

House Financial Services Committee Scrutinizes Climate Disclosure Proposals

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On February 22, 2023, the chairman of the House Financial Services Committee, Patrick McHenry, along with other Republican leaders in the House and Senate, released a letter (“the Letter”) to Chair Gary Gensler of the Securities and Exchange Commission (SEC), seeking information related to the recently proposed SEC climate disclosure rules. In the Letter, Chairman McHenry, Senator Tim Scott, and Representative Bill Huizenga (chairman of the Subcommittee on Oversight and Investigations within the Committee on Financial Services) noted their view that the proposed climate disclosure rules exceeded the SEC’s authority and mission and the limitations imposed upon an executive agency’s statutory authority, as recently described in West Virginia v. EPA.^[1]

Additionally, Chairman McHenry, Senator Scott, and Representative Huizenga noted that members of Congress in both the House and the Senate had sought records from the SEC relating to the proposed rules but that the SEC had failed to comply with such requests. In addition to renewing their informational requests, the Republican leaders listed questions for Chair Gensler to respond to, including:

1. whether the SEC had considered the impact of the proposed climate disclosure rules on energy prices and other costs associated with the rules;
2. whether the proposed rules raise First Amendment concerns related to compelled speech;
3. whether the SEC had coordinated with other federal agencies, the White House Climate Policy Office, or nongovernmental organizations on the policies contained in the climate disclosure rules; and
4. whether SEC employees had received legal advice or analyses related to the SEC’s statutory authority to promulgate portions of the proposed climate disclosure rules.

The Letter indicates that Congress is increasingly turning its attention to the scope of the SEC’s rule-making authority, particularly where its proposed rules touch on controversial policies like climate change disclosures. The Letter requests that all related records be disclosed by March 8, 2023, and *Capital Markets Watch* will continue to monitor updates as congressional oversight continues.

^[1] See *W. Va. v. EPA*, 597 U.S. ____ (2022) (finding an executive agency must “point to ‘clear congressional authorization’ for the power it claims,” particularly where such authority touches on issues of economic and political significance).

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