Nomination Hearing:
Gary Gensler to be a Member of the SEC & Rohit Chopra to be Director of the CFPB
Senate Banking, Housing, and Urban Affairs Committee
March 2, 2021

Opening Statements

Chairman Brown (D-OH) opened by noting how Gensler and Chopra will need to stand up for those who do not have corporate lobbyists as many do not feel they have a voice. They need to fight for essential workers and those who have been preyed upon by Wall Street. Brown continued that the racial wealth gap has increased and pointed to the widest racial homeownership gap in 50 years. He noted that the CFPB has created a voice for all Americans who often do not have a voice in Washington. Chopra has the expertise and track record to run CFPB. Brown said Chopra will stand up for people like veterans who are often preyed upon by predatory lenders. Brown then continued that it is more and more obvious that the stock market is detached from reality. Corporations pay dividends to shareholders while employees have been laid off. Markets should be away for families to save and invest, not a game for hedge fund managers. Gensler needs to bring back a focus on the people who make the country work and take on climate risk disclosure requirements, enforcing protections, and working with other agencies. Brown closed by saying that we've seen what happens when markets do not have safeguards and he's confident that both nominees will stand up for workers who do not have a voice.

Ranking Member Toomey (R-PA) said that the US economy is now in recovery mode, but a number of actions from the federal government could stifle recovery. Burdensome and other regulations could limit consumer access to credit and impede economic growth. Toomey questioned whether these nominees would implement such regulations. He pointed to the CFPB as the most unaccountable agency in the federal government and how it's still not accountable to Congress through the appropriations process. The CFPB has repeatedly engaged in overreach and abuse of authority. Toomey expressed concern over Chopra's past record of this unaccountable agency as he helped set it up and was known to have a hostile relationship with lenders. At FTC, Chopra continues to take an aggressive anti-business stance. Toomey continued that Chopra favors unaccountable regulators with vast powers which raises concerns over how he will yield power at CFPB as sole director with no other commissioners to restrain him. With regard to Gensler, Toomey said that there is no question he has great knowledge of the securities markets. Toomey noted that facilitating capital formation will be crucial to economic recovery and he is concerned that Gensler will be inclined to use the SEC in an inappropriate manner to correct climate, racism, and other social agendas. Toomey is concerned that Gensler will push the legal bounds of the SEC to push a liberal agenda.

Sen. Cardin (D-MD) introduced Gensler for his nomination. Cardin has known the Gensler family his whole life and they represent public/civil servants. He has experience in the executive and legislative branches and private sector. Gensler is uniquely equipped to serve in this role through his professional and academic life. Cardin noted that Gensler was one of the leading financial reformers during the great recession and that he was a tough, but fair, regulator at the CFTC.

Sen. Van Hollen (D-MD) also introduced Gensler for his nomination. He strongly recommended Gensler for SEC Chair. He said Gensler has stellar qualifications, great judgement, a brilliant mind and good heart. He has expertise to take on this responsibility and Van Hollen said he is confident that if Gensler is confirmed, he will serve this country well in this position. Van Hollen closed by saying that Gensler was known as one of the quiet heroes during the Great Recession and he imposed financial accountability at the CFTC and he's the right person for the job at the SEC.

Sen. Blumenthal (D-CT) introduced Chopra for his nomination. He said he couldn't imagine a better person to head the CFPB at this critical time. Chopra is sensitive to challenges that minority communities face during this economic crisis and consumers can be sure Chopra will have their back. Chopra fights for the Made in American label to increase American jobs. Blumenthal continued that Chopra has expertise and experience in protecting households and students from unfair and burdensome practices. He has been saluted by veteran organizations for his work in protecting them against predatory threats. Blumenthal continued that tough and fair enforcement of consumer protection laws is pro-business as it helps the good guys. Blumenthal closed by saying that Chopra will be a distinguished head in CFPB.

Witness Testimony

Gary Gensler, ***Member Designate, Securities and Exchange Commission,*** opened by stating that two decades ago he served on this committee staff under Sarbanes and he was proud to be here as a nominee. He continued that he has spent his entire career around financial markets in public and private sectors and academia. The SEC is expected to protect investors, maintain orderly markets, and maintain capital formation. When the SEC does its job and there are clear rules, our nation prospers. If confirmed, Gensler said he will work with SEC staff and Congress to strengthen accountability in markets so people can invest confidently by making sure companies and startups can raise capital to innovate and that markets serve the needs of working families. He continued that capital markets touch every part of the economy and we cannot take any of this for granted. Gensler noted that the rules have to change with markets and technology; financial technology can be a powerful force as long as we harness the mission of the SEC.

Rohit Chopra, ***Director Designate, Bureau of Consumer Financial Protection,*** noted that America in March 2021 is far different than a year ago and we must not forget that the financial lives of Americans lay in ruins. He continued that it is harder for families to get back on their feet as pandemic ends. Due to economic devastation due to COVID, many risk losing their homes and have seen their jobs disappear. Chopra emphasized the importance of the administration and enforcement of laws that help Americans navigate losses and keep their homes. The CFPB helps protect Americans from fraud and ensures that lawful businesses are able to compete fairly. If confirmed, Chopra pledged to be a partner to each Member of Congress, be attuned to market realities, and have an open mind.

Member Questions

Chairman Brown (D-OH) pointed to the devastation that foreclosures can cause and noted how we saw this during the great recession from which Ohioans are still recovering. Brown asked what role the CFPB can play to prevent another foreclosure crisis. Chopra responded that he saw how this crisis devastated economies and widened the wealth gap, so it is critical for CFPB to enforce regulations to avoid another crisis. Brown then discussed the recent unprecedented volatility in trading. He said that Wall Street has treated the markets as a game for years and that this affects real people. Brown asked what this volatility means to them and the steps that the SEC will take to ensure that the market is fair. Gensler responded that this story is about new technology and that technology is constantly changing finance. He emphasized ensuring that customers still get best execution, ensuring access to markets, promoting competition in markets, and updating back office infrastructure to lower cost. Brown noted how financial institutions are making things worse through lenders, including student loan lenders. He asked Chopra what he saw as the biggest risk people face and the role of the CFPB. Chopra responded that it is important to enforce the rules on unlawful practices so they stop and look at what's best for honest market participants. He also pointed to looking at how big tech companies are entering the financial sector and anticipating tomorrow's risks.

Sen. Toomey (R-PA) noted how he wrote a letter to the acting chairman of the SEC to take on a number of non-controversial good governance initiatives and asked Gensler to commit to having the SEC evaluate whether or not to pursue these issues and report back in writing if he decides to not pursue them.

Gensler responded that there are a number of helpful initiatives and he looks forward to working on with him. Toomey noted that he specifically hopes for a faster settlement cycle on equities. Toomey asked Gensler about the board diversity rule from Nasdaq. He pointed to how he and other Republicans sent a letter to the SEC urging them to disapprove of this rule. Corporations and boards benefit from diversity, but race, gender and sexual orientation should not determine diversity. Toomey said that Nasdaq shouldn't use its quasi-regulatory authority to further its social agendas. He then asked Gensler if he thought it was a good idea for boards to be pressured or have diversity quotas.

Gensler responded that he has looked at his letter on file and that he will take it into account among other comments. He continued that he thinks diversity in boards and senior leadership benefits decision making and he is committed to diversity at the SEC if confirmed. It will be a positive step forward in leadership at the SEC. Toomey asked Gensler if he is committed to basing disclosure requirements on materiality and Gensler responded affirmatively. Toomey asked if a publicly traded company spending money on some electricity, is it material where this electricity comes from. Gensler responded that it may or may not be material on total mix. Materiality is a total mix of information and a small piece may not be material, but he would have to look at the total mix. Toomey responded that if it is financially insignificant, he doesn't see how it can be material. He then asked if Apple spending money on political ads is material. Gensler responded that many investors think it would be material to get such information. Toomey asked if it might be okay to mandate this even though it is insignificant. Gensler responded that he will go by what the court says. Toomey continued that if it is financially insignificant, why not leave it up to the companies. Gensler replied that it is about investors making a choice on what is material for them and it should be grounded in courts and law. Toomey noted how two recent rule makings from the SEC require proxy voting and that modernization of thresholds for companies. He asked if Gensler plans to revisit or if he intends to leave as they are. Gensler responded that he would want to work with staff and fellow commissioners to understand the rules better in proxy advisory areas to address potential conflicts of interest and see if it is working to achieve the mission of the SEC.

Sen. Reed (D-RI) noted volatile trading in securities and how some pointed to payment for order flow as an area that deserves more scrutiny. Reed asked Gensler to commit to evaluating payment for order flow and seeing if retail investors benefit. Gensler replied that we should always evaluate new approaches to markets and payments for order flow is something that should be looked at carefully. Reed emphasized the importance of protecting retail investors and then asked Chopra to discuss how the Office of Servicemember Affairs could be better utilized. Chopra responded that the health of military families is about the health of our country and that it is important that the office is looking at risks to military families, veterans and others. Chopra noted that there were some concerns over the past few years like issues in VA home loans and ongoing issues with the Civil Relief Act. Chopra said he wants to work closely with the DoD to make sure the CFPB plays a leading role in this and make sure we are taking appropriate steps to protect service members from abusive practices. Reed then turned to student debt and noted how previous operations of CFPB stopped many of the actions that were being taken. Reed asked Chopra if the CFPB would consider returning to prior practice of financial products on campus and what the biggest protections are for students. Chopra responded that we want to make sure all students are starting financial lives with a good future ahead and how we should educate them by working with the Treasury and Department of Education.

Sen. Shelby (R-AL) discussed how Toomey got into economic materiality and asked Gensler to talk about political materiality and economic materiality. Gensler responded that materiality is grounded in the economic side of materiality and what the courts have deemed material to investors and that he is aware of the difference between the two. Shelby then asked about cost benefit analysis and if he believes in applying this to regulation. Gensler responded yes and that it is at the heart of decision making for any rulemaking. Shelby pointed to the importance of the SEC adhering to 2012 Reg and asked if he would follow the same trend. Gensler responded that if he was referencing SEC guidance on cost benefit then yes. Shelby emphasized the importance of bipartisanship and asked Gensler if he will be able to work with Republicans on the committee as bipartisanship is important to the functioning of the SEC. Gensler responded that it is beneficial to have many commissioner opinions and while they will have some differences, he will look to see where they can work together. Shelby then asked Gensler who owns corporations and Gensler responded that the shareholders do. Shelby said that management should work for shareholders first and asked Gensler if he believed this to be true. Gensler responded that he does and that it is the law in all states.

Sen. Menendez (D-NJ) pointed to how more than 1.2 million securities experts and members of the public have pressed the SEC for a political spending disclosure rule. He said he was reintroducing the Shareholder Protection Act and asked Gensler if he agreed that political contributions by publicly listed companies represents material information that should be disclosed. Gensler responded that disclosures are critical to investors and for promoting capital. He continued that such decisions are driven by materiality standards and that wanting to see what companies are doing in the political arena is something to consider. Menendez pointed to how Toomey asked about diversity and he wanted to talk about mandates versus disclosure and how disclosure to the public and government is important. Menendez continued that corporate America has a diversity problem: boards do not look like this country. Menendez asked Gensler if he agreed that greater diversity leads to better corporate performance. Gensler responded that he is familiar with the well-crafted studies on this and from his own experience, diversity is important and enhances decision making. Menendez said that this is not forcing corporations to make changes, but rather disclose their policies and level of diversity. He asked Gensler if he agreed that investors should be informed about diversity policies. Gensler responded that human capital is an important and evolving value proposition in companies and that he will look at what information investors want about human capital, including diversity in companies that they are investing in.

Sen. Scott (R-SC) added to Menendez's conversation and noted how mandates are something he opposes, but gathering information can be helpful and instructive as long as we are not pursuing an outcome based on implicit bias in some form or fashion. Scott then talked about discrimination with NRSROs and his legislation with Senator Sinema. He mentioned the House companion bill passing which was a good sign. He believed in supporting open competition in NRSROs, even in credit agencies to have more competition there, and that newer agencies are using more info to access credit worthiness. Gensler agreed with Scott that competition is really important in the credit rating and capital markets space. He committed to working on how the SEC can support and promote competition there. Scott emphasized that this is in the best interest long term for consumers to have competition.

Sen. Tester (D-MT) discussed service member and veteran protection and how Chopra talked about working with DoJ and DoD and he asked what Chopra would do to address those harmed under the previous administration since the CFPB was not as functional as he would have liked. Chopra responded that when it comes to veterans, we have lots of data and sources of information. We need to hear what is happening and make sure that we are listening especially in the area of housing and mortgages. Chopra said the CFPB will look at where they see consumer complaints to conduct trend analysis and evaluate how they can correct this. He commented that most financial institutions want to stay on top of this, but some have flouted the law when it comes to service members and we cannot afford disruption in the mortgage market when it comes to service members. Tester pointed to how the CFPB's work in making sure that folks have the ability to own a home is important and he asked Chopra about the most important considerations as the CFPB looks to revise QM rules. Chopra responded that he has an open mind on this and that he will look to what the statute is and consider Congress's goals. When it comes to QM, Chopra responded that it is important that we balance the consumer protections Congress has put into place for rural areas. Chopra continued that we do not want to go back to liar loans and fraud in this space and that the country is stronger when mortgage lending is safe and that he will solicit input from everyone on how this rule should evolve over time. Tester then asked Chopra about his housing priorities at CFPB. Chopra responded that he wants to be ready for potentially looming problems when it comes to forbearances that could go to foreclosures and he does not want to see another foreclosure crisis in this country.

Sen. Rounds (R-SD) addressed the civil penalty fund and how the fines levied by the CFPB can range differently per day. He cited that the GAO identified opportunities for transparency to be improved here and questioned what the appropriate uses of this are and what Chopra can do for transparency. Chopra stated that he reviewed these audits and the statute and agreed with Rounds' concerns on the funds not being used for statutory purposes and the victims' relief fund. He committed to not use it for another purpose as that would be inappropriate and understood that when there is an award, that it is for victim relief and the expressed statutory purposes. Rounds continued that the fund is available to contracting with nonprofits and how that should also be fully disclosed. Chopra replied that it is required to be disclosed and subject to be, and the need to fix this if it is not disclosed. He stated that if there are contracts, they better be disclosed. Rounds moved on to digital currency and the outdated crypto regulatory regime. He asked about a more forward thinking regulatory environment for innovators in this space. Gensler answered that innovations are a catalyst for change and have brought new thinking to payments and financial inclusion. He talked about, if confirmed, working with fellow commissioners to promote innovation and ensure for investor protection if under securities law. He also mentioned trade exchanges and ensured the appropriate investor protection there.

Sen. Warner (D-VA) discussed market structure and the elimination of some conflicts of interest and disadvantages to retail investors. He noted how market structure and payment for order flow interest has been reignited due to Gamestop and Robinhood. Warner continued that he thought the structure of Robinhood is similar to Facebook: people are used as products rather than customers. Warner then asked Gensler what he would do to address this. Gensler responded that technology has raised important policy issues on how we promote fair markets and that we will need to look at structure and equity markets around payment for order flow. He continued that it raises questions about a firm dominating a field, what that does to the pricing of capital, and what it means to best execution in this process. Warner noted how we often hear about rebates and payments to increase liquidity. The top 10 % get about 77% of volume, yet large firms like Fidelity do not pay any broker payment fees while other firms have to pay fees to increase liquidity. Warmer asked if Gensler would commit to a full review of this structure. Gensler responded that he would work on a review of each of the market issues he addressed.

Sen. Tillis (R-NC) asked Gensler if he thought that the FTT would have the same negative impact as it has in other jurisdictions. He asked if he thought it was a good idea or if it would have a negative impact and move transactions offshore. Gensler responded that it's not something he examined seriously before this hearing, but he noted that we have a fee on transactions and at that modest level, we have the deepest most liquid markets, but he has not studied it and that he will work with Sen. Tillis on this issue. Tillis then asked if Gensler supported changes to FSOC's activities based approach and noted how Yellen supported it. Gensler replied that he looks forward to working with Yellen and FSOC on designations if appropriate and when activities are systemic, then such changes could be appropriate. Tillis responded that he is curious if the SEC has the necessary mandate and tools if they pursued this approach. Gensler said he would answer for the record. Tillis then asked for Gensler's commitment to make digital delivery alternatives available. Gensler responded that he worked on electronic delivery of payments and e-signatures in the Clinton Administration and that he wants to embrace and move forward with technologies.

Sen. Warren (D-MA) stated that the SEC fell on the job in the previous administration by not requiring public companies to disclose climate risk, on predatory private equity practices, and the SEC standing by while the stock market functions like a casino. On climate risk, she asked if there is any reason why companies should hide this from investors. Gensler responded no as materiality is a point here so it should not be hidden. Warren continued asking if there is any reason why a company should not have to disclose general practices to investors. Gensler answered that a company should share fees and conflicts of interest with investors as well as a description of its business model. Warren questioned if someone has been cheated by a broker dealer if the company should be able to use forced arbitration clauses to avoid being held accountable. Gensler responded that investors and customers should have the avenue to redress claims in court. Finally, Warren said that the SEC has tools to make the markets function better. She asked if Gensler would pick up the tools to make markets honest and transparent. Gensler responded that he would look at all the tools to protect investors and capital markets.

Sen. Kennedy (R-LA) focused on credit bureaus collecting data on their customers paying bills and selling it to businesses and questioned why Congress would not make legislation on this issue on behalf of the consumer. Chopra responded that accuracy is critical for credit bureaus to work and consumers should be able to dispute claims and get answers when they feel wronged. Kennedy questioned why no one on Wall Street went to jail in 2008. Gensler replied that the CFTC held those accountable for rigging interest rates in the market and shared the question on no one going to jail. He explained these are cases that are hard to try but ultimately up to the DoJ to determine.

Sen. Cortez Masto (D-NV) talked about online trading platforms with no commission and worried about investors getting in over their heads, she asked what steps Gensler would take to protect investors who want to be in the stock market but are less knowledgeable about the risks. Gensler replied that technology is providing greater access to investors but raises bigger questions on risk. He said he needed to study what this means for the marketplace. Cortez Masto touched on how diversity, equity and inclusion in corporate America was somehow a 'quota'. She continued that it was not a quota and that her and her colleagues' goal – the reason they support the Nasdaq proposal to increase transparency of the composition of the boards of exchange listed companies– is because we need a paradigm shift, we need a cultural change, not a check box or quota. Cortez Masto continued that her colleagues pointed to how this was a benefit for these companies as we know that in the long term these companies are more profitable. She asked Gensler to be aware of this. Cortez Masto moved to Chopra asking what the CFPB can do to support small businesses. Chopra replied that regulators need to make sure there are not unfair practices in small business lending and that it is crucial to enforce the law to protect small businesses right now.

Sen. Hagerty (R-TN) believed that regulators should not use the backdoor to advance social policies and expressed concern about overreaching regulatory rule making. He highlighted the importance of cost benefit analysis, taking the economic approach, and utilizing analysis. Hagerty complimented Gensler on his undertaking of digital assets and thought about financial regulation in rapidly innovating markets and the challenges of managing this from a regulatory standpoint. He asked Gensler to share his perspective on this and how he would approach digital assets. Gensler responded that it is important to update market oversight to account for new technology and to be tech neutral because with the new technology of crypto and central bank digital currency, it is important to stay true to investor protection and protection of the capital markets. He committed to working with everyone to see how we can move forward in this space. Hagerty remarked that there is great potential for leadership here and advised not having too heavy a hand. He thought Gensler could make a significant mark here.

Sen. Van Hollen (D-MD) referenced 10b-5 plans and the 8K trading gap and his two bills on this that are intended to provide confidence for investors. He asked for Gensler's commitment to working with him in providing technical assistance to pass the bills. Gensler looked forward to working with him on those. Van Hollen moved on to the stock market and the rules that allow too much gaming and noted how he wanted to close these loopholes. On corporate disclosure rules and materiality, he said that Gensler cited the Supreme Court standard and that it is important to have an open eye to ensure disclosure rules match demands for information. Gensler agreed on the importance of the investor community deciding what is material to them and how he will be guided by that principal. Van Hollen addressed corporate political spending and whether an investor would be interested in looking at reputational risk of a company if its spending of secret money is revealed. Gensler replied it is up to the investor to decide if they wanted to be provided this information. Finally, Van Hollen asked about the proposal for a new SEC headquarters and the already appropriated money for this. He asked Gensler if he will transfer this money so the headquarters project can advance. Gensler answered that he would work with the SEC and GSA to get up to speed on this and emphasized the importance of following congressional will.

Sen. Lummis (R-WY) asked Gensler to provide more clarity on the reputation of the SEC being a black hole for innovators. Gensler replied that technology and markets change so it is important for the SEC to provide guidance and clarity through guidance or no action letters. Lummis asked about ways to work together on consumer protection of digital assets that do not harm innovation. Gensler answered that it is important to protect consumers and investors and to ensure that the custody of digital assets work. He added the need to ensure markets be free of fraud and manipulation which is the greater challenge. Lummis referenced Gensler's comment in 2018 where he said that blockchain technology has the ability to change the world of finance. She asked him to talk about how such technology would promote inclusion. Gensler answered that blockchain has been a catalyst for change and how it can provide more inclusive payment structures or tokens. He went on that other payment system providers are looking at systems that can operate 24/7. Finally, Lummis addressed energy and environmental issues. She stated that Wyoming's economy is dependent on energy sectors and how revenues have been declining due to the focus on climate change. She asked if Gensler is considering the impacts on her state economy by making it more difficult for energy companies to raise capital. Gensler replied that investors are asking for climate risk disclosure because they see it as material which can be pro-energy for consistency and clear rules.

Sen. Smith (D-MN) expressed concern about ongoing challenges to get good student loan servicing. She asked for Chopra's thoughts on this and asked what can be done to ensure high quality servicing, the oversight approach to this, and what the CFPB can do to protect student loan borrowers. Chopra deemed it critical for loan servicers to live up to their obligations and the need for communication from servicers so borrowers can navigate their options. He wanted to avoid the avalanche of defaults when the student loan moratorium ends in September.

Sen. Daines (R-MT) discussed the issue of proxy advisor duopolies. Proxy firms provide a variety of services to shareholders, most notably they provide advice to shareholders at shareholder meetings of publicly traded companies. There are two dominant proxy firms - ISS and Glass Lewis – which control 95% of the proxy advisory industry, have become the de-facto standard. Daines continued that this is an area that has attracted bipartisan attention in the past, most notably through the House passage of the Corporate Governance Reform and Transparency Act with a similar version being sponsored by Sen. Reed and other members of the committee, including Tillis and Kennedy. Daines asked Gensler if he was concerned about the lack of competition in the market for proxy advisory services and that some proxy advisory firms might have significant conflicts of interest that may impact the subjectivity of their voting recommendations. Gensler responded that in all parts of the capital markets, whether it be proxy advisors or credit rating agencies, competition is a good thing to bring about transparency, lower cost and bring more efficiency and that he shares that view in proxy space too. He continued that it does bring efficiency to many pension funds to have proxy advisors, it is a service that helps pension funds and investors through the proxy season. Gensler noted how Daines raised conflicts of interest and that it is the role of an agency like the SEC to try to, through transparency and other rules, address potential conflicts of interest which we saw before the 2008 crisis in the credit rating area and he knows that the commission has attempted this in the proxy advisor space. Daines then asked if the SEC has the responsibility to ensure that the proxy advisor system functions properly and that investors receive the most accurate and up to date information prior to voting proxies. Gensler responded that this is within the authorities of the SEC and that if confirmed, he will work with staff and others to see if there were things that needed to be further addressed. Gensler continued that he thought they play an important role in the markets during the proxy season. Daines then turned to SEC enforcement actions and asked how the SEC enforcement division decides to engage and when issuance and guidance may be more appropriate. Gensler responded that enforcement follows facts and laws to stamp out fraud and manipulation in markets and the focus is on using the SEC’s limited resources to effectuate the greatest problems in the market. He noted that rulemaking is very different from enforcement. Daines then asked Gensler to commit to making enforcement a priority for ponzi schemes and scams aimed at seniors to which Gensler responded affirmatively.

Sen. Ossoff (D-GA) noted how the largest investment banks are very heavily subsidized and that they dominate not because they offer the best products, but because they receive trillions in government bailouts and quantitative easing. He asked Chopra if he agreed with this evaluation. Chopra responded that too big to fail is a huge problem that Congress sought to fix via Dodd Frank and we want to make sure there is competition based on the merits and that there is a market structure where small financial institutions can compete. He noted that regulators need to be attuned to every consumer and institution, not just the largest ones. Ossoff continued with his concerns about massive scale of cash and cheap loans to banks during the pandemic and asked how can we level the playing field when other institutions like community banks, credit unions and ordinary people haven't had similar access. Chopra responded that small businesses and households did have tougher time getting support and that the Federal Reserve Chairman and others are modernizing the payment system for a more real time system. He emphasized that we cannot fall behind other countries on this and he supports efforts by the Fed to modernize for equal access. Ossoff then asked about advances in financial technology and the implications it presents for consumers, regulatory developments in digital banking and how policy makers can address them. Chopra responded that we have seen how large tech platforms are increasingly entering the financial systems like Facebook's libra proposal and how it could impact privacy and competition. He continued that we need to make sure we look at issues facing countries today, other issues coming down the pipe and ensure that dominant players are not able to squelch out competition.

Second Round of Questioning

Sen. Brown (D-OH) asked Gensler what he will do at the SEC with regard to climate disclosure. Gensler responded that investors increasingly want to see assets behind this and want climate risk to be disclosed. He continued that issuers would benefit from such guidance from the SEC, so through good economic analysis, working with the staff, and requesting public feedback, this is something the commission would work on. Brown then turned to changes in the consumer finance market and how companies are increasingly offering financial products through mobile apps and using new methods of underwriting, such as relying on alternative credit data algorithms that use AI. Brown asked Chopra what the most significant developments he has seen are and what he sees as presenting new risks to consumers. Chopra responded that technology will play such a big role in our lives in every sector of the economy, but we need to understand more clearly how mass data collection is impacting our privacy, the security of our data and ultimately the decisions made by algorithms. Chopra emphasized that this presents real questions about transparency and discrimination and that looking at how big data from large platforms with detailed behavioral data is used is something we must examine carefully and make sure we have a competitive market.

Sen. Scott (R-SC) asked Chopra if he agreed that Congress did not provide the CFPB authority over insurance products. Chopra agreed that the CFPB does not have authority over firms regulated by state insurance. Scott said he was confident that every Senator on the committee supports responsible consumer protections and that there is a robust market of products from regulated entities that know the rules. He pointed to how the CFPB has used enforcement as the primary mechanism for protecting consumers which has had a chilling effect and he asked Chopra to commit to the improvement of the overall transparency of enforcement programs.

Chopra responded that the CFPB should be focused on fixing harms and making it clear to market participants what is expected of them because this is what creates a vibrant market. Scott went on to discuss how the availability of small dollar credit is essential and plays a role during these challenging times and he asked what actions Chopra would take to encourage the availability of a wide variety of credit choices for consumers. Chopra said he would work closely with agencies and make sure that it is more than just access to credit but access to money and he emphasized the importance of a modernized payment system.

Sen. Warren (D-MA) said that the last administration appointees acted like they worked for giant banks and that the CFPB needs to return to its mission of protecting consumers. Warren pointed to the enforcement of fair lending laws and asked Chopra to talk about his plan for holding banks accountable for discriminatory practices. Chopra responded that enforcement was a problem at CFPB and other agencies under the prior administration. He continued that agencies should enforce the laws that it has been delegated to use and hold violators accountable. Warren went on to state that discrimination in financial services exacerbates racial wealth and inequalities. She then asked Chopra to discuss the upcoming housing cliff and how the CFPB will use its tools to prevent what happened in 2008 from reoccurring. Chopra responded that what happened in the mortgage market leading up to 2008 had a devastating impact and that the CFPB was subsequently entrusted to monitor risks. He continued that we are not out of the current crisis and many families will struggle, so we must make sure they can stay in their homes and not be deceived about what their options are.

Sen. Toomey (R-PA) noted how the CFPB is unaccountable to Congress and how in 2016 Chopra was asked about the CFPB being subject to appropriations or a 5-person commission and Chopra said that there was no good argument for gutting the CFPB like that. Toomey commented how he continues to support making the CFPB more accountable to Congress and subject to appropriations and he asked Chopra if his previous comments were still his current view. Chopra responded that many concerns around accountability is principle and he believes that independent agencies are able to steer clearer of political influence and exercise judgement carefully. Toomey noted how last year the CFPB affirmed that supervisory guidance does not have the force or effect of law and it issued a rule to codify that principle. Toomey asked Chopra if he agreed with that step and if he is committed to complying with this. Chopra responded that guidance does not impose obligations, it is not an appropriate way in which new laws are created, it is outside the regulatory process. He continued that he understood Toomey’s concern and that he has not read the rule, but supervisory guidance is supposed to be there to help institutions best comply. Toomey then asked about indirect auto lending which he said was an egregious example of the CFPBs enforcement crusade and how it specifically relied on a very controversial disparate impact theory. He said it was issued by a supervisory bulletin rather than a proper rule and the GAO confirmed that the CFPB’s bulletin functioned as a rule and that it was therefore subject to the CRA and Congress overturned this misguided policy. Toomey noted how he had asked Chopra previously if he intended to reopen this issue and create some new version of auto lending rule premised on the disparate impact theory and how he committed to Toomey that he would not do that and Toomey asked him to confirm this commitment. Chopra responded that the congressional review action has nullified that guidance document and that the CFPB will continue to adhere to that if he's confirmed and that he will continue to monitor any concerns he has.

Sen. Warnock (D-GA) asked what Chopra would do to protect student loan borrowers and about opportunities for reform in this space. Chopra replied that minorities are more likely to borrow when they go to college and face a wage gap after graduating. He acknowledged many problems in the student loan system and the critical need to get this right. Warnock then referenced Chopra's 2013 testimony on servicemembers and veterans being forced to fly home to save their homes from illegal foreclosures. He asked for Chopra's experience on this and how he would use CFPB's tools to help. Chopra said he believed that military families are in more complex situations and if institutions are improperly foreclosing on them, it can raise questions about their ability to deal with complex situations. He ensured CFPB would work with the DoJ to crack down on this and anticipate risks in the mortgage market.

Sen. Tillis (R-NC) asked Chopra if he would use rulemaking to define deceptive practices and expand CFPB authority. Chopra replied that he would enforce the law as written and that at times rulemaking can be used as a tool, but it is important to follow what Congress has said and be subject to judicial scrutiny. Tillis followed up asking if it is appropriate for guidance, a speech, or comment to become a rule or drive a new regulatory regime. Chopra responded that he worried about this uncertainty for small and new players that do not have people working for them in Washington. He said he would prioritize being as transparent as possible for rulemakings.

Sen. Menendez (D-NJ) asked if CFPB has the authority to oversee consumer debt in student loans. Chopra answered that existing law shows that such entities are covered as consumer financial products and services. Menendez followed up asking if the CFPB would ensure that federal and private student loans are overseen. Chopra replied that there is $1.7 trillion in student debt and with it being one of the biggest consumer credit markets, the CFPB has to make sure the law is being followed. Lastly, Menendez asked if the CFPB should examine whether student loan servicers are hurting minority borrowers. Chopra responded that many, if not all, firms are subject to the Equal Credit Opportunity Act and that the CFPB will ensure appropriate enforcement of the law.

Sen. Daines (R-MT) referenced the Supreme Court decision stating that the Director of the CFPB is removable at any time at the direction of the President, and asked if Chopra agreed that the CFPB should instead be led by a multi-member commission to avoid instability. Chopra answered that it is the job of Congress to determine agency structure but regardless, there needs to be accountability and responsiveness. He committed that, no matter the structure, the CFPB will follow the law and be responsive to Congress and Americans. Daines expressed concern over Chopra's record at the FTC and prejudgment of businesses. Chopra answered that it would be inappropriate to prejudge a business but defended that he had a problem with fraudsters getting off without redress and sometimes enough is not done when a business causes harm. He wanted honest business to thrive and be able to compete.

Sen. Lummis (R-WY) discussed how usury laws had historically been the province of state legislatures and how Dodd Frank prohibits the CFPB from imposing maximum interest charges on consumer credit. She asked if Chopra agreed that the CFPB lacks the authority to impose a usury cap. Chopra responded that it was his understanding that she was right and that usury caps, interest rate caps, are primarily up to states and he pointed to explicit language in title 10 of Dodd Frank that prohibits the CFPB from establishing something like that and that he would be happy to look at it more closely. Lummis responded that this was a great answer and she proceeded to note how Chopra would be a member of the FDIC board and how Congress has codified that ILCs are entitled to deposit insurance if they have a safe and sound plan of operation. She asked Chopra if he would consider the merits of each and every application and grant deposit insurance to an ILC with a safe and sound plan of operation. Chopra responded he would follow the law when it comes to applications and that he will rely heavily on FDIC staff. Lummis then noted how the FDIC allows two members of the FDIC board to call a special meeting of the board and asked if he would commit to not forcing votes on matters that the FDIC chairwoman has not included on the board's agenda. Chopra responded that he was not familiar with these procedural rules and that he was happy to answer for the record.