately 420, still fewer than former Chairman Waxman sent in a single year.

With the 111<sup>th</sup> Congress scheduled to adjourn on October 8, the Oversight Committee in 2010 is set to have held significantly fewer hearings than the Committee held in the last year of the previous Congress. In 2008, the Committee, under Democratic leadership with a Republican in the White House, held 96 full committee and subcommittee hearings. Thus far this year, under Democratic leadership with a Democrat in the White House, the Committee has held or is scheduled to hold only 76 full and subcommittee hearings, a decrease of 21 percent. Similarly, in the 110<sup>th</sup> Congress, the Oversight Committee held 74 full committee hearings; thus far in the 111<sup>th</sup> Congress, there have been only 62 full committee hearings, a decrease of 16 percent.

More important than the number of hearings held are the areas of national interest on which the Oversight Committee focuses. As of August 2010, the Republican members of the Oversight Committee had sent 46 letters to the Democratic Chairman of the Committee or its Subcommittee Chairs requesting hearings, additional witnesses at hearings, or subpoenas of important documents related to significant investigations. Formal responses were received for only six of those requests.

Hearings requested by the Republican Minority but ignored by the Democratic Majority include:

- Food Safety - In 2009, following a salmonella outbreak in a Georgia peanut plant that led to at least 8 deaths and more than 500 illnesses, Ranking Member Issa sent a letter to Chairman Towns requesting a hearing on the federal food safety bureaucracy, citing a GAO report that identified 15 different federal agencies responsible for administering 30 food safety-related laws and noting that "our Committee is uniquely positioned to look at the coordination and cooperation amongst departments and agencies." No response to the request was received,



and nothing was done to hold the federal agencies accountable. A year and a half later, the nation has suffered another salmonella outbreak with more than 500 million eggs in 22 states recalled and more than 2,000 reported illnesses.

- Homeland Security - During the 107<sup>th</sup>, 108<sup>th</sup>, and 109<sup>th</sup> Congresses, the Committee's Republican Majority conducted 35 hearings on homeland security matters. Among other things, these addressed terrorism and cross-agency information sharing, as well as the formation and oversight of the Department of Homeland Security. Oversight of Homeland Security has been badly neglected over the past two years. The Oversight Committee has yet to address any issues associated with the Fort Hood shootings, Christmas Day attack, or the Times Square bombing attempt, despite repeated requests by the Republican Minority and written assurance from the Chairman that he would do so.
- Fannie Mae and Freddie Mac – Despite the role Fannie and Freddie played in the financial crisis and the huge financial stakes for the American taxpayer involved in continuing to prop up these organizations, the Dodd-Frank financial reform bill did nothing to address them and Treasury Secretary Geithner announced that the Administration would not produce a plan to reform Fannie and Freddie until 2011. Oversight Committee Republicans requested a public hearing on Fannie and Freddie but received no response from the Majority.
- Healthcare Reform Oversight – Prior to passage of President Obama's healthcare reform legislation, Republicans sought to investigate and released a report on systemic problems in the Medicare system that have made it susceptible to massive fraud at taxpayer expense. Attorney General Eric Holder has said himself that every year American taxpayers lose "tens of billions of dollars in Medicare and Medicaid funds to fraud." With government's increased role in healthcare under the Obama reform, this number is all but certain to increase. Oversight is desperately needed to address rampant waste, fraud, and abuse in existing health programs, as well as the implementation of the new healthcare law. Under Democrats, the Oversight Committee refused to investigate waste, fraud, and abuse in government run healthcare and also decided to waive its jurisdiction when the new healthcare reform law came through Congress and refused to hold even a single hearing or mark-up on the legislation.
- Wasteful Stimulus Spending – The Republican Minority has provided the Democratic Majority with evidence of government agencies wasting stimulus funds on projects of dubious merit that appear to contradict the Administration's stated goals for stimulus-worthy projects and that therefore are ripe for oversight. For example, the Committee Minority requested in a letter that the Committee hold a hearing to scrutinize hundreds of thousands of dollars for wasteful projects funded by the National Endowment for the Arts through ARRA. The Minority has not yet received a reply from the Chairman.

- Minerals Management Service – The last time Republicans had subpoena power was in 2006, where as a subcommittee Chairman, Ranking Member Issa used it to compel the testimony of oil executives and expose cozy relationship with the Minerals Management Service (MMS) - the federal entity charged with overseeing oil companies and their drilling activities. Ranking Member Issa brought the oil executives before his subcommittee outraged that their pockets were being lined with billions of dollars that rightfully belonged to taxpayers that had been lost due to a failure of management and leadership at MMS. This investigation, however, was halted when the Democrats took the Majority – despite repeated requests from Republicans for nearly four years, it wasn't until after the April 20, 2010, *Deepwater Horizon* oil spill that Oversight Committee Democrats agreed to hold a hearing about the troubles of MMS.
- Politicization of Science - In November 2009, in a scandal popularly referred to as “Climategate,” a large volume of email messages and documents from the Climatic Research Unit of the University of East Anglia were disclosed, raising serious questions about the research that led to the findings released by the United Nation’s Intergovernmental Panel on Climate Change (IPCC). Other news reports have suggested that in an effort to force a determination that carbon dioxide (CO<sub>2</sub>) endangers human health and welfare, EPA inappropriately limited staff contributions, suppressed dissent, and may have punished those who challenged the Obama Administration’s environmental agenda. The Republican Minority requested that Chairman Towns launch a full Committee investigation into the disclosed emails and EPA’s lack of transparency and alleged misconduct, but did not received a response from the Majority.
- School Choice – The D.C. Opportunity Scholarship Program (OSP) was launched by Congress in 2004, with bipartisan support, to give economically disadvantaged District of Columbia children the chance for a quality education outside of public school classrooms plagued by problems. The program has been proven highly successful by every known measurement, including academic improvement, personal safety, and parental satisfaction. A strong coalition of academics, journalists and civic leaders are supporting reauthorization of OSP in the House and Senate. However, the Obama Administration is now phasing out the program. The Republican Minority has requested a full Committee hearing to examine this program, but did not receive a response.

Despite refusing or ignoring the Republican Minority’s requests for hearings on issues of high importance for an American public that repeatedly cites the economy, jobs, the federal budget deficit, health, and terrorism as the most critical issues facing the nation today, and despite holding fewer hearings than it did in previous Congresses, the Democratic Majority on the Oversight and Government Reform Committee did find time in the past two years to hold hearings on the following:

- H.R. 4869, the Restroom Gender Parity in Federal Buildings Act
- Two hearings on “Are Superweeds an Outgrowth of USDA Biotech Policy?”

- Will Arbitron's Personal People Meter Silence Minority Owned Radio Stations?
- Inadvertent File Sharing Over Peer-To-Peer Networks
- Female D.C. Code Felons: Unique Challenges in Prison and At Home
- Green Building Practices in the Federal Sector: Progress and Challenges to Date
- Quitting Hard Habits: Efforts to Expand and Improve Alternatives to Incarceration for Drug-Involved Offenders
- GPS: Can We Avoid a Gap in Service?
- Stakeholders' Views on the National Archives and Records Administration
- Environmental Restoration Program at Spring Valley
- Arbitration or "Arbitrary:" The Misuse of Mandatory Arbitration to Collect Consumer Debts
- Ready to Eat or Not: Examining the Impact of Leafy Green Marketing Agreements
- The Local Role of the United States Parole Commission (USPC): Increasing Public Safety, Reducing Recidivism, and Using Alternatives to Re-incarceration in the District of Columbia
- Managing the Thrift Savings Plan to Thrive
- Greater Autonomy for the Nations Capital
- History Museum or Records Access Agency? Defining and Fulfilling the Mission of the National Archives Administration
- Will NOAA's New leadership Address Serious Problems in Fishery law Enforcement?
- Housing DC Code Felons Far Away From Home: Effects on Crime, Recidivism and reentry
- Female DC Code Felons: Unique Challenges in Prison and At Home
- Assessing EPA's Efforts to Measure and Reduce Mercury Pollution from Dentists Offices
- Strengthening the National Historical Publications and Records Commission
- Treating Addiction as a Disease: The Promise of Medication Assisted Recovery
- Temporary Employee Practices: How Long Does Temporary Last?

While many of these hearings looked at substantive issues of concern to some Americans, their importance lags far behind other issues that were largely or completely ignored by the Oversight Committee Majority this Congress.

Democrats on the Oversight Committee have also routinely excused senior Administration officials from appearing before the Committee at hearings or at a minimum requiring they send testimony. The Majority routinely rebuffed Republican requests that those officials be present. In this Congress, of the 34 hearings conducted on national security and foreign affairs issues, only 13 have included Administration witnesses (excluding agency Inspectors General). These include vital hearings examining critically important topics such as the Administration's reliance on using drones to target terrorists abroad, and the President's policies on Afghanistan and Pakistan in general. These hearings often felt more like a think tank discussion rather than a real Congressional Hearing. While it was appropriate to bring an academic

perspective to these problems, not having the Administration at these hearings to defend their policies did a disservice to the members of the Committee and the public in general.

Similarly, in 2009, the Committee held a series of hearings on issues related to the 2008 financial crisis, including the government bailouts of AIG, General Motors, and Chrysler, the merger of Bank of America and Merrill Lynch, and the Administration's implementation of the Troubled Assets Relief Program. The Committee Majority did not compel the presence of Treasury Secretary Timothy Geithner at any of these hearings, despite his heavy involvement in decisions related to each of these issues both before the crisis as president of the Federal Reserve Bank of New York and after as the President's Treasury Secretary. It was not until January 2010 that Secretary Geithner was finally asked to come before the Committee by the Majority following repeated requests by the Republican Minority and pressure from the news media. The Minority again requested that Secretary Geithner provide testimony at a June 2010 hearing on the Administration's Home Affordable Modification Program, which has struggled to alleviate the foreclosure crisis, but the request was denied by Committee Democrats and neither Secretary Geithner nor any other Administration official was present at the hearing.

Congress' chief watchdog committee requested 61 percent less information in the first year of the 111<sup>th</sup> Congress than it did in the 110<sup>th</sup>. The Committee held 21 percent fewer hearings, and the subjects of those hearings were too often far outside the most pressing issues facing the American people. It is difficult to attribute these changes from the 110<sup>th</sup> Congress to the 111<sup>th</sup> to anything other than the party in control of the White House. Only four years ago Democrats lamented a lack of congressional oversight under one-party rule. But today, at a time of unprecedented expenditures and growth in the federal workforce and its presence in Americans' lives, with all the potential for fraud, waste, and abuse such growth carries with it, the Democratic-controlled Congress has consciously abdicated its Constitutional responsibility to provide oversight of the Executive Branch.

### **Oversight Neglected by the Democratic Majority in the 111<sup>th</sup> Congress**

Committee Republicans have been successful in partnering with their Democratic counterparts on some important reform efforts, most notably securing House passage of legislation that would make financial information disclosure significantly more transparent and accessible to regulators, investors, and the general public. When it comes to oversight activities, however, Committee Republicans most often have had to act alone. Since the beginning of the 111<sup>th</sup> Congress, the Minority has sent more than 700 letters seeking information from the White House, federal agencies, inspectors general, and private companies and individuals to support its oversight efforts.

Following are examples, in addition to those discussed in the previous section on Minority-requested hearings, of issues in need of Congressional oversight that were the focus of vigorous attention by the Republican Minority in the 111<sup>th</sup> Congress but were largely or entirely neglected by the Democratic Majority.

- Federal Emergency Management – The inadequate response by the federal government to the Deepwater Horizon oil spill is evidence that 5 years after Hurricane Katrina, government agencies are no more effective now than they were then in dealing with large scale disasters. The same problems identified by the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina – failures in planning and execution, communications operability, coordination between all levels of government and within each level of government – still exist. The Oversight Committee is uniquely able to address cross-agency and cross-government activities, yet has done little to oversee efforts to implement lessons learned from previous disasters or to propose reforms.
- Protecting the Independence of Inspectors General – Oversight Republicans investigated and produced reports on the removal of two Inspector General: the IG for the Corporation for National and Community Service and the IG for Amtrak. In both cases there was strong evidence that the IGs were removed for highly improper reasons. Inspector Generals must have independence and must know that investigating waste and mismanagement isn't going to cost them their jobs. There are supposed to be 74 IGs, but right now there are 11 vacant positions including the Departments of State and Interior where there hasn't even been nominations. IGs are critical allies for oversight in Congress and the Oversight Committee needs to examine what can be done to better protect their independence, their ability to look for waste and abuse in federal agencies, and to make sure vacancies are filled in a timely manner.
- Federal IT Systems – Technology can make government more efficient, transparent, and interactive with citizens. While the private sector has seen blinding technological advancement in a relatively short time, federal agencies have struggled to keep up, even with a government-wide IT budget of \$80 billion for fiscal 2011. Far too often, federal investments for IT improvements have run way over budget, or in the worst of scenarios, fail to meet any projected goals. For instance, according to OMB, the Department of Veterans Affairs has wasted more than \$300 million over the past 10 years on two financial systems IT projects – the first project ended in complete failure and the second one has not been able to meet any of its required operational capabilities. In the private sector, 24% of IT projects fail before coming online. GAO and OMB were unable to provide comparable figures for federal IT projects, but evidence suggests that the failure rate is likely much higher. In the 111<sup>th</sup> Congress, the Committee has not devoted sufficient time to oversight and reform efforts in this costly and critical area.
- Federal Financial Management – Addressing the real issue behind the government's fiscal woes – irresponsible, runaway spending – is daunting enough, but adding fuel to the fire is the widely acknowledged fact that the federal government cannot even track its own spending well enough to give a verifiable accounting of how taxpayer's money is being spent. In 2009, for the 13th straight year, GAO found that the federal government's consolidated

financial statements were not auditable due to persistent financial management problems, including the government's inability to account for interagency funding activity and other ineffective systems, processes, and internal controls at federal agencies.

- Current spending transparency mechanisms – designed to allow the American people to see how their money is being spent – have failed completely to hold federal agencies accountable. In 2009, USASpending.gov, which is supposed to provide details on each grant the government makes, failed to have reliable data on \$1.3 trillion worth of grants out of a total of \$1.9 trillion. In other words, our financial management systems were wrong 70% of the time.
- These deficiencies provide fertile ground for massive amounts of waste, fraud, and abuse; in fiscal year 2009, for example, the White House Office of Management and Budget reported that the federal government made \$98 billion in improper payments.
- TARP Oversight – Following the unprecedented expansion of federal government involvement in the private sector with its bailout of AIG, Committee Republicans tirelessly and successfully pushed the Treasury Department, the Federal Reserve, and others to provide greater transparency about the decisions made by the federal government to save AIG and become its dominant shareholder, eventually convincing the Committee Majority of the need to utilize the Chairman's subpoena power. The Committee's efforts were applauded in a public hearing by the Special Inspector General for TARP, Neil Barofsky, who referred to the Committee's "tenacity and leadership ... in continuing the drive for transparency and accountability on the AIG bailout." While the efforts of the Minority have pulled back the curtain on some aspects of high-profile bailouts, the refusal of the Majority to assist on numerous requests have left many questions unanswered.
- Failures at the SEC – Despite a budget that nearly tripled between 2000 and 2010, the SEC has not lived up to its watchdog responsibilities. The scandals involving Bernie Madoff, Enron, WorldCom, and others during the past decade were not detected by SEC investigators but by journalists, whistleblowers and others. In many cases the SEC had the information it needed to frauds years earlier but failed to put the pieces together until after the wrongdoing had already been uncovered. Oversight Committee Republicans launched an investigation of problems at the SEC and released a report finding that the SEC suffers from an acute "silo problem," which has been admitted by former Chairmen, current and former commissioners, senior staff, and the SEC Inspector General. The Commission is divided into five operating divisions and sixteen independent offices – all but three reporting directly to the Chairman. The Commission's fragmentation into operational silos has devastating effects on collaboration, encourages uninformed rulemaking, prevents effective IT investment, and generates bureaucratic rivalries. The Dodd-Frank financial services legislation

did not address these problems and there is a clear need for oversight that should present an opportunity for needed reforms and restructuring.

- Stimulus Oversight – With unemployment at 9.6 percent in August 2010, 19 months after the passage of the stimulus bill, Committee Republicans have repeatedly questioned the Administration and raised public awareness about the inconsistencies and half-truths related to the Administration’s claims of stimulus-related job creation, leading to the Chairman of the Recovery Act Transparency and Accountability Board agreeing in a public hearing that the Administration does not have the “ability to calculate the full time jobs equivalent” created or saved by the stimulus and the Administration changing its definition of “jobs created or saved.” Since the stimulus was designed to spend taxpayer dollars quickly, there are also significant concerns that waste, fraud, and abuse is going undetected. The failure of the stimulus to reduce unemployment is perhaps the most significant concern of many Americans who have been hit hardest by the recession.
- Food Safety – In 2009, following a salmonella outbreak in a Georgia peanut plant that led to at least 8 deaths and more than 500 illnesses, Ranking Member Issa sent a letter to Chairman Towns requesting a hearing on the federal food safety bureaucracy, citing a GAO report that identified 15 different federal agencies responsible for administering 30 food safety-related laws and noting that “our Committee is uniquely positioned to look at the coordination and cooperation amongst departments and agencies.” No response to the request was received, and nothing was done to hold the federal agencies accountable. Less than 2 years later, the nation has suffered another salmonella outbreak with more than 500 million eggs in 22 states recalled and more than 2,000 reported illnesses.
- Countrywide – As part of its ongoing investigations into the causes of the financial crisis, Committee Republicans exposed large quantities of previously unknown details about Countrywide Financial Corporation’s “Friends of Angelo” program, which provided sweetheart mortgages to so-called “VIPs” as part of its larger investigation of influence peddling by Fannie Mae, Freddie Mac and other companies involved in affordable mortgage lending. At the same time that Fannie-Freddie executives were accepting Countrywide VIP loans, *The New York Times* has reported about “how assiduously Fannie pursued Mr. Mozilo and 14 of his lieutenants to make sure the company continued to shovel loans its way.”
- ACORN – As shown through whistleblower accounts, media reports including videotaped evidence, and a number of thorough reports by the Oversight Committee’s Minority, the Association of Community Organizations for Reform Now has been shown to engage in corrupt and unlawful activities, including embezzlement, the commingling of federal funds with personal funds, and the filing of fraudulent forms with several federal administrative agencies. While the Committee’s Minority was able to help secure passage of legislation denying all federal funding to ACORN, the Committee’s Majority has repeatedly refused to

hold hearings on ACORN, its associations with other political groups, and its corrupt practices.

- Presidential Records Act – To ensure compliance with both the Presidential Records Act and the Hatch Act, the Committee needs to conduct oversight to monitor the technology associated with the White House E-mail archiving system and the maintenance of private e-mail accounts by White House staff. This effort actually began under Democrats. Former Chairman Henry Waxman’s oversight of the White House’s use of e-mail became an issue of bipartisan concern – not the political aspect of it, but the fact that there was a clear failure of government and waste of taxpayer dollars. In the 111th Congress, the Majority has not continued critical oversight initiatives in this area despite the repeated urgings of the Minority.
- Federal Agency Performance Management – As the main oversight body in the House of Representatives, the Committee has an obligation to hold federal agencies accountable for performance. While federal agency funding has increased tremendously, attention to agency performance under GPRA and other performance legislation and possible reforms of performance legislation, such as requiring outcome-based performance goals, has received short shrift in the 111<sup>th</sup> Congress.

## **Conclusion**

Congress is constitutionally obligated to provide thorough oversight of the Executive Branch. This obligation is recognized by scholars and the Courts and by the American public that expects its federal government to root out waste, fraud, abuse, mismanagement, and misconduct. This was a mainstay of Congressional Democrats in the 110<sup>th</sup> Congress while the White House was occupied by a Republican President.

The election of a Democrat to the White House, however, has seen a sea change in Congressional Democrats’ affinity for oversight. The House of Representatives’ principal oversight body, the Committee on Oversight and Government Reform, has refused to hold Administration officials accountable, requesting only a fraction of the information from Executive Branch officials the Committee did when their party did not hold the presidency. The Committee has also declined to hold hearings on many of the crucial issues facing the nation, deciding too often instead to spend the Committee’s time and resources on narrow, peripheral matters. With the Executive Branch and Congress consolidated under one-party Democratic rule, Congressional Democrats have abandoned their oversight responsibilities of the Administration at a time when the federal establishment’s presence in the American people’s lives has expanded more rapidly than ever before.



## About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

## Contacting the Committee

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