

Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
March 2, 2021 at 10:00 AM

Thank you, Mr. Chairman.

Mr. Gensler and Commissioner Chopra, welcome to both of you. Thank you for your willingness to serve.

You've been nominated to lead two agencies—SEC and CFPB—that can have a substantial impact on the U.S. economy.

After taking a devastating hit last spring, the U.S. economy, thankfully, is now in recovery mode. But there are a lot of actions the federal government could take to stifle this recovery. If agencies, like the CFPB and SEC, move to impose burdensome and restrictive regulations, including backdoor 'regulations by enforcement,' that limit consumers' access to credit, hamper job growth by limiting access to capital markets, and restrict the ability of publicly-traded companies to act in the best interest of their owners – the shareholders.

Today I hope we'll learn whether Mr. Gensler and Commissioner Chopra would take such actions as the heads of the SEC and the CFPB.

Commissioner Chopra's been nominated to serve as Director of the CFPB. In considering his nomination, it's important to remember CFPB's history. It was created by Democrats through the Dodd-Frank Act as arguably the most unaccountable agency in the federal government. It's an agency with a single-director, who—until recently—the president was unconstitutionally forbidden from removing, and it's not accountable to Congress through the appropriations process.

Under President Obama, the CFPB pursued an activist anti-business agenda that limited consumer choice, drove up the cost of credit, and hamstrung job creators through overregulation. The CFPB repeatedly engaged in overreach and abuse of its authorities. For example, it took a 'regulation by enforcement' approach that the D.C. Circuit held violated the bedrock principles of due process; it routinely overstepped its jurisdiction, like investigating for-profit-college accreditation, which the courts shut

down; and it used public pressure tactics to 'name and shame' businesses, like publishing unverified consumer complaints.

Based on Commissioner Chopra's record, I'm concerned he'd return the CFPB to the hyper-active, law breaking, anti-business, unaccountable agency it was under Obama Administration.

Why do I say that? Well, Commissioner Chopra helped set up the CFPB and then served as the agency's student loan ombudsman during the Obama Administration. In that role, he was known to have a hostile relationship with many lenders and used 'name and shame' tactics to pressure them. In one such case, he took a 'shoot first, aim second' approach to the facts by posting online inaccurate allegations about several credit unions without checking with them first. CFPB had to retract the allegations.

At the FTC, Commissioner Chopra has continued to take aggressive anti-business stances. The Wall Street Journal editorial board has noted Commissioner Chopra 'has a record at the FTC and CFPB that suggests deep hostility to for-profit schools and other parts of the private economy' and 'has pushed the FTC to impose enormous penalties on businesses without due process.'

In one FTC case, three of his fellow commissioners publicly rebuked his dissent in a case for its 'disregard of facts and the law,' making 'misleading claims,' and relying on 'false assertions.'

Finally, we know Commissioner Chopra favors unaccountable regulators with vast powers. He proposed creating a super-agency to regulate politicians, think tanks and nonprofits. This raises concerns about how he would wield power at the CFPB. At the CFPB, the sole director is not accountable to Congress through the appropriations process. And as a sole director, there would be no other commissioners to potentially restrain him.

I hope today's hearing will provide further insight into Commissioner Chopra's plans for the CFPB, if he's confirmed.

Mr. Gensler's been nominated to serve as Chairman of the SEC. There's no question he has a great deal of knowledge about securities markets.

The capital markets that the SEC regulates are the envy of the world and an engine for economic growth and job creation. Facilitating capital formation will be particularly critical to our current economic recovery.

The SEC has historically administered the federal securities laws on a bipartisan basis. There are some, however, who want the SEC to stray from its tradition of bipartisanship by using its regulatory powers to advance a liberal social agenda on issues such as climate change and racial inequality.

Based on Mr. Gensler's record, I'm concerned he may be inclined to use the SEC in this inappropriate manner. The securities laws are not the appropriate vehicle to regulate climate change nor to correct racial injustice or intimidate companies regarding political spending. That is why we have environmental, civil rights, and political spending laws.

At the CFTC, Mr. Gensler had a history of pushing the legal bounds of the agency's authority. One CFTC rule on position limits was overturned in court, and another rule on cross-border swaps was viewed by critics, including international regulators, as exceeding the CFTC's authority. This raises the question of whether he will also push the legal bounds of the SEC's authority in particular to advance a liberal social agenda.

I hope that today's hearing will provide further insight into his plans for the SEC, if he's confirmed.

I look forward to hearing from both Commissioner Chopra and Mr. Gensler.