

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

□ 1700

#### GUIDANCE CLARITY ACT OF 2021

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (S. 533) to require a guidance clarity statement on certain agency guidance, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 533

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Guidance Clarity Act of 2021”.

#### SEC. 2. GUIDANCE CLARITY STATEMENT REQUIRED.

(a) REQUIREMENT.—Each agency, as defined in section 551 of title 5, United States Code, shall include a guidance clarity statement as described in subsection (b) on any guidance issued by that agency under section 553(b)(3)(A) of title 5, United States Code, on and after the date that is 30 days after the date on which the Director of the Office of Management and Budget issues the guidance required under subsection (c).

(b) GUIDANCE CLARITY STATEMENT.—A guidance clarity statement required under subsection (a) shall—

(1) be displayed prominently on the first page of the document; and

(2) include the following: “The contents of this document do not have the force and effect of law and do not, of themselves, bind the public or the agency. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”.

(c) OMB GUIDANCE.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall issue guidance to implement this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) and the gentleman from Pennsylvania (Mr. KELLER) each will control 20 minutes.

The Chair recognizes the gentlewoman from New York.

GENERAL LEAVE

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on this measure.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 533 would require Federal agencies to include a guidance clarity statement on the first page of guidance documents.

Federal Rules, regulations, and guidance are complex, even at best of

times. For most Americans who do not spend hours per day reading through the Federal Register, guidance documents can be very confusing. This simple, good government bill will help clarify for the public that agency guidance is intended to help guide the implementation of Federal regulations, not to act as additional legally binding rules.

I thank Representative LUETKEMEYER and Ranking Member COMER for working with us to perfect this bill. This is a bipartisan bill which has passed the Senate by unanimous consent.

Mr. Speaker, I urge all of my colleagues to support this legislation so it can be sent to the President's desk, and I reserve the balance of my time.

Mr. KELLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, agency guidance serves an important function in the Federal regulatory system. Agency guidance helps regulated parties and the public understand how agencies will interpret the laws and administer their programs.

However, agency guidance can be—and has been—abused. For example, agencies can use guidance documents to intimidate small businesses and individuals into compliance with agency views, sometimes under the threat of enforcement action.

Small businesses and the American people often do not have the legal resources or necessary background to know when an agency statement is binding law. It is tough for the public to determine what agency statements are binding and what are not.

Even Federal agencies have a tough time understanding the difference. They have been known to try to start enforcement actions based simply on guidance. Agencies have also been known to attempt to issue binding rules by quietly slipping rule language into guidance documents. This clearly bypasses the Administrative Procedure Act's requirements that were put in place to protect regulated individuals and small businesses.

The courts coined the term “non-rule rule” to describe this Big Government sleight of hand, and the courts have rightly struck down such rules that only appeared in agency guidance.

The Guidance Clarity Act offers a simple solution to these problems. It requires agency guidance documents to include the following explicit statement:

“The contents of this document do not have the force and effect of law and do not, of themselves, bind the public or the agency.

“This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”

With that stroke of the pen, gone will be the days in which agencies can use guidance documents to force small businesses and individuals to comply with nonbinding agency views. Gone too will be the days of the agencies try-

ing to issue non-rule rules that bypass the Administrative Procedure Act's requirements for legislative rules.

I thank Senator LANKFORD for his hard work to make this legislation the law of the land.

I also thank the sponsor of the companion bill in this House, the ranking member of the Small Business Committee, BLAINE LUETKEMEYER, who has worked tirelessly on this bill since he first introduced it during the 115th Congress.

Also, I thank House Oversight and Reform Committee Chairwoman MALONEY, Ranking Member JAMES COMER, and Senate Homeland Security and Governmental Affairs Chairman GARY PETERS for their critical efforts to help make passage of this bill a bipartisan success.

Mr. Speaker, I urge my colleagues to support the bill, and I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, if the gentleman from Pennsylvania has no further speakers, then I am prepared to close.

Mr. Speaker, I reserve the balance of my time.

Mr. KELLER. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. LUETKEMEYER).

Mr. LUETKEMEYER. Mr. Speaker, I rise in support of S. 533, the Guidance Clarity Act, which is identical to my bill, H.R. 1508, which passed the House by voice vote on October 20, 2021, almost 13 months ago.

American small businesses have enough to worry about, especially in this economy. Inflation, supply chain issues, and labor shortages have made it exceedingly difficult to be a small business owner right now. These are people who don't have time to worry about keeping track of the latest government red tape, which is made more difficult by the conflation of agency guidance with regulations or laws.

The purpose of guidance is to assist Americans in understanding rules and regulations and give them suggestions on how to adhere to them. However, it is important to note that guidance is not law, nor is it enforceable as law—it is simply a suggestion.

Guidance is not approved by Congress, nor does it go through the Federal rulemaking process which allows for public input and legal scrutiny of agency actions. Therefore, citizens are free to take the suggestion or completely ignore it.

Unfortunately, over the years, regulators have threatened punitive action against businesses for not following guidance. I am not talking about people breaking the law or ignoring Federal regulations who should certainly face consequences. I am talking about small businesses who are following Federal regulations but simply are not doing it in the manner certain regulators would prefer—the way their guidance suggested regulations be implemented. That is unacceptable, and it is illegal. Regulators have no legal authority to enforce guidance, and any

attempt to do so is an egregious abuse of power.

To make matters worse, thousands and thousands of guidance documents are constantly being produced. So instead of achieving their intended goal of providing clarity, they are making the waters even murkier.

With some regulators enforcing guidance while others do not, small businesses and entrepreneurs are falling deeper into the regulatory maze of the Federal Government.

The Guidance Clarity Act is a simple, straightforward solution. It ensures the first page of guidance documents includes a plain language statement declaring that guidance is not law, nor can it be legally enforced as law. This might seem like a small fix, but this critical statement clarifies for individuals, businesses, and regulators alike that guidance is meant to be helpful. It is a suggestion that can be put in place or disregarded.

It will help regulators do their jobs more efficiently and small businesses, who lack the resources to employ teams of expensive lawyers, to continue to strengthen our workforce and economy.

Mr. Speaker, I thank Chairwoman MALONEY and Ranking Member COMER for bringing the Guidance Clarity Act to the floor. I also thank Senator LANKFORD for getting the bill across the finish line in the Senate. This is a commonsense solution that will help American small business owners, who are the drivers of our economy and embodiment of the American Dream, do what they do best.

Mr. Speaker, I encourage my colleagues to vote in favor of the Guidance Clarity Act.

Mr. KELLER. Mr. Speaker, I have no further speakers, and I yield myself the balance of my time to close.

Mr. Speaker, thanks to the Guidance Clarity Act, small business owners and individuals across the country will soon have the confidence that agency guidance—however helpful and clarifying it may be—is not legally binding.

Mr. Speaker, I urge my colleagues to support this necessary bipartisan legislation, and I yield back the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I urge passage of S. 533, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) that the House suspend the rules and pass the bill, S. 533.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. ROSENDALE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

## CIVIL RIGHTS COLD CASE INVESTIGATIONS SUPPORT ACT OF 2022

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (S. 3655) to amend the Civil Rights Cold Case Records Collection Act of 2018 to extend the termination date of the Civil Rights Cold Case Records Review Board.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 3655

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Civil Rights Cold Case Investigations Support Act of 2022”.

### SEC. 2. CIVIL RIGHTS COLD CASE RECORDS REVIEW BOARD EXTENSION OF TERM.

Section 5(n)(1) of Civil Rights Cold Case Records Collection Act of 2018 (44 U.S.C. 2107 note; Public Law 115-426) is amended—

(1) by striking “4 years” and inserting “7 years”; and

(2) by striking “4-year period” and inserting “7-year period”.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) and the gentleman from Pennsylvania (Mr. KELLER) each will control 20 minutes.

The Chair recognizes the gentlewoman from New York.

#### GENERAL LEAVE

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on this measure.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 3655, a bill to amend the Civil Rights Cold Case Records Collection Act of 2018 to extend the termination date of the Civil Rights Cold Case Records Review Board.

I would like to begin by celebrating that this bill is bipartisan. It is co-led by Senators JON OSSOFF and TED CRUZ, and a companion bill was introduced in the House by my colleague, BOBBY RUSH of Illinois.

The Civil Rights Cold Case Records Collection Act of 2018 requires public disclosure of cold case files from the civil rights era that are still in the possession of Federal agencies. The 2018 law also created a review board tasked to review any agency decisions to delay public disclosure of civil rights cold case files within their possession.

As part of their examination, the review board will submit recommendations to the President, who has final decisionmaking authority over the public records disclosure. Under current law, the review board will be terminated by January of 2024.

This bill, S. 3655, revises the initial term of the board from 4 to 7 years with an optional extension year, if needed. The extension is critical because the work of the review board has been delayed.

The prior administration did not nominate members to the board when the bill was enacted in 2018. The current administration nominated board members in 2021, and all members were confirmed by February of 2022.

As a result of delays in nomination and confirmation of the review board members, S. 3655 provides the board additional time to complete its mission.

This bill has bipartisan support. In addition, the National Archives supports this bill because the extensions will ensure that review board members have enough time to complete their assignments.

Mr. Speaker, I encourage my colleagues to join me in support of the Civil Rights Cold Case Investigations Support Act, and I reserve the balance of my time.

Mr. KELLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in 2019, President Trump signed the Civil Rights Cold Case Investigations Support Act into law after it passed with broad bipartisan support in Congress.

The act directed the National Archives and Records Administration to make a collection of previously sealed civil rights cold case records available for public scrutiny. It also required the National Archives to establish a process for Federal agencies to transmit cold case records—older records from about 1940 to 1979—to the National Archives.

To do this, an independent agency review board was established to review the National Archives’ civil rights cold case records and evaluate which public record disclosures should be postponed.

The review board is also charged with investigating cold case records and requesting relevant documents held by government agencies and the courts be transferred to the National Archives. However, this board was not fully formed until this year, leaving the review board with less time than Congress intended before it terminates at the end of 2024.

The bill before us today, the Civil Rights Cold Case Investigations Support Act, will extend the review board’s term until 2027. This extension will allow the board to increase the volume of cold case documents made available to the public. This will enable journalists, students, and others to lend their expertise to help investigate and resolve unsolved civil rights cold cases.

According to the Department of Justice, about 115 civil rights cases remain unsolved, and the older the cases become, the less likely they will ever be solved.

The 2019 law was necessary to establish a specific process for addressing cold case records instead of having citizens rely on the Freedom of Information Act to directly request individual