have secured $2 million for them for homeless services, another $2 million for mental health services, and just this year almost a million to provide modular affordable housing.

□ 1215

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE SECURITIES AND EXCHANGE COMMISSION RELATING TO ''STAFF ACCOUNTING BULLETIN NO. 121''

Mr. MCHENRY. Mr. Speaker, pursuant to House Resolution 1194, I call up the joint resolution (H.J. Res. 109) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Securities and Exchange Commission relating to ''Staff Accounting Bulletin No. 121'', and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 1194, the joint resolution is considered read.

The text of the joint resolution is as follows:

H.J. RES. 109

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Securities and Exchange Commission relating to ''Staff Accounting Bulletin No. 121'' (87 Fed. Reg. 21015 (April 11, 2022) and a letter of opinion from the Government Accountability Office dated October 31, 2023 (which was printed in the Congressional Record on November 1, 2023, on pages S5310–5312), concluding that such Staff Accounting Bulletin is a rule under chapter 8 of title 5, United States Code), and such rule shall have no force or effect.

The SPEAKER pro tempore. The joint resolution shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their respective designees.

The gentleman from North Carolina (Mr. MCHENRY) and the gentlewoman from California (Ms. WATERS) will each control 30 minutes.

The chair recognizes the gentleman from North Carolina (Mr. MCHENRY).

GENERAL LEAVE

Mr. MCHENRY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and submit extraneous material on the joint resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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

Mr. Speaker, I rise in support of this bipartisan resolution of disapproval. This resolution is an essential effort to protect consumers and foster innovation in digital asset markets.

It is also critical to stop the Securities and Exchange Commission's regulatory power grabs and efforts to circumvent the Administrative Procedure Act.

I thank my friend Congressman FLOOD of Nebraska, a leader on financial innovation and digital asset policy, for introducing this bipartisan resolution.

Staff Accounting Bulletin 121, or SAB 121, is one of the most glaring examples of the current Securities and Exchange Commission's reign of overreach.

Through SAB 121, the Commission is trying to dictate how financial institutions and firms safeguard Americans' digital assets, in particular here, digital assets, under the guise of so-called staff guidance.

Let me explain why this is deeply concerning. Because they call it a staff guidance, the Securities and Exchange Commission could avoid public comment and the rulemaking process governed by the Administrative Procedure Act, or APA.

This is where the public gets to give an opinion back or expertise back to the agency so they can improve the rulemaking by listening to the public. This is a longstanding process here in the United States.

Not only did the Securities and Exchange Commission bypass Congress and the Comptroller General, but the Commission did not even consult with other financial regulators, prudential regulators responsible for overseeing banks prior to issuing SAB 121.

Thanks to the work of the House Financial Services Committee and my friend Senator LUMMIS, the GAO rightly deemed SAB 121 a rule for purposes of the Congressional Review Act, providing Congress with the opportunity to right the wrong of the agency action.

SAB 121 requires financial institutions and firms that are safeguarding their customers' digital assets to hold those assets on their balance sheet.

That means banks would be required to take on significant capital liquidity and other costs under the existing prudential regulatory framework.

This essentially makes it cost prohibitive for financial institutions to custody their customers' digital assets.

This is a massive deviation for how highly regulated banks are traditionally required to treat assets they hold on behalf of their customers.

Now, this is the point that everyone can understand. This is a change that harms consumers and makes them less protected. It is not a change for the better, clearly.

It limits the options for consumers and increases concentration risk to the financial system. Perhaps even worse, it could leave Americans' assets vulnerable in the event of a bank failure, just as we saw with Silicon Valley Bank last year.

If you want Americans' assets to be protected, they should be held in custody, not on a bank balance sheet. If you want Americans to be able to engage with digital assets safely and securely, banks, which are some of the most highly regulated entities in our country and in the world, are probably the best places for them to be kept. Unfortunately, SAB 121 makes this nearly impossible.

We hear a lot from our Democrat colleagues about consumer protection. If that concern is genuine, and I think it is, they should support Congressman FLOOD's bipartisan resolution before us today.

Let me give you one example of why this guidance is problematic. The Securities and Exchange Commission recently approved 11 Bitcoin ETFs, which allow everyday investors to gain exposure to this new technology. It is a decade old, but it is relatively new.

Of those 11, zero—and I repeat, zero—use banks as their primary custodian. Instead, all that risk is now concentrated in a few entities.

Let's do a quick recap. The Securities and Exchange Commission through Staff Accounting Bulletin 121 upended traditional custody practices.

Just like you hold a stock with a stockbroker, it is held in custody. That means if that entity goes bankrupt, your asset is still protected. It is held in custody and safeguarded as if it is in a safe.

We want digital assets to be treated the same way that we treat other assets and be protected. This staff accounting bulletin upends traditional custody practices for banking institutions and makes a joke of the rulemaking process and ignores other regulatory agencies and market participants that are impacted by this bulletin. That is a bad process with even worse policy outcomes.

If you want consumers to be protected in digital assets markets, vote ''yes'' on this resolution. If you want to return bank custody practices to the tried, tested, and successful approach that we have had in this country for centuries, then vote ''yes.'' If you support financial innovation, you should vote ''yes,'' as well.

Finally, if you want to send a message that rogue regulators cannot circumvent Congress and our well-established rulemaking process, vote ''yes.''

Let's bring a level of common sense into the world of the digital asset debate or crypto and bring consumer protection back to this marketplace where it needs to be.

I encourage my colleagues to vote ''yes'' on this Congressional Review Act.

Finally, I thank Congressman FLOOD on the Republican side and Congressman NICKEL on the Democrat side for their leadership on this important topic.

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

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

Mr. Speaker, I rise in strong opposition to H.J. Res. 109, a Congressional Review Act resolution that would overturn accounting guidance for crypto

assets from the Securities and Exchange Commission known as Staff Accounting Bulletin 121, or SAB 121.

The bill's sponsors have falsely asserted that this bill is meant to address a narrow concern from a particular special interest group, but, in reality, it is drafted in a way that is far broader than this narrow concern.

The collateral damage caused by this CRA resolution would be far-reaching, causing significant harm to investors, consumers, public companies, and the safety and soundness of our capital markets.

The bill takes a sledgehammer to fix an issue that may merely need a scalpel, and it does so because my colleagues on the other side of the aisle are not only interested in doing the bidding of special interest groups, they are also interested in attacking and undermining the SEC in every possible way, as they have done relentlessly since the beginning of this Congress.

SAB 121 is highly technical guidance, therefore, let me break it down simply. SAB 121 has been in place for 2 years, and it only applies to companies that hold crypto assets on behalf of their customers.

This is known as providing custody services. SAB 121 provides guidance for these companies in two respects.

First, it advises companies on how they should disclose crypto assets that they have in custody, and second, it advises companies on how they should record those crypto assets on their balance sheets.

The first prong of the guidance I described on disclosure of crypto assets is critical to providing transparency for investors and the public on volatile crypto assets.

This kind of transparency helps prevent the kind of fraud and mishandling of crypto assets that led to the collapse of major crypto companies like FTX. In fact, this disclosure guidance has been broadly supported by industry and advocate stakeholders alike.

The second prong of SAB 121 advises relevant companies on how to record crypto assets on their balance sheets.

Under the guidance, the amount of the liability should correspond to the fair value of the crypto assets they are obligated to safeguard.

This ensures that the company providing custody services has sufficient resources to secure these assets for the users against any theft, loss, or other misuse that could result in financial consequences.

The SEC has explained that this guidance is prudent due to the unique risks and uncertainties associated with crypto assets.

The sponsor of this resolution has tried to reason that this bill is meant to respond to a narrow concern from largely custody banks, but it really has much more far-reaching, negative consequences.

Specifically, this special interest group has raised concerns that the second prong of SAB 121 that I described on accounting mechanisms would interact with existing bank capital requirements in a way that would absolutely make it cost prohibitive for them to provide custody services for crypto assets.

To be clear, even this special interest group has expressed support for the disclosure guidance in SAB 121. They are only concerned about how the accounting guidance applies to their balance sheet.

In fact, a letter sent by the special interest group requests ''targeted modifications'' to address this concern.

Mr. Speaker, I include in the RECORD a letter from the Bank Policy Institute, the American Bankers Association, the Financial Services Forum, and the Securities Industry and Financial Markets Association.

FEBRUARY 14, 2024.

Hon. GARY GENSLER,
Chair, U.S. Securities and Exchange Commission, Washington, DC.

DEAR CHAIR GENSLER: The Bank Policy Institute (''BPI''), the American Bankers Association (''ABA''), the Financial Services Forum (''the Forum''), and the Securities Industry and Financial Markets Association (''SIFMA'') (collectively, the ''Associations'') write to request that the Securities and Exchange Commission (''Commission'') consider targeted modifications to Staff Accounting Bulletin No. 121 (''SAB 121'') to address recent policy developments and the challenges that SAB 121 has posed for U.S. banking organizations since it was issued on March 31, 2022.

As the two-year anniversary of the issuance of SAB 121 approaches, the Associations believe now would be an appropriate time to examine and discuss the implications of SAB 121 for regulated banking organizations. There have been several relevant developments during this two year period, including the GAO report issued in October, approval of certain Spot Bitcoin ETPs, and the SEC's proposed rule on Safeguarding Advisory Client Assets that would cover the custody of digital assets if finalized as proposed. The Associations believe that SAB 121 can be modified to mitigate the specific challenges identified herein without undermining the stated policy objectives of the Commission to enhance the information received by investors and other users of financial statements.

The Associations are happy to continue to serve as a resource and work collaboratively with the Commission to provide recommendations that would ensure that investors are provided the requisite disclosures while allowing responsible innovation to occur. The Associations and Commission share the common goals of ensuring the highest levels of investor protection and implementing policies that advance principles of market integrity and financial stability.

We believe the recommendations set forth in this letter are consistent with those principles and would remove unintended barriers for well-regulated U.S. banking organizations to engage in certain activities. Below we describe the drivers behind this request and suggest targeted modifications to SAB 121.

I. BACKGROUND

Since SAB 121 was issued in 2022, the Associations have articulated their concerns regarding the Bulletin to the Commission both in writing and in meetings with Commission staff. The foremost concern identified and discussed is how the on-balance sheet requirement of SAB 121 negatively impacts U.S. banking organizations and investors due to the associated prudential implications. The Associations have underscored that on-balance sheet treatment will preclude highly regulated banking organizations from providing a custodial solution for digital assets at scale. Moreover, the Associations have highlighted that the on-balance sheet requirement, coupled with the overly-broad definition of ''crypto-asset'' in SAB 121, will have a chilling effect on banking organizations' ability to develop responsible use cases for distributed ledger technology (DLT) more broadly.

U.S. banking organizations' experience over the past two years has confirmed that SAB 121 has curbed the ability of the Associations' members to develop and bring to market at scale certain digital asset products and services. In comparison, in-scope entities of SAB 121 other than U.S, banking organizations have not suffered the same effects. For example, digital asset custodial services are currently offered by various non-banking organizations, thereby keeping activity outside the prudential perimeter and avoiding the necessary oversight by regulators. Indeed, if regulated banking organizations are effectively precluded from providing digital asset safeguarding services at scale, investors and customers, and ultimately the financial system, will be worse off, with the market limited to custody providers that do not afford their customers the legal and supervisory protections provided by federally-regulated banking organizations. The Associations continue to urge the Commission to work with industry to adopt solutions that could mitigate the described challenges.

II. CONCRETE EXAMPLES OF THE IMPACT OF SAB 121 ON U.S. BANKING ORGANIZATIONS

The Associations highlight two specific examples of the negative impact of SAB 121 on banking organizations, investors, and the financial ecosystem:

(1) Spot Bitcoin ETPs: The Commission recently approved 11 Spot Bitcoin ETPs, allowing investors access to this asset class through a regulated product. However, notably absent from those approved products are banking organizations serving as the asset custodian, a role they regularly play for most other ETPs. These ETPs have already experienced billions of dollars in inflows, but it is practically impossible for banks to serve as custodian for those ETPs at scale due to the Tier 1 capital ratio and other reserve and capital requirements that result from SAB 121. This raises important questions about the safety and stability of this ecosystem. We believe that this result could raise concentration risk, as one nonbank entity now serves as the custodian for the majority of these ETPs. That risk can be mitigated if prudentially regulated banking organizations have the same ability to provide custodial services for Commission regulated ETPs as qualified nonbank asset custodians. SAB 121 does not appear to contemplate this type of concentration risk, in part perhaps because Spot Bitcoin ETPs or similar products were not an approved product at the time SAB 121 was issued.

(2) Use of DLT to record traditional financial assets: Banking organizations are increasingly exploring the use of DLT to record traditional financial assets, such as bonds. The use of DLT has the potential to expedite and automate payment, clearing, reconciliation and settlement services, and multiple central banks outside the United States are partnering with banks to explore the adoption of DLT. However, SAB 121 has proven to be a barrier to banking organizations' ability to meaningfully engage in

DLT-based projects due to the breadth of the definition of ''crypto-asset'' in SAB 121: ''a digital asset that is issued and/or transferred using distributed ledger or blockchain technology using cryptographic techniques.'' Under this definition, a traditional financial asset issued or transferred using DLT could be considered a ''crypto asset'' and thus within scope of SAB 121, regardless of the applicable risks. SAB 121 makes no distinction between asset types and use cases, but instead generally states that crypto-assets pose certain technological, legal, and regulatory risks requiring on-balance sheet treatment. However, there are significant differences between a cryptocurrency like Bitcoin that exists on a public, permissionless network versus a traditional financial instrument that is recorded on a blockchain network where access is controlled and transactions can be cancelled, corrected, or amended. The past two years have underscored these differences, as the turmoil in the crypto market has been wholly unrelated to banks' use of permissioned DLT. DLT does not change the underlying nature or risks of traditional assets, nor do they present the risks SAB 121 purports to address, and thus SAB 121's application to those assets should be reconsidered. Clear indication from the Commission that the use of DLT to record or transfer traditional financial assets is consistently outside the scope of SAB 121 would alleviate associated challenges.

III. PROPOSED MODIFICATIONS AND CLARIFICATIONS

The Associations request that the Commission consider the following targeted modifications to SAB 121 to address the above concerns:

Narrow the definition of ''crypto-assets'' to clarify and confirm the exclusion of certain asset types and use cases. SAB 121 is premised on the risks posed exclusively by cryptocurrencies, and traditional financial assets recorded or transferred using blockchain networks should be excluded because they do not present the same risks as cryptocurrencies; the use of DLT does not change the underlying nature or risk of traditional assets. Moreover, certain exclusions for products wherein the underlying activity relates to the offering of a Commission-approved product should be clarified.

Exempt banking organizations from on-balance sheet treatment but maintain the disclosure requirements: As described previously, SAB 121 answers three questions, and the Associations' and its members' are primarily concerned with the first question: how an entity should account for its obligations to safeguard crypto-assets (the on-balance sheet treatment). We do not object to the requirements imposed in the answer to the second question (disclosures in Fnancial statements). Exempting banking organizations from the on-balance sheet treatment but requiring them to make certain disclosures about their digital activity would mitigate the concerns raised by banking organizations without undermining the goal of SAB 121 to promote disclosures to investors. Balance sheet disclosure may be appropriate where the controls are not adequate to protect investors from the risk of custodied assets, which is not the case for banking organizations that are subject to robust oversight from the federal banking agencies. The required disclosures in the answer to the second question are broad and may include disclosures in the description of business, risk factors, and management's discussion and analysis of financial condition and results of operation, and such information will still ''enhance the information received by investors and other users of financial statements about these risks, thereby assisting them in making investment and other capital allocation decisions.''

IV. CONCLUSION

The Associations and their members appreciate your attention to the issues raised in this letter. Given the upcoming two-year anniversary of the issuance of SAB 121, certain policy developments, the experience of U.S. banking organizations, and the evolution in technology since the guidance was first issued, we believe it is an appropriate time to reflect on the intended goals of SAB 121. We request a meeting with you and Commission staff to discuss the issues and proposed modifications set forth above.

We appreciate the Commission's attention to this important topic and look forward to engaging with you further.

Respectfully submitted,

BANK POLICY INSTITUTE,
AMERICAN BANKERS ASSOCIATION,
FINANCIAL SERVICES FORUM,
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION.

Ms. WATERS. Mr. Speaker, this bill does far more than implement targeted modifications, as this letter proposes.

This CRA resolution would overturn all of SAB 121, not just the part that this special interest group has complained about.

Mr. Speaker, I am curious whether my colleagues on the other side of the aisle have actually read this letter from the special interest group that they are trying to pander to or whether they are bothered to consult the largest custody bank in the United States, the Bank of New York Mellon, which holds in custody more than $45 trillion in customer assets because they told me that they do not want this CRA and did not push for it in any way because they share our concerns about the bill being overly broad.

□ 1230

The consequences of using a CRA, rather than a more narrowly tailored bill, go beyond simply overturning SAB 121 entirely when the aforementioned concerns from special interests only have to do with one little piece of it.

If this resolution is passed, the SEC would be prohibited from issuing any guidance in the future that is substantially similar to this one, including disclosure guidance on this issue. This means that the SEC would not be able to simply turn around and narrowly address this one little concern while preserving the rest of the guidance. It also means that while the crypto industry clamors for the SEC to provide for clarity, this resolution would tie the SEC's hands, making it harder for them to provide the clarity that the industry purportedly wants.

I am further concerned that if this resolution is passed, industry and investors alike will no longer be able to receive timely guidance from the SEC staff, as this resolution is also intended to be a warning. Passing this resolution would have broad and negative consequences for all public companies and their investors, with implications for the entire securities market, not just crypto.

The SEC has issued numerous staff accounting bulletins. The one being repealed today is No. 121, which has helped companies understand how SEC rules apply in specific situations.

If the SEC were to pull back in this regard, it would be particularly harmful to smaller companies with less resources dedicated to compliance and could result in more enforcement actions as they struggle to understand how to best comply with SEC rules.

Chairman MCHENRY and I have worked well together to find common ground on crypto issues like stablecoins. However, instead of finding ways to work together, Republicans are recklessly pushing this harmful, partisan resolution.

Let us not forget, the SEC is our cop on the block and should be supported because they protect our investors.

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

Mr. MCHENRY. Mr. Speaker, I include in the RECORD the Government Accountability Office's October 31, 2023, decision on the ''Applicability of the Congressional Review Act to Staff Accounting Bulletin No. 121,'' which can be found online at: https://www.gao.gov/assets/870/862501.pdf.

The decision makes clear that the accusations that the ranking member is making about how broad this is are simply not the case. It is a very targeted removal of the staff accounting bulletin that broadly affects digital assets, not one bank.

Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska (Mr. FLOOD), the sponsor of the resolution and a leader on innovation on the Financial Services Committee and broader policy.

Mr. FLOOD. Mr. Speaker, I thank Chairman MCHENRY for yielding.

I am pleased to speak in support of my bipartisan resolution, H.J. Res. 109, a Congressional Review Act resolution for the SEC's Staff Accounting Bulletin No. 121, or SAB 121 for short.

I thank Congressman NICKEL and Senator LUMMIS for working with me on this resolution and for the chairman's leadership in getting this to the floor.

This is something of a complicated issue, as you have heard today, so I will break it down into a few different components.

First, I will begin by explaining what a staff accounting bulletin is. Staff accounting bulletins are technical accounting guidance for public entities. They are typically noncontroversial in nature and, importantly for this debate, are not rules. Guidance is not supposed to dictate a major change in policy. That is what our notice-and-comment rulemaking process is for.

This specific bulletin effectively requires banks to put digital assets held in custody on their balance sheet. Simply put, that is not how custody usually works.

As a Federal Reserve Chairman once said: ''Custody assets are off balance sheet, always have been.''

This bulletin upends custodial practice for banks, and it effectively keeps banks out of this market entirely. That is not good for consumers or investors.

Next, let's talk about the process, as the chairman has already mentioned. There were two major process fouls by the SEC in issuing SAB 121.

Number one, the SEC is not a bank regulator, and SAB 121 affects a core banking activity: custody. Yet, the SEC issued this bulletin without even talking to the regulators first. Think about that. The SEC issued this without even talking to the prudential regulators. That is an incredible oversight, particularly given the bulletin's unusual treatment of custodial assets.

Number two, the nonpartisan Government Accountability Office determined that this bulletin is effectively a rule. In other words, the SEC got caught trying to circumvent the APA and the due diligence requirements that come with it.

Now, let's talk about solutions. The easiest way to fix this problem is for the SEC to simply rescind the bulletin themselves and work with the prudential regulators on an alternate solution.

Despite the fact that this bulletin was issued through a faulty process and despite the negative ramifications of keeping banks from taking custody of retail investor assets, the SEC has been unwilling to have any conversation about making changes.

That leaves us with no choice. Congress needs to act through the Congressional Review Act to rescind SAB 121.

Finally, let me briefly address an argument that Ranking Member WATERS and some of my Democratic colleagues have made on this issue. I have heard this argument that the CRA should not be applied to an accounting bulletin, but let's contemplate the alternative. What are the implications if we fail to pass this resolution?

This is an instance where the nonpartisan GAO outright said the SEC circumvented the proper regulatory process.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MCHENRY. Mr. Speaker, I yield an additional 1 minute to the gentleman from Nebraska.

Mr. FLOOD. Mr. Speaker, think about why the Congressional Review Act was passed in the first place: to give Congress the ability to check a regulator that has gone astray. If we don't pass this resolution, we are effectively giving the green light to our regulators to bypass the APA rulemaking process with impunity.

This isn't just about the SEC or bank custody. This is about providing a necessary check to executive branch power. Regardless of your feelings on the banking policy or the SEC, I urge my colleagues to support this resolution for the sake of upholding the authority of the institution we serve in.

Mr. Speaker, I include in the RECORD four letters.

Number one is a letter dated April 27, 2023, sent by Fed Vice Chair Michael Barr to Senator LUMMIS, discussing the impact of SAB 121 on Fed-regulated financial institutions.

Number two is a letter dated April 18, 2023, sent by FDIC Chairman Gruenberg to Chairman MCHENRY and Senator LUMMIS, in response to their March 2, 2023, letter.

Number three is a letter dated February 28, 2024, sent by the Conference of State Bank Supervisors to Chairman MCHENRY and Ranking Member WATERS, outlining the unintended effects SAB 121 could pose on consumers and markets.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, DC, April 27, 2023.

Hon. CYNTHIA M. LUMMIS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: Thank you for your letter dated March 2, 2023, regarding the Securities and Exchange Commission (SEC) Staff Accounting Bulletin 121 (''SAB 121'') published on April 11, 2022.

As you know, the Federal Reserve is not responsible for the general accounting policy for public companies and, as such, Federal Reserve staff were not consulted by the SEC regarding the development and issuance of SAB 121. For accounting and reporting purposes under U.S. generally accepted accounting principles (GAAP), assets held in custody are generally not recognized on the custodian's balance sheet—as the custodian does not control the assets—and we defer to the SEC on these matters. However, I would note that state member banks may provide safekeeping services, in a custodial capacity, for crypto-assets if conducted in a safe and sound manner and in compliance with consumer, anti-money laundering, and anti-terrorist financing laws.

By law, regulatory reports and statements required to be filed with Federal banking agencies by all insured depository institutions must be uniform and consistent with U.S. GAAP. In light of SAB 121, the Federal Financial Institutions Examination Council (FFIEC) issued supplemental instructions to the Call Report related to SAB 121. The supplemental instructions state that an institution that determines that it is appropriate for it to apply SAB 121 for SEC or other financial reporting purposes should complete its Call Report consistent with the classification determination made for SEC or other financial reporting purposes. Institutions are encouraged to consult with SEC staff on the scope and applicability of SAB 121.

The Basel Committee's prudential treatment of crypto-asset exposures applies to various types of exposures to banks, such as exposures held as securities on balance sheet or through derivatives. However, the Basel standard does not generally apply to custodial assets.

The Federal Reserve continues to take a careful and cautious approach related to current or proposed crypto-asset-related activities at each banking organization and will continue to ensure that legally permissible activities are conducted in a manner that is safe and sound, and in compliance with applicable laws and regulations, including those designed to protect consumers.

Sincerely,

MICHAEL S. BARR.

FEDERAL DEPOSIT
INSURANCE CORPORATION,
Washington, DC, April 18, 2023.

Hon. CYNTHIA M. LUMMIS,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. PATRICK MCHENRY,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR SENATOR LUMMIS AND CHAIRMAN MCHENRY: Thank you for your letter of March 2, 2023, to the Federal Deposit Insurance Corporation (FDIC) regarding the accounting and regulatory capital implications of the Securities and Exchange Commission (SEC) Staff Accounting Bulletin 121 (SAB 121).

FDIC staff was not consulted by the SEC before the issuance of SAB 121 and has not been advised of any plans by the SEC to modify or withdraw SAB 121. By law, regulatory reports and statements required to be filed with Federal banking agencies by all insured depository institutions must be uniform and prepared in a manner that is no less stringent than U.S. generally accepted accounting principles (GAAP). In accordance with U.S. GAAP, assets held in custody are generally not recognized on the custodian's balance sheet, because custodial assets provide no economic benefit to the custodian and the custodian does not control the assets.

Beginning in June 2022, the Federal Financial Institutions Examination Council, of which the FDIC is a member, issued Supplemental Instructions for the Consolidated Reports of Condition and Income (Call Report). Those instructions state: ''An institution that determines that it is appropriate for it to apply SAB 121 for SEC or other financial reporting purposes should complete its Call Report consistent with the classification determination made for SEC or other financial reporting purposes.'' The FDIC encourages institutions to consult with SEC staff on the scope and applicability of SAB 121. Reporting custodial assets on-balance sheet in accordance with SAB 121 would be no less stringent than U.S. GAAP.

The Basel Committee on Banking Supervision (BCBS) published its final standard on the prudential treatment of crypto-asset exposures in December 2022. The BCBS standard outlines that consistent with the leverage ratio standard, crypto-assets are included in the leverage ratio exposure measure according to their value for financial reporting purposes, based on applicable accounting treatment for exposures that have similar characteristics. The standard states that crypto-asset exposures include on- or off-balance sheet amounts that give rise to credit, market, operational and/or liquidity risks. Certain parts of the standards, such as those related to operational risk, are also applicable to banks' crypto-asset activities. The FDIC does not view the BCBS standard as being in conflict with the SEC's SAB 121, although the agency does acknowledge that the SEC's SAB 121 would require institutions to hold capital against custodied crypto-assets.

The FDIC continues to actively monitor activities associated with digital asset by regulated banking organizations that includes digital asset custodial activities. The FDIC will continue to ensure that legally permissible activities are conducted in a safe and sound manner and in compliance with applicable laws and regulations, including those designed to protect consumers.

Your interest in this matter is appreciated. If you have additional comments or questions, please contact me or Andy Jiminez, Director, Office of Legislative Affairs.

Sincerely,

MARTIN J. GRUENBERG.

CSBS,
Washington, DC, February 28, 2024.

Hon. PATRICK MCHENRY,
Chairman, House Financial Services Committee, Washington, DC.
Hon. MAXINE WATERS,
Ranking Member, House Financial Services Committee, Washington, DC.

CHAIRMAN MCHENRY AND RANKING MEMBER WATERS: On behalf of the Conference of State Bank Supervisors, I write to relay our concerns with the U.S. Securities and Exchange Commission's (SEC) Staff Accounting Bulletin 121 (''SAB 121,'' or ''the Bulletin''). The Bulletin, issued without public consultation, unilaterally upends traditional custodial accounting obligations. As written, SAB 121 could lead to significant downstream effects for custodial firms subject to prudential regulation.

State regulators strongly support appropriate customer protections and a safe and sound financial system. Further, we appreciate the SEC's effort to provide guidance concerning novel activities such as custodial services for ''crypto-assets.'' However, decisions with wide-ranging implications across the banking sector should be made in consultation with prudential regulators at both the state and federal level and only after an opportunity for public notice-and-comment. As the Government Accountability Office (GAO) ruled in October 2023, SAB 121 qualifies as a rule under the Administrative Procedure Act (APA) and, as such, should have been made available for public comment.

While custodial activities may have once elicited images of only safe deposit boxes holding valuable physical objects, today's banks hold a variety of both physical and electronic assets. More recently, bank customers have been increasingly interested in banks' ability to custody crypto-assets, including cryptographic keys. While the nature of the underlying assets may change and prudential risk management requirements may vary from asset to asset, the accounting and regulatory principles applicable to such custodial assets should be consistent. In unilaterally departing from well-established accounting principles for safeguarding custodial crypto-assets, SAB 121 ignores existing regulatory frameworks in place to ensure custodial activity is conducted in a safe and sound manner.

Failure to take public comment or consult with other regulators on a cross-jurisdictional issue like this could result in substantial unintended consequences. Two areas of potential side effects from this opaque rulemaking include:

Potential Asset Concentration. The Bulletin requires on-balance sheet accounting of crypto-assets under custody, which is a significant departure from the treatment of other assets held under custody. Due to the prudential regulatory implications of on-balance sheet accounting, this would likely require custodial institutions to raise significant funds to maintain adequate leverage ratios—a step many industry participants have indicated would be prohibitive to providing these custodial services for customers. Not only is this model inconsistent with the principle that similar activities should be regulated in a similar manner, but it could also result in an unnecessary and potentially risky concentration of custodial assets outside of prudentially regulated institutions.

Loss of Insolvency Protections for Customers. Applying on-balance sheet treatment for crypto-assets may inappropriately subject customer assets to creditors' claims in the event of the insolvency of an institution offering custody products and services. In a traditional bankruptcy proceeding, assets accounted for on-balance sheet are typically subject to creditor claims. Conversely, assets held in custody for the benefit of customers are considered accounted for off-balance sheet—and thus protected in bankruptcy—because they remain the assets of the customer. Requiring custodied crypto-assets to be accounted for on-balance sheet risks losing the bankruptcy remote protections of custody services. This is an important distinction from the treatment for a broker-dealer that would be subject to a different form of bankruptcy under the Securities Investor Protection Act.

These are only two unintended side effects that SAB 121 could impose on markets and consumers in an evolving technological environment.

History repeatedly demonstrates the shortcomings of rulemaking in a vacuum. Without significant consultation with peer regulators and comments from the broader public, these types of missteps are all too common, particularly with new and innovative technologies. We support robust consumer and market protections in this growing and evolving asset class and stand ready to provide Congress and our federal regulatory partners with our experience and expertise. However, given the lack of adequate consultation and opportunity for public comment, and the potential for significant detrimental effects, we have significant concerns with SAB 121.

Sincerely,

BRANDON MILHORN,
President and CEO.

Mr. FLOOD. Mr. Speaker, number four is a letter dated February 29, 2024, sent by the American Bankers Association to Chairman MCHENRY and Ranking Member WATERS, expressing support for H.J. Res. 109.

AMERICAN BANKERS ASSOCIATION,
Washington, DC, February 29, 2024.

Re Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Securities and Exchange Commission relating to ''Staff Accounting'' Bulletin No. 121'' (H.J. Res. 109).

Hon. PATRICK MCHENRY,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.
Hon. MAXINE WATERS,
Ranking Member, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR CHAIRMAN MCHENRY AND RANKING MEMBER WATERS: The American Bankers Association (ABA) welcomes and supports H.J. Res. 109, the Congressional Review Act resolution of disapproval for the Securities and Exchange Commission ''Staff Accounting Bulletin 121.'' which was recently introduced by Reps. MIKE and FLOOD (R–NE) and WILEY NICKEL (D–NC).

ADVERSE IMPACT OF SAB 121 ON BANK DIGITAL ASSET PRODUCTS AND SERVICES

In March 2022, the Securities and Exchange Commission (SEC) released Staff Accounting Bulletin 121 (SAB 121) to address perceived risks to publicly traded companies that safeguard crypto assets for their customers. Under SAB 121, an entity responsible for safeguarding cryptocurrency assets for platform users must present a liability on its balance sheet at fair value to reflect that obligation, as well as a corresponding asset. SAB 121 is a departure from the banking industry's historical practice of treating custody assets off-balance sheet, and this accounting treatment effectively precludes banks from offering digital asset custody at scale since placing the value of client assets on balance sheet will impact prudential requirements such as capital, liquidity, and other mandates.

On February 14, 2024, ABA joined with several other financial trades in a joint letter to the SEC. In the letter, we noted that U.S. banking organizations' experience over the past two years with SAB 121 shows that it has curbed the ability of our members to develop and bring to market at scale certain digital asset products and services. We gave two concrete examples:

(1) Spot Bitcoin ETPs

The Commission recently approved Spot Bitcoin Exchange Traded Products (ETPs), allowing investors access to this asset class through a regulated product. However, notably absent from those approved products are banking organizations serving as the asset custodian, a role they regularly play for most other ETPs. These ETPs have already experienced billions of dollars in inflows, but it is practically impossible for banks to serve as custodian for those ETPs at scale due to the Tier 1 capital ratio and other reserve and capital requirements that result from SAB 121. This raises important questions about the safety and stability of this ecosystem.

We believe that this result could raise concentration risk, as one nonbank entity now serves as the custodian for the majority of these ETPs. That risk can be mitigated if prudentially regulated banking organizations have the *same ability* to provide custodial services for Commission regulated ETPs as qualified nonbank asset custodians. SAB 121 does not appear to contemplate this type of concentration risk, in part perhaps because Spot Bitcoin ETPs or similar products were not an approved product at the time SAB 121 was issued.

(2) Use of DLT to record traditional financial assets

Banking organizations are increasingly exploring the use of Distributed Ledger Technology (DLT) to record traditional financial assets, such as bonds. The use of DLT has the potential to expedite and automate payment, clearing, reconciliation and settlement services, and multiple central banks outside the United States are partnering with banks to explore the adoption of DLT. However, SAB 121 has proven to be a barrier to banking organizations' ability to meaningfully engage in DLT-based projects due to the breadth of the definition of ''crypto-asset'' in SAB 121: ''a digital asset that is issued and/or transferred using distributed ledger or blockchain technology using cryptographic techniques.''

Under this definition, a traditional financial asset issued or transferred using DLT could be considered a ''crypto asset'' and thus within scope of SAB 121, regardless of the applicable risks. SAB 121 makes no distinction between asset types and use cases, but instead generally states that crypto-assets pose certain technological, legal, and regulatory risks requiring on-balance sheet treatment. However, there are significant differences between a cryptocurrency like Bitcoin that exists on a public, permissionless network versus a traditional financial instrument that is recorded on a blockchain network where access is controlled and transactions can be cancelled, corrected, or amended.

The past two years have underscored these differences, as the turmoil in the crypto market has been wholly unrelated to banks' use of permissioned DLT. DLT does not change the underlying nature or risks of traditional assets, nor do they present the risks SAB 121 purports to address, and thus SAB 121's application to those assets should be reconsidered. Clear indication from the Commission that the use of DLT to record or transfer traditional financial assets is consistently outside the scope of SAB 121 would alleviate associated challenges.

In the February 14 letter, we made several recommendations for changes to SAB 121

that would mitigate the specific challenges identified above without undermining the stated policy objectives of the SEC to enhance the information received by investors and other users of financial statements. We also asked for a meeting to discuss those changes, but as yet have not had a response from the SEC.

ADVERSE CONSEQUENCES FOR CONSUMERS

Banks have long provided safe and well-regulated custody services to investors for securities and other assets. However, the implications of SAB 121 mean few banks are currently offering custody services for digital assets, leaving consumers with few options for a safe, well-regulated custody service for digital assets.

In fact, many have turned to non-bank market entrants that are not subject to prudential regulation and examination and are not subject to robust capital and liquidity requirements. This unregulated activity can expose consumers and counterparties to significant harm.

CONCLUSION

We applaud Representatives Flood and Nickel for their leadership on this important issue. The SEC's Staff Accounting Bulletin 121 represents a significant departure from longstanding accounting treatment for custodied assets and threatens the banking industry's ability to provide its customers with safe and sound custody of digital assets, Limiting banks' ability to offer these services leaves consumers with few well-regulated, trusted options for their digital asset portfolios and ultimately exposes them to risk.

We encourage you and your membership to favorably report this resolution out of the Committee. We would be pleased to meet with you and your staff to discuss how Staff Accounting Bulletin 121 inhibits consumer access to safe, sounds access to digital asset custody services.

Sincerely,

KIRSTEN SUTTON,
EXECUTIVE VICE PRESIDENT,
American Bankers Association.

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

This is my response to the gentleman from Nebraska. My Republican colleagues have claimed that the SEC failed to consult with prudential regulators on SAB 121, but if this resolution is passed, the SEC will effectively be barred from consulting with prudential regulators in order to issue revised guidance on this matter.

Again, the plain consequences of this bill do not match the purported goals of the bill's sponsor and supporters. If Republicans wanted the SEC to consult with prudential regulators and reissue modified guidance, they should do that. This bill does the opposite. It actually prevents the SEC from consulting with prudential regulators in order to reissue modified guidance.

Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. SHERMAN), who is also the ranking member of the Subcommittee on Capital Markets.

Mr. SHERMAN. Mr. Speaker, the crypto industry comes before our committee almost every week saying: We want clarity. Then the SEC provides the clarity. Now, the friends of crypto are here to abolish the clarity, to not only take away release 121, which requires that the custodians of crypto indicate that on the balance sheet, but to prevent the SEC from issuing a revised version of 121 that could call for that same disclosure to be made in footnotes.

It is very clear to me, as co-chair of the bipartisan CPA Caucus, that the financial statements must reflect the incredible risk that banks take when they become custodians of billions and hundreds of billions of dollars, supposedly, worth of crypto.

Now, why the uniqueness of crypto? We have seen Sam Bankman-Fried. He was the face of crypto. He is now facing only a quarter century in jail, which seems rather light. The crypto industry would tell us that Sam Bankman-Fried was just a single snake in the crypto Garden of Eden. The fact is, we have learned since Sam Bankman-Fried's indictments that crypto is a garden of snakes. It is uniquely problematic. Why is that? Because crypto's whole purpose is to facilitate evading American law and to help criminals. Who does it attract? It attracts criminals.

What is the comparative advantage that crypto has as it attempts to become a currency and partially displace the dollar and the euro? Is it more stable? Certainly not. Is it more useful to buy something? You can go to Rayburn and buy a sandwich for $1—well, okay, $8, but you can't buy a sandwich anywhere in this complex for a bitcoin. It is not a better medium of exchange. It is not a better measure of value. What advantage does it have? It is secret.

Now, the best way to have their secrecy is to have the iceberg above the water be available and visible and then to have under the water seven-eighths of the crypto subject to being hidden from the know-your-customer and anti-money-laundering laws.

So how can the crypto compete with the dollar, aspire to become a currency, and compete with the best currency in the world? By tapping into the markets that don't want to be surveilled by the U.S. Government. What are those? Obviously, the sanctions evaders, the drug dealers, and the human traffickers, but that is not a big enough market for crypto. They want the tax evasion market.

The IRS Commissioner under Donald Trump testified that we are losing a trillion dollars in revenue. That means that those who are cheating on taxes, almost all at the high end of the spectrum, have to hide $3 trillion of income each and every year. That is $30 trillion of hidden income every decade. They can't do it with U.S. dollars, so crypto is designed to fill that need.

Now, if you think it will be successful in doing that and you want to bet against America and facilitate the undermining of American laws while perhaps making a profit, you can buy crypto, but it is an asset whose very nature creates an additional risk. That risk needs to be shown in the financial statements of the custodian. This resolution would prevent the SEC from causing that to be disclosed either on the balance sheet or in the footnotes.

□ 1245

If you doubt what the purpose is of crypto, then look at their latest invention: the mixer.

What is the mixer?

It is designed to mix up law enforcement. It is a facility available to every crypto owner to disguise their transactions and to hide from American law enforcement.

Not only that, of course, crypto aspires and claims that they will partially displace the dollar as the reserve currency. If it does that, that will be a tremendous decline in America's power in the world and the American economy.

So I see no reason for us to have rules that hide this risk from the shareholders of the custodian.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. WATERS. Mr. Speaker, I yield an additional 1 minute to the gentleman from California.

Mr. SHERMAN. I see no reason for us to hide from those who are looking at bank balance sheets the unique risk that they take in order to facilitate a crypto ecosystem whose sole purpose and whose strategy is to defeat the American Government whether it tries to collect taxes or enforce our sanctions.

Mr. Speaker, if you have any doubt, look at what the proponents, the visionaries, behind crypto say. They say that they are innovative. They are trying to innovate a way to make sure that America cannot enforce its sanctions, cannot deal with drug dealers, cannot enforce its taxes, and, oh, by the way, particularly useful to Sam Bankman-Fried, cannot enforce its bankruptcy laws.

Mr. MCHENRY. Mr. Speaker, I would say to my colleagues that if they want to fix the Sam Bankman-Fried FTX fraud and their ability to do that again, then you need to pass the bill that we produced out of committee that regulates crypto and provides regulatory agencies power.

Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma (Mr. LUCAS), who is the chairman of the Science Committee and a great leader on the Financial Services Committee.

Mr. LUCAS. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker, I support this bipartisan CRA to overturn the SEC's Staff Accounting Bulletin 121.

SAB 121 has removed a bank's ability to offer custodial services for digital assets and has prevented banks from exploring the use of distributed ledger technologies.

The SEC issued SAB 121 unilaterally, outside the rulemaking process, and without the consultation of the banking regulators.

This policy is not for the SEC to decide, and certainly not for the SEC to

dictate through a broad interpretation of accounting practices.

The cost of and the availability of capital is dependent on the U.S. banking system's ability to adapt to new technologies and to compete in offering innovative products and services. SAB 121 has put up barriers to that essential responsibility.

This CRA is an important correction to the SEC's misstep. I thank Congressman FLOOD and Congressman NICKEL for leading this effort.

Ms. WATERS. Mr. Speaker, I include in the RECORD a Statement of Administration Policy from the White House.

STATEMENT OF ADMINISTRATION POLICY

H.J. RES. 109—CONGRESSIONAL DISAPPROVAL OF ''STAFF ACCOUNTING BULLETIN NO. 121'' ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION—REP. FLOOD, R–NE, AND FOUR COSPONSORS

The Administration strongly opposes passage of H.J. Res. 109, which would disrupt the Securities and Exchange Commission's (SEC) work to protect investors in crypto-asset markets and to safeguard the broader financial system. H.J. Res. 109 would invalidate SEC Staff Accounting Bulletin 121 (SAB 121), which reflects considered SEC staff views regarding the accounting obligations of certain firms that safeguard crypto-assets. Moreover, as explained in staff's accompanying release, SAB 121 was issued in response to demonstrated technological, legal, and regulatory risks that have caused substantial losses to consumers. By virtue of invoking the Congressional Review Act, it could also inappropriately constrain the SEC's ability to ensure approriate guardrails and address future issues related to crypto-assets including financial stability. Limiting the SEC's ability to maintain a comprehensive and effective financial regulatory framework for crypto-assets would introduce substantial financial instability and market uncertainty.

If the President were presented with H.J. Res. 109, he would veto it.

Ms. WATERS. The President states that the resolution before us would ''disrupt the Securities and Exchange Commission's work to protect investors in crypto-asset markets and to safeguard the broader financial system.''

This statement not only explains how terrible this resolution is, but that the President of the United States of America will veto it.

Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. LYNCH) who is also the ranking member of the Subcommittee on Digital Assets, Financial Technology and Inclusion.

Mr. LYNCH. Mr. Speaker, I rise in strong opposition to H.J. Res. 109.

This misguided resolution would eliminate the Securities and Exchange Commission's Staff Accounting Bulletin 121. This nonbinding, interpretive guidance advises companies that are holding crypto assets in custody for customers to record those assets as liabilities on their balance sheets. It also recommends that companies disclose the nature and the amount of their crypto-asset holdings. Simply put, it advises caution and transparency regarding crypto because it is so volatile.

The disapproval of SAB 121 would have severe consequences in the U.S. financial services industry and be especially dangerous for banks, depositors, investors, and consumers. As underscored in the bulletin, the safeguarding of crypto assets presents unique technological, regulatory, and legal risks that could significantly impact a company's financial condition and its operations. For this same reason, the bulletin seeks to ensure that investors are informed about these risks in making investment and other capital allocation decisions.

The failure of Silicon Valley Bank, Signature Bank, First Republic Bank, and others have shown us that nervous depositors can cause a run on bank assets when crypto assets become unstable. They can also move money in the blink of an eye, which makes these banks less stable and subject to failure.

With the collapse of FTX, the violation of Federal anti-money laundering and sanctions laws by Binance, and legal issues facing several other crypto companies, Staff Accounting Bulletin 121 serves to protect investors.

Crypto is now in its 17th year, yet the primary use cases for crypto continue to be money laundering, tax avoidance, cybercriminal ransomware payments, and terrorist finance.

Regrettably, crypto has become a truly perfect example of a textbook case of an elegant idea that is being continually savaged by an ugly gang of facts.

Regrettably, the Republican leadership's efforts to curtail SEC regulation in the crypto sector are now even extending to staff bulletins that are simply advisory and designed to publicize staff views regarding accounting-related disclosure practices.

This resolution also undermines the practice of issuing Staff Accounting Bulletins for the benefit of small investors and firms that may not have the resources to engage directly with the SEC and obtain an individual opinion or advice.

As ranking member of the Digital Assets Subcommittee for the House Financial Services Committee, I urge my colleagues to vote ''no.''

Mr. MCHENRY. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky (Mr. BARR), who is the chair of the Subcommittee on Financial Institutions and Monetary Policy on the Financial Services Committee.

Mr. BARR. Mr. Speaker, I thank the chairman for his leadership on this issue.

Mr. Speaker, I stand in front of you today to support my friend and colleague from Nebraska (Mr. FLOOD) and his CRA resolution to nullify the SEC's Staff Accounting Bulletin Number 121 which would eviscerate financial institutions' ability to provide custodial services for digital asset firms.

In theory, under SAB 121, a bank could custody digital assets. However, the conditions set forth by SAB 121 make it impractical for any bank. This very fact has been noted by Federal Reserve Board Chair Powell who acknowledged it shifts away from traditional custodial practices as custodial assets receive off-balance-sheet treatment.

SAB 121 overturns decades of precedent regarding the accounting assets for banks. If a bank decides to custody digital assets and adhere to SAB 121, then the on-balance-sheet requirement would have significant capital, liquidity, and other prudential consequences. This makes it difficult, at best, for regulated institutions to safeguard digital assets.

The fact is that technological, legal, and regulatory risks cited in SAB 121 are already addressed by the legal and regulatory framework that applies to banks' custodial activities. Yet, SAB 121 did not account for that.

Moreover, and disturbingly, the SEC did not consult with any of the prudential regulators before issuing this flawed guidance. Unfortunately, the failure to consult the regulators overseeing institutions that are largely impacted by an SEC proposal has become quite common under Chair Gensler.

The SEC does not have the expertise to assess the same risks as the prudential regulators, and it is not the role of Gary Gensler to propose misguided rulemakings and guidance that may have major adverse implications to the functioning of our financial institutions, and ultimately to the safety and soundness of our financial system.

Given the implications for financial institutions' ability to safeguard assets under this rule and the clear lack of understanding regarding their prudential standards and guidance from their primary regulators, this rule is fatally flawed.

The fact of the matter is to the extent there is concern about a lack of regulation, if there is concern about a lack of regulatory clarity or risk with crypto, then we should not make it impossible, as a practical matter, for well-regulated banks to protect Americans who own digital assets with custody services.

Mr. Speaker, if you want to protect customers and if you want to protect investors in digital assets, then we shouldn't be pushing crypto transactions into less transparent and more opaque, riskier offshore places, but that is exactly what SAB 121 would do.

I have to address this issue. Silicon Valley Bank's failure had to do with deposit concentration risk and interest rate mismanagement. It had nothing to do with the fact that many of its customers were technology firms or worked in the blockchain space. It had nothing to do with that. That is a red herring.

This is why I support Mr. FLOOD's measure, I support the bipartisan work, and I encourage my colleagues to support it as well.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MCHENRY. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Kentucky.

Mr. BARR. Mr. Speaker, I thank the gentleman for yielding.

In conclusion, Mr. Speaker, I include in the RECORD a letter dated March 2, 2023, cosigned by Chairman MCHENRY and Senator LUMMIS sent to the Fed, OCC, FDIC, and NCUA asking them about SAB 121's impact on regulated entities, and also asking if they were consulted prior to SAB 121's issuance.

CONGRESS OF THE UNITED STATES,
Washington, DC, March 2, 2023.

Re Prudential Impact of Staff Accounting Bulletin 121.

Hon. MICHAEL BARR,
Vice Chair for Supervision, Board of Governors of the Federal Reserve System, Washington, DC.
Mr. MICHAEL HSU,
Acting Comptroller, Office of the Comptroller of the Currency, Washington, DC.
Hon. MARTY GRUENBERG,
Chairman of the Board, Federal Deposit Insurance Corporation, Washington, DC.
Hon. TODD HARPER,
Chairman of the Board, National Credit Union Administration, Alexandria, VA.

DEAR VICE CHAIR BARR, CHAIRMAN GRUENBERG, CHAIRMAN HARPER, AND MR. HSU: We write regarding Securities and Exchange Commission (SEC) Staff Accounting Bulletin 121 (''SAB 121'') published on April 11, 2022. SAB 121 was intended to clarify the accounting treatment of digital assets safeguarded by custodians, exchanges, and other platforms engaged in digital asset activities. However, SAB 121 places customer assets at greater risk of loss if a custodian becomes insolvent or enters receivership, violating the SEC's fundamental mission to protect customers.

Our concern stems from SAB 121's directive that companies recognize a liability and a corresponding offset on their balance sheets, measured at the fair value of the customer custodial digital assets. A recent decision in the Celsius bankruptcy, which classified all Celsius' customers as unsecured creditors, and therefore at the back of the line to recover their assets, highlights the legal risk of effectively forcing customer custodial assets to be placed on balance sheet. Additionally, SAB 121 upends decades of precedent regarding the accounting treatment of custodial assets for banks, credit unions and other regulated financial institutions.

Federal Reserve Board Chair Powell noted this shift away from traditional custodial practices in testimony before the Senate Banking Committee on June 22, 2022. Typically, custodial assets receive off-balance sheet accounting treatment. This is largely because customers retain ownership of their custodial assets and financial institutions are not permitted to conduct proprietary trading with customer assets. As emphasized in comment letters, SAB 121 ''deviates from existing accounting treatment of safeguarded assets held in a custodial capacity, which does not result in assets or liabilities reported on the custodian's balance sheet.''

Furthermore, the breadth of the ''digital asset'' definition in SAB 121 covers any ''digital asset that is issued and/or transferred using distributed ledger or blockchain technology using cryptographic techniques.'' The scope of assets covered by this broad definition, whether virtual currency, stablecoins, or even tokenized equities, is unclear. This is concerning because a more nuanced hierarchy for this asset class which considers the opportunities and risks of digital assets with different functions is necessary. For example, the Bank for International Settlements' Prudential Treatment of Crypto Assets framework differentiates between various types of digital assets for bank capital purposes.

Since SAB 121 purports to require banks, credit unions and other financial institutions to effectively place digital assets on their balance sheets, it would trigger a massive capital charge. This in turn is likely to prevent these prudentially regulated entities from engaging in digital asset custody. To the contrary, we should be encouraging prudentially regulated financial institutions, like banks and credit unions, to provide digital asset services precisely because they are subject to the highest standards of capital, liquidity, recovery and resolution, custody, cyber-security, and risk management.

In sum, the effect of SAB 121 is to deny millions of Americans access to safe and secure custodial arrangements for digital assets. For these reasons, please respond to the following questions regarding the impact of SAB 121 on banks, credit unions, and other financial institutions:

(1) Was your agency contacted by the SEC prior to the issuance of SAB 121? If so, please identify the staff members consulted by the SEC and provide copies of written feedback, if any, provided to SEC staff.

(2) Has the SEC indicated that it will modify or withdraw SAB 121 in light of widespread comments that the Bulletin is flawed?

(3) What are the legal and supervisory reasons off-balance sheet treatment of custodial assets has historically been the norm for banks and credit unions?

(4) Has your agency directed banks and other financial institutions within your jurisdiction to comply with the terms of SAB 121 for the purposes of capital adequacy, business plan change approvals, reporting and other supervisory matters? If not, do you plan to do so?

(5) Does SAB 121 conflict with your agency's input regarding the Basel Committee on Bank Supervision's Prudential Treatment for Crypto Asset exposures, in so far as the definition of ''digital asset'' under SAB 121 also encompasses Group 1a, Group 1b, and Group 2 digital assets under the Prudential Treatment framework?

(6) Do you agree that the capital charge for banks, credit unions, and other financial institutions under SAB 121 is prohibitive?

(7) Do you agree that SAB 121 potentially weakens consumer protection by preventing well-regulated banks, credit unions, and other financial institutions from providing custodial services for digital assets?

We would appreciate a response no later than March 16, 2023. Thank you for your attention to this matter.

Sincerely,

SEN. CYNTHIA M. LUMMIS,
Senate Banking Committee.
REP. PATRICK MCHENRY,
Chairman, House Financial Services Committee.

Mr. BARR. Mr. Speaker, I include in the RECORD a letter dated April 6, 2023, sent by OCC Acting Comptroller Hsu to Chairman MCHENRY and Senator LUMMIS in response to their March 2, 2023, letter.

OFFICE OF THE COMPTROLLER
OF THE CURRENCY,
April 6, 2023.

Hon. CYNTHIA LUMMIS,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.
Hon. PATRICK MCHENRY,
Chairman, Committee on Financial Services, U.S. House of Representatives, Washington, DC.

DEAR SENATOR LUMMIS AND CHAIRMAN MCHENRY: Thank you for your letter dated March 2, 2023, concerning the impact of the Securities and Exchange Commission (SEC) Staff Accounting Bulletin Number 121 (SAB 121) on institutions regulated by the Office of the Comptroller of the Currency (OCC).

The OCC recognizes that the SEC plays an important role in developing financial reporting standards applicable to publicly listed companies in the United States. Federal law (12 U.S.C.1831n) requires all national banks and federal savings associations to follow reporting standards that are no less stringent than U.S. Generally Accepted Accounting Principles (GAAP), regardless of public listing status. We understand that these institutions, in consultation with their auditors, are analyzing the intersection of SAB 121 and GAAP. The OCC is monitoring these discussions.

Please see responses below to your specific questions.

(1) Was your agency contacted by the SEC prior to the issuance of SAB 121? If so, please identify the staff members consulted by the SEC and provide copies of written feedback, if any, provided to SEC staff.

The SEC did not consult with the OCC prior to the issuance of SAB 121.

(2) Has the SEC indicated that it will modify or withdraw SAB 121 in light of widespread comments that the Bulletin is flawed?

The OCC has not participated in any communications with the SEC in which the SEC indicated it would modify or withdraw SAB 121.

(3) What are the legal and supervisory reasons off-balance sheet treatment of custodial assets has historically been the norm for banks and credit unions?

Section 37(a) of the Federal Deposit Insurance Act (12 U.S.C. 183n(a)) requires that the Federal banking agencies prescribe accounting principles for regulatory reporting purposes that are no less stringent than U.S. GAAP. Under U.S. GAAP, custodial assets are generally not reported on the bank's balance sheet provided that client assets held in custody are properly segregated and held separately from the bank's assets

(4) Has your agency directed banks and other financial institutions within your jurisdiction to comply with the terms of SAB 121 for the purposes of capital adequacy, business plan change approvals, reporting and other supervisory matters? If not, do you plan to do so?

The OCC worked with the other members of the Federal Financial Institutions Examination Council to provide regulatory reporting instructions to banks that provide for each bank to determine whether it is appropriate to apply SAB 121 for financial reporting purposes. If a bank determines that it is appropriate to follow SAB for financial reporting purposes, the bank should also prepare its Consolidated Reports of Condition and Income in the same manner.

(5) Does SAB 121 conflict with your agency's input regarding the Basel Committee on Bank Supervision's Prudential Treatment for Crypto Asset exposures, in so far as the definition of ''digital asset'' under SAB 121 also encompasses Group 1a, Group 1b, and Group 2 digital assets under the Prudential Treatment framework?

The Basel Committee on Banking Supervision (BCBS) defines cryptoassets as ''private digital assets that depend on cryptography and distributed ledger technologies (DLT) or similar technologies. Digital assets are a digital representation of value, which can be used for payment or investment purposes or to access a good or service.''

While the final BCBS cryptoasset standard applies different capital treatments to Group 1 and Group 2 cryptoasset exposures, the standard states that custodial service activities are not considered ''exposures'' for the purposes of the standard.

(6) Do you agree that the capital charge for banks, credit unions, and other financial institutions under SAB 121 is prohibitive?

The OCC expects banks to hold capital commensurate with the nature and extent of the risks of their activities) For national trust banks, OCC Bulletin 2007–21, ''Supervision of National Trust Banks: Revised Guidance: Capital and Liquidity,''provides that the minimum capital is informed by analysis of quantitative and qualitative factors including, but not limited to, financial projections, fixed and variable expenses, the nature of fiduciary products and services being proposed, and discussions with organizers.

(7) Do you agree that SAB 121 potentially weakens consumer protection by preventing well-regulated banks, credit unions, and other financial institutions from providing custodial services for digital assets?

The OCC will continue to monitor this issue and work to ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations, including consumer protection laws.

If you have any questions or need additional information. please do not hesitate to contact me or Carrie Moore, Director, Public Affairs and Congressional Relations.

Sincerely,

MICHAEL J. HSU,
Acting Comptroller of the Currency.

Mr. BARR. Mr. Speaker, I also include in the RECORD a letter dated March 16, 2023, sent by NCUA Chairman Harper in response to Chairman MCHENRY's and Senator LUMMIS' March 2, 2023, letter.

NATIONAL CREDIT
UNION ADMINISTRATION,
Alexandria, VA, March 16, 2023.

Hon. PATRICK MCHENRY,
Chairman, U.S. House Committee on Financial Services, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN MCHENRY: Thank you for contacting the National Credit Union Administration about the implementation of Staff Accounting Bulletin 121. The increase in consumers and businesses using digital assets, including cryptocurrency, has impacted the financial services industry, which includes both credit unions and banks. It is therefore important to develop a balanced policy approach to address emerging risks to the safety and soundness of federally insured credit unions.

Your letter requests responses to several questions, which reflect the NCUA's supervisory role over federally insured credit unions. Our responses follow.

(1) Was your agency contacted by the SEC prior to the issuance of SAB 121? If so, please identify the staff members consulted by the SEC and provide copies of written feedback, if any, provided to SEC staff.

The NCUA was not contacted.

(2) Has the SEC indicated that it will modify or withdraw SAB 121 in light of widespread comments that the Bulletin is flawed?

The NCUA is not aware of the SEC's intent to modify or withdraw SAB 121.

(3) What are the legal and supervisory reasons off-balance sheet treatment of custodial assets has historically been the norm for banks and credit unions?

The off-balance sheet treatment of custodial assets is rooted in generally accepted accounting principles, or GAAP for short. The GAAP standard evolved from the concept of the principal agent relationship, where the reporting of an asset belonged to the entity that controlled the asset and ownership rights were not passed to the custodian. As the custodian did not have ownership rights—that is, the ability to buy, sell, or leverage the asset—the custodian did not report those types of assets in its financial statements. The concept is codified in the Accounting Standards Codification Topic 860 Transfers and Servicing, where ''transfers of the custody of financial assets for safekeeping'' is excluded from accounting for transfers and servicing of financial assets.

(4) Has your agency directed banks and other financial institutions within your jurisdiction to comply with the terms of SAB 121 for the purposes of capital adequacy, business plan change approvals, reporting and other supervisory matters? if not, do you plan to do so?

The NCUA has not directed credit unions to comply with SAB 121 for any purpose. SAB 121 is a requirement of public registrants and does not apply to credit unions, which are cooperatively owned by their members.

(5) Does SAB 121 conflict with your agency's input regarding the Basel Committee on Bank Supervision's Prudential Treatment for Crypto Asset exposures, in so far as the definition of ''digital asset'' under SAB 121 also encompasses Group 1a, Group 1b, and Group 2 digital assets under the Prudential Treatment framework?

The NCUA is neither a member of the Basel Committee nor does it provide input on Bank Supervision's Prudential Treatment for Crypto Asset exposures.

(6) Do you agree that the capital charge for banks, credit unions, and other financial institutions under SAB 121 is prohibitive?

If SAB 121 is eventually applied to nonpublic entities, it will have implications for assessing the adequacy of an insured credit union's net worth. If a credit union functions as a digital asset custodian and is required to reflect the digital assets held in custody on its balance sheet, the credit union's net worth ratio would be negatively impacted as the institution's assets would increase without a commensurate increase in the net worth.

(7) Do you agree that SAB 121 potentially weakens consumer protection by preventing well-regulated banks, credit unions, and other financial institutions from providing custodial services for digital assets?

Prior to the release of SAB 121, the NCUA issued a Letter to Credit Unions on Relationships with Third Parties that Provide Services to Digital Assets. As stated in that letter, the NCUA would not take exception to credit unions partnering with third parties to make digital asset services available to members. That letter also outlines the NCUA's expectations that credit unions conduct adequate due diligence and ensure compliance with all applicable laws and regulations when engaging in any such activity. The NCUA is not able to determine the impact of adopting SAB 121 at publicly traded financial institutions that offer custody services of digital assets and cannot make a broad determination of the impact on consumer protection.

Thank you for raising this issue with the NCUA. If you have additional questions, please feel free to contact me or have your staff contact Elizabeth Eurgubian in our Office of External Affairs and Communications.

Sincerely,

TODD M. HARPER,
Chairman.

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

Mr. Speaker, this bill has been opposed by the Biden administration. Further, this bill is opposed by the following organizations: Americans for Financial Reform, Better Markets, Public Citizen, Consumer Federation of America, United States Public Interest Research Group; New Jersey Citizen Action, Demand Progress, Institute for Agriculture and Trade Policy, Texas Appleseed, 20/20 Vision, and Bank of New York Mellon.

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

Mr. MCHENRY. Mr. Speaker, I yield 2 minutes to the gentleman from Utah (Mr. CURTIS).

Mr. CURTIS. Mr. Speaker, I rise today in favor of H.J. Res. 109 which would repeal the SEC's unnecessary regulations on cryptocurrency and the banking industry.

The SEC and its chairman, Gary Gensler, have repeatedly overstepped their authority and targeted cryptocurrencies.

The SEC's latest unnecessary regulation was implemented outside of the regular rulemaking process and bypassed established procedures, and it shows.

This rule will limit banks' ability to offer digital assets as part of their custodial services. This makes it more challenging for Americans to safely engage with digital assets under the advisement of their local banks who are able to accurately inform them of risks of investments.

Crypto is a legitimate market used by millions of Americans. Hundreds of thousands of those are in my district. Unfortunately, today they have been referred to as ''criminals and drug dealers,'' and I take offense to that.

We should be giving investors opportunities to take part in cryptocurrencies, not putting up artificial barriers.

Mr. Speaker, I urge my colleagues to support this resolution and repeal the regulation.

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

Mr. Speaker, Republicans have echoed calls from the crypto industry saying that legislation is needed to provide clarification on how securities laws apply to them, but their actions reveal their true motivation.

They don't want clarity; they want broad exemption from securities laws.

Let's look at their actions to date. The first crypto-related bill that Republicans marked up was the FIT 21 Act which they claimed was responsive to the need for clarity on crypto.

The only thing clear about this highly convoluted bill is that it would provide the crypto industry with broad exemptions from current securities.

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

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Mr. MCHENRY. Mr. Speaker, may I inquire as to how much time is remaining.

The SPEAKER pro tempore. The gentleman from North Carolina has 14 minutes remaining. The gentlewoman

from California has 9½ minutes remaining.

Mr. MCHENRY. Mr. Speaker, I yield 3 minutes to the gentleman from Arkansas (Mr. HILL), my friend and chair of the Digital Assets Subcommittee and the vice-chair of the Financial Services Committee.

Mr. HILL. Mr. Speaker, I thank Chairman MCHENRY and the gentleman from Nebraska (Mr. FLOOD) for this excellent work in this Congressional Review Act resolution to roll back the SEC's failure in their Staff Accounting Bulletin 121.

It would reshape the business of custody in this country. This is not just about crypto. This is a sweeping rule that the SEC has implemented without following the Administrative Procedures Act. The GAO says it is a rule. Well, if it is a rule, it needs to go through the Administrative Procedures Act and have a comment period and get people involved because, as Ranking Member WATERS noted, they did not consult with the banking regulators, who have the primary role of supervising custody in this country.

A custodian is someone who holds your assets for you, whether it is shares of a stock or acres of forest land or a rental house or 10 bitcoin. Holding reserves against the assets in custody is not standard financial services practice.

This staff accounting bulletin is misguided. It requires that money be set aside for that category of assets of digital assets in custody. It is part of a broader attack by the Biden administration to treat digital assets differently from all other assets.

That doesn't make any sense to House Republicans. Under Mr. MCHENRY's leadership and Mr. THOMPSON's leadership of the Ag Committee, we have a fit-for-purpose approach that, in fact, directs the SEC and the CFTC how to handle digital assets.

Unfortunately, this accounting bulletin is in the wrong direction. That is why we have the Congressional Review Act. That is why we are using Article I authority under the Constitution to say this is the wrong direction and that we will all come to this House floor and say it should be repealed and sent back.

Mr. Speaker, I would remind my friends on the other side of the aisle, senior Biden official Vice Chairman Barr of the fed, Acting Comptroller Hsu all testified before our committee that they were not consulted by the SEC about this staff accounting bulletin. It is a significant change. It is a rule. It should have gone through the Administrative Procedures Act and be out for public comment.

Mr. Speaker, that is why I thank the gentleman from Nebraska (Mr. FLOOD) for leading the charge on this important resolution, and I urge adoption.

Ms. WATERS. Mr. Speaker, the industry, the custody industry, the big banks that hold these crypto assets simply asked for a little correction, a little clarity, a little information.

The Republicans are taking advantage of this, and this is the first crypto bill that Republicans are bringing to the floor today, and it would do what the majority always attempts to do, and this would actually reverse SEC guidance that provides clarity on accounting standards specifically for crypto assets. Not only that, but it would undermine the SEC's ability to provide clarity on crypto in the future.

That is why the administration sees this bill for what it is and has advised us that they would veto it.

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

Mr. MCHENRY. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. DAVIDSON), the chair of the Housing Subcommittee, the vice chair of the Digital Assets Subcommittee, and a longtime leader in digital innovation and digital assets.

Mr. DAVIDSON. Mr. Speaker, I thank the chairman for yielding time.

Mr. Speaker, this accounting bulletin has proven to be a barrier to publicly traded banks having an ability to meaningfully engage in distributed ledger products due to their overly broad definition of a crypto asset. SAB 121 makes no distinction between asset types in use cases, but, instead, generally states that crypto assets pose certain technological, legal, and regulatory risks, requiring special on-balance-sheet treatment.

All other assets, if you want to make a deposit at a bank, they are glad to hold custody of the assets, but somehow these assets qualify for special treatment.

Normally, if there was on-balance-sheet treatment, it would also just be a clean entry. There wouldn't be a mark to mark it that would require not just a balance sheet treatment that would be appropriate for a custody of a certain kind of asset, but you would have income statement flow throughs and all kinds of other risks.

Why would a bank need to cover extra risk up to 100 percent of the deposit of an asset simply to take custody of the asset? This is a special treatment that applies just to these assets, so applying on-balance-sheet treatment for crypto assets wrongly subjects customer assets to creditors' claims in the event there was a failure of a custodial institution.

In a traditional bankruptcy, assets are accounted for on balance sheet and are subject to creditor claims. Conversely, assets held in custody for customers are accounted for off balance sheet and, thus, are protected from creditor claims in bankruptcy because they remain the assets of the company.

We would see this distinction in a company like Fidelity, where the assets are off balance sheet, versus a company like Silicon Valley Bank when they went bankrupt. The depositors were literally at risk. Why would we change the standard with this out-of-jurisdiction rulemaking by the SEC?

Requiring custody crypto assets to be accounted for on balance sheets risks losing the bankruptcy protections of custodial services. This is an important distinction from the treatment for a broker-dealer that would be subject to a different form of bankruptcy under the Securities Investor Protection Act. Distributor ledger technology does not change the underlying nature of risk of traditional assets, nor do they present risks that SAB 121 purports to address.

Mr. Speaker, I include in the RECORD three letters: A letter dated August 23, 2023, cosigned by Chairman MCHENRY and Representative HILL, sent to the Comptroller General at the Government Accountability Office, urging GAO to complete its assessment on whether the Congressional Review Act applies to SAB 121; a letter dated February 14, 2024, cosigned by the Bank Policy Institute, the American Bankers Association, the Financial Services Forum, and the Securities Industry and Financial Markets Association, sent to the SEC requesting a meeting with the SEC Chairman, Gary Gensler, urging him to reconsider SAB 121; and, lastly, a bipartisan, bicameral letter dated November 15, 2023, cosigned by five Representatives and two Senators, sent to the Federal Reserve, the OCC, the FDIC, NCUA, urging the agencies to withhold enforcement of SAB 121 in light of GAO's decision.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, August 23, 2023.

Re SEC Staff Accounting Bulletin No. 121 and the Congressional Review Act

Hon. GENE DODARO,
Comptroller General of the United States Government Accountability Office, Washington, DC.

DEAR COMPTROLLER DODARO: We write to inquire about the status of the Government Accountability Office (GAO)'s decision regarding the applicability of the Congressional Review Act (CRA) to the Securities and Exchange Commission's (SEC) Staff Accounting Bulletin No. 121 (SAB 121). We are concerned that SAB 121 is not guidance but rather should be considered a major action undertaken by the SEC. This letter underscores the request by Senator Lummis expressing her shared concern about the effect of SAB 121. To date, GAO has not rendered a decision.

To underscore Senator Lummis' position, SAB 121 should be construed as a rule for purposes of the CRA. SAB 121 is not an interpretive rule. It is not a general statement of policy. Rather SAB 121 is a major policy change that fundamentally impacts the way customer assets under custody are treated for balance sheet purposes. The Bulletin significantly impacts a number of entities within the SEC's purview but also state and nationally chartered banks and trust companies.

Separately, it is important to note that Congress continues to make progress on legislation establishing a regulatory framework to provide certainty for the digital asset ecosystem. The Committee's work to report out legislation governing both the issuance and use of payment stablecoins as well as the regulation of digital asset intermediaries is consistent with the recommendations made by GAO this past June. This legislative work should not be subverted by unelected bureaucrats through opaque and unaccountable processes such as SAB 121.

We encourage you to protect the prerogatives of the legislative branch by determining SAB 121 as a major rule and subject to the CRA. We appreciate your attention to this matter.

Sincerely,

PATRICK MCHENRY,
Chairman, Committee on Financial Services.

FRENCH HILL,
Chairman, Subcommittee on Digital Assets, Financial Technology, and Inclusion.

FEBRUARY 14, 2024.

Hon. GARY GENSLER,
Chair, U.S. Securities and Exchange Commission, Washington, DC.

DEAR CHAIR GENSLER: The Bank Policy Institute (''BPI''), the American Bankers Association (''ABA''), the Financial Services Forum (''the Forum''), and the Securities Industry and Financial Markets Association (''SIFMA'') (collectively, the ''Associations'' write to request that the Securities and Exchange Commission (''Commission'') consider targeted modifications to Staff Accounting Bulletin No. 121 (''SAB 121'') to address recent policy developments and the challenges that SAB 121 has posed for U.S. banking organizations since it was issued on March 31, 2022.

As the two-year anniversary of the issuance of SAB 121 approaches, the Associations believe now would be an appropriate time to examine and discuss the implications of SAB 121 for regulated banking organizations. There have been several relevant developments during this two year period, including the GAO report issued in October, approval of certain Spot Bitcoin ETPs, and the SEC's proposed rule on Safeguarding Advisory Client Assets that would cover the custody of digital assets if finalized as proposed. The Associations believe that SAB 121 can be modified to mitigate the specific challenges identified herein without undermining the stated policy objectives of the Commission to enhance the information received by investors and other users of financial statements.

The Associations are happy to continue to serve as a resource and work collaboratively with the Commission to provide recommendations that would ensure that investors are provided the requisite disclosures while allowing responsible innovation to occur. The Associations and Commission share the common goals of ensuring the highest levels of investor protection and implementing policies that advance principles of market integrity and financial stability.

We believe the recommendations set forth in this letter are consistent with those principles and would remove unintended barriers for well-regulated U.S. banking organizations to engage in certain activities. Below we describe the drivers behind this request and suggest targeted modifications to SAB 121.

I. BACKGROUND

Since SAB 121 was issued in 2022, the Associations have articulated their concerns regarding the Bulletin to the Commission both in writing and in meetings with Commission staff. The foremost concern identified and discussed is how the on-balance sheet requirement of SAB 121 negatively impacts U.S. banking organizations and investors due to the associated prudential implications. The Associations have underscored that on-balance sheet treatment will preclude highly regulated banking organizations from providing a custodial solution for digital assets at scale. Moreover, the Associations have highlighted that the on-balance sheet requirement, coupled with the overly-broad definition of ''crypto-asset'' in SAB 121, will have a chilling effect on banking organizations' ability to develop responsible use cases for distributed ledger technology (DLT) more broadly.

U.S. banking organizations' experience over the past two years has confirmed that SAB 121 has curbed the ability of the Associations' members to develop and bring to market at scale certain digital asset products and services. In comparison, in-scope entities of SAB 121 other than U.S. banking organizations have not suffered the same effects. For example, digital asset custodial services are currently offered by various non-banking organizations, thereby keeping activity outside the prudential perimeter and avoiding the necessary oversight by regulators. Indeed, if regulated banking organizations are effectively precluded from providing digital asset safeguarding services at scale, investors and customers, and ultimately the financial system, will be worse off, with the market limited to custody providers that do not afford their customers the legal and supervisory protections provided by federally-regulated banking organizations. The Associations continue to urge the Commission to work with industry to adopt solutions that could mitigate the described challenges.

II. CONCRETE EXAMPLES OF THE IMPACT OF SAB 121 ON U.S. BANKING ORGANIZATIONS

The Associations highlight two specific examples of the negative impact of SAB 121 on banking organizations, investors, and the financial ecosystem:

(1) Spot Bitcoin ETPs: The Commission recently approved 11 Spot Bitcoin ETPs, allowing investors access to this asset class through a regulated product. However, notably absent from those approved products are banking organizations serving as the asset custodian, a role they regularly play for most other ETPs. These ETPs have already experienced billions of dollars in inflows, but it is practically impossible for banks to serve as custodian for those ETPs at scale due to the Tier 1 capital ratio and other reserve and capital requirements that result from SAB 121. This raises important questions about the safety and stability of this ecosystem. We believe that this result could raise concentration risk, as one nonbank entity now serves as the custodian for the majority of these ETPs. That risk can be mitigated if prudentially regulated banking organizations have the same ability to provide custodial services for Commission regulated ETPs as qualified nonbank asset custodians. SAB 121 does not appear to contemplate this type of concentration risk, in part perhaps because Spot Bitcoin ETPs or similar products were not an approved product at the time SAB 121 was issued.

(2) Use of DLT to record traditional financial assets: Banking organizations are increasingly exploring the use of DLT to record traditional financial assets, such as bonds. The use of DLT has the potential to expedite and automate payment, clearing, reconciliation and settlement services, and multiple central banks outside the United States are partnering with banks to explore the adoption of DLT. However, SAB 121 has proven to be a barrier to banking organizations' ability to meaningfully engage in DLT-based projects due to the breadth of the definition of ''crypto-asset'' in SAB 121: ''a digital asset that is issued and/or transferred using distributed ledger or blockchain technology using cryptographic techniques.'' Under this definition, a traditional financial asset issued or transferred using DLT could be considered a ''crypto asset'' and thus within scope of SAB 121, regardless of the applicable risks. SAB 121 makes no distinction between asset types and use cases, but instead generally states that crypto-assets pose certain technological, legal, and regulatory risks requiring on-balance sheet treatment. However, there are significant differences between a cryptocurrency like Bitcoin that exists on a public, permissionless network versus a traditional financial instrument that is recorded on a blockchain network where access is controlled and transactions can be cancelled, corrected, or amended. The past two years have underscored these differences, as the turmoil in the crypto market has been wholly unrelated to banks' use of permissioned DLT. DLT does not change the underlying nature or risks of traditional assets, nor do they present the risks SAB 121 purports to address, and thus SAB 121's application to those assets should be reconsidered. Clear indication from the Commission that the use of DLT to record or transfer traditional financial assets is consistently outside the scope of SAB 121 would alleviate associated challenges.

III. PROPOSED MODIFICATIONS AND CLARIFICATIONS

The Associations request that the Commission consider the following targeted modifications to SAB 121 to address the above concerns:

Narrow the definition of ''crypto-assets'' to clarify and confirm the exclusion of certain asset types and use cases. SAB 121 is premised on the risks posed exclusively by cryptocurrencies, and traditional financial assets recorded or transferred using blockchain networks should be excluded because they do not present the same risks as cryptocurrencies; the use of DLT does not change the underlying nature or risk of traditional assets. Moreover, certain exclusions for products wherein the underlying activity relates to the offering of a Commission-approved product should be clarified.

Exempt banking organizations from on-balance sheet treatment but maintain the disclosure requirements: As described previously, SAB 121 answers three questions, and the Associations' and its members' are primarily concerned with the first question: how an entity should account for its obligations to safeguard crypto-assets (the on-balance sheet treatment). We do not object to the requirements imposed in the answer to the second question (disclosures in financial statements). Exempting banking organizations from the on-balance sheet treatment but requiring them to make certain disclosures about their digital activity would mitigate the concerns raised by banking organizations without undermining the goal of SAB 121 to promote disclosures to investors. Balance sheet disclosure may be appropriate where the controls are not adequate to protect investors from the risk of custodied assets, which is not the case for banking organizations that are subject to robust oversight from the federal banking agencies. The required disclosures in the answer to the second question are broad and may include disclosures in the description of business, risk factors, and management's discussion and analysis of financial condition and results of operation, and such information will still ''enhance the information received by investors and other users of financial statements about these risks, thereby assisting them in making investment and other capital allocation decisions.''

IV. CONCLUSION

The Associations and their members appreciate your attention to the issues raised in this letter. Given the upcoming two-year anniversary of the issuance of SAB 121, certain

policy developments, the experience of U.S. banking organizations, and the evolution in technology since the guidance was first issued, we believe it is an appropriate time to reflect on the intended goals of SAB 121. We request a meeting with you and Commission staff to discuss the issues and proposed modifications set forth above.

We appreciate the Commission's attention to this important topic and look forward to engaging with you further. If you have any questions, please contact Paige Pidano Paridon.

Respectfully submitted,

Bank Policy Institute,
American Bankers Association,
Financial Services Forum,
Securities Industry and Financial Markets Association.

CONGRESS OF THE UNITED STATES,
Washington, DC, November 15, 2023.

Hon. MARTIN GRUENBERG,
Chairman of the Board, Federal Deposit Insurance Commission, Washington, DC.
Hon. MICHAEL BARR,
Vice Chair for Supervision, Board of Governors of the Federal Reserve System, Washington, DC.
Hon. MICHAEL HSU,
Acting Comptroller of the Currency, Office of the Comptroller of the Currency, Washington, DC.
Hon. TODD HARPER,
Chairman of the Board, National Credit Union Administration, Alexandria, VA.

DEAR VICE CHAIR BARR, CHAIRMAN GRUENBERG, CHAIRMAN HARPER, AND ACTING COMPTROLLER HSU: We write regarding Securities and Exchange Commission (SEC) Staff Accounting Bulletin 121 (''SAB 121'') published on April 11, 2022.

Last month, the Government Accountability Office (GAO) issued a legal decision that SAB 121 is a rule for purposes of the Congressional Review Act. SAB 121 was issued without consultation with any of your respective agencies and would require custodians to recognize a liability and a corresponding offset on their balance sheets, measured at the fair value of the customer custodial digital assets. This accounting approach, which deviates from established accounting standards, would not accurately reflect the underlying legal and economic obligations of the custodian, and places consumers at greater risk of loss.

In its decision, GAO stated that ''it is reasonable to believe that companies may change their behavior to comply with the staff interpretations found in the Bulletin'' due to the SEC's responsibility and authority in monitoring public disclosures and pursuing enforcement actions against noncompliant entities.

SAB 121 meets the definition of a rule under the Administrative Procedure Act (APA), and was never submitted to Congress or the GAO, nor was it subsequently published in the CONGRESSIONAL RECORD consistent with the requirements of the Congressional Review Act. Given that the SEC failed to meet these obligations, SAB 121 should have no legal effect and the Federal banking agencies and National Credit Union Administration should not require banks, credit unions and other financial institutions that provide custody services for digital assets to comply. This means that such entities need not recognize a liability and a corresponding asset offset on their balance sheets.

Enforcing this noncompliant rule would set a concerning precedent that would facilitate regulatory gamesmanship to circumvent the APA, effectively allowing the SEC to have regulatory authority over institutions which Congress did not authorize.

We therefore ask you to clarify, through guidance or other action, that SAB 121 is not enforceable in light of the recent GAO determination. Thank you for your attention to this matter.

Sincerely,

PATRICK MCHENRY,
Member of Congress.
FRENCH HILL,
Member of Congress.
RITCHIE TORRES,
Member of Congress.
WILEY NICKEL,
Member of Congress.
CYNTHIA M. LUMMIS,
United States Senator.
KIRSTEN GILLIBRAND,
United States Senator.
MIKE FLOOD,
Member of Congress.

Ms. WATERS. Mr. Speaker, the sponsor of this bill, Mr. FLOOD, has asked what the alternative to this CRA resolution would be, and that answer is very simple: Draft a bill that narrowly addresses the current question about how this guidance applies to banks. The use of a CRA is dangerous and reckless.

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

Mr. MCHENRY. Mr. Speaker, my friend says dangerous and reckless. Well, Democrats used the Congressional Review Act process just like Republicans have used the Congressional Review Act process. This is not reckless or dangerous. It is law, and we are trying to be a check and balance on overreach of the administration.

Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. FITZGERALD), an esteemed member of the Financial Services Committee and Judiciary Committee.

Mr. FITZGERALD. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker, I rise today in strong support of H.J. Res. 109. I don't want to be redundant on some of these points, but the SEC's Staff Accounting Bulletin 121 is a radical departure from how custodians account for all other assets. By requiring custodians to treat digital assets as both an asset and a liability on their balance sheets, SAB 121 makes it nearly impossible for banks to provide custody services for digital assets due to the prudential requirements that it would trigger.

Innovations like the tokenization of assets have the potential to dramatically improve our financial infrastructure, and tokenization will allow new innovations and traditionally illiquid assets to become available to more people more efficiently, like commercial bank deposits, government corporate bonds, money market fund shares, real estate, gold, and other commodities.

However, for tokenization to take hold, it is important for regulated financial institutions to be custodians in order to identify the entitlement holder and to mitigate any single point of failure in the record of the ownership.

Mr. Speaker, this misguided action from the SEC should be struck down, and I urge my colleagues to vote ''yes'' for this resolution.

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

Mr. MCHENRY. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina (Mr. NICKEL), my good friend and colleague, and a great leader in digital assets.

Mr. NICKEL. Mr. Speaker, I rise in support of the bipartisan resolution I am leading with my colleague across the aisle, Congressman MIKE FLOOD.

Mr. Speaker, our Congressional Review Act resolution to disapprove of the SEC's Staff Accounting Bulletin 121 protects consumers, reinforces Congress' role in the rulemaking process, and pushes back on the SEC's hostility toward digital assets.

Mr. Speaker, SAB 121 makes the digital assets industry less safe for consumers. It prevents well-regulated banks from safeguarding digital assets that are owned by their clients. SAB 121 requires banks to place custody of digital assets on their balance sheets, contrary to how traditional assets are treated. This makes it nearly impossible for a bank to provide custody of digital assets at scale, leaving investors to rely on riskier, unregulated options.

Mr. Speaker, whether you love crypto or you hate it, you should want the most heavily supervised financial institutions who are experts at custodial banking to safeguard digital assets. We are also seeing this issue with SAB 121 play out in real time, the SEC's recent approval of spot bitcoin ETPs, which I pushed for, allows retail investors access to this asset class through a regulated product. However, most bitcoin ETPs are held by the same nonbank custodian. Notably, banks aren't serving as custodians for any of these products as they would with a traditional ETP. This could pose a risk to the safety and soundness of the financial system, a concentration of risk issue, for sure.

To make matters worse, Gary Gensler and the SEC deliberately sidestepped the customary regulatory process, amounting to an obvious overstep of the agency's authority.

Last October, the Government Accountability Office concluded that the SEC breached statutory rulemaking requirements by issuing SAB 121 as guidance rather than a rule, avoiding the notice and comment period. SABs are meant to serve as tools to interpret existing policies, not create brand-new policy like SAB 121.

Additionally, the SEC issued the rule without conferring with banking regulators, which is unacceptable given the SEC's lack of prudential authority over banking institutions. It is time for Congress to take action and conduct oversight of the SEC's missteps. We shouldn't have to resort to using a CRA to fix this issue, and Gary Gensler could re-issue this accounting bulletin

and work with stakeholders to find a solution, but, unfortunately, this is the only tool that we have left.

As with previously successful CRAs, the SEC will be able to re-issue its rule as long as it has made changes responding to statements made by Members in the CONGRESSIONAL RECORD.

Mr. Speaker, I ask my colleagues to support our bipartisan CRA of SAB 121, which will protect investors and the financial system, encourage innovation, bolster American competitiveness, and restore Congress' role in administrative rulemaking.

Ms. WATERS. Mr. Speaker, Mr. DAVIDSON entered a letter into the RECORD from several bank trades. What he did not mention was that the banks only asked for target modifications when they wrote about this legislation. In fact, in that letter, they supported the transparency requirements this resolution would repeal.

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

Mr. MCHENRY. Mr. Speaker, may I inquire as to how much time is remaining.

The SPEAKER pro tempore. The gentleman has 3¾ minutes remaining. The gentlewoman has 7½ minutes remaining.

Mr. MCHENRY. Mr. Speaker, I am prepared to close, and I reserve the balance of my time.

Ms. WATERS. Mr. Speaker, I yield myself the balance of my time to close.

Mr. Speaker, I would urge my colleagues to see this bill for what it is. It is a giveaway to one powerful special interest group in an effort to weaken the SEC, a crucial agency that protects investors and the functioning of our capital markets. This is the agency that is working to protect the retirement savings of millions of Americans. This is the agency that is crucial to making our capital markets the envy of the world. This is the agency at the forefront of ensuring that innovation, like in crypto, is done responsibly and in accordance with existing security laws. We simply cannot afford to weaken the SEC.

□ 1315

Moreover, this resolution harms investors by eliminating much-needed transparency on volatile crypto assets, making it harder for them to make informed investment decisions. It also harms crypto users because transparency also deters fraud and other mismanagement of assets that can lead to devastating losses for consumers.

Additionally, the resolution increases the likelihood of market volatility because a lack of transparency can result in more unexpected failures of crypto-related companies.

Finally, this resolution harms all public companies who benefit from the SEC's practice of providing timely guidance through Staff Accounting Bulletins.

If the Republicans would like to address the issue raised by large custody banks, they should do that, but there is no need to cause broader harm to the SEC and all of the people and companies that rely on it to maintain safety and stability.

Mr. Speaker, the President of the United States would not be giving us this information this early about vetoing unless they saw this as a serious issue that must be dealt with right here on the floor of the House of Representatives.

Mr. Speaker, I yield back the balance of my time.

Mr. MCHENRY. Mr. Speaker, I include in the RECORD a May 7, 2024, letter from the American Bankers Association, Bank Policy Institute, the Financial Services Forum, and the Securities Industry and Financial Markets Association supporting H.J. Res. 109.

MAY 7, 2024.

Re Providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Securities and Exchange Commission relating to ''Staff Accounting Bulletin No. 121'' (H.J. Res. 109)

Hon. MIKE JOHNSON,
Speaker, House of Representatives, Washington, DC.
Hon. HAKEEM JEFFRIES,
Minority Leader, House of Representatives, Washington, DC.

DEAR SPEAKER JOHNSON AND MINORITY LEADER JEFFRIES: The American Bankers Association, Bank Policy Institute, Financial Services Forum, and Securities Industry and Financial Markets Association (Associations) write to express our support for H.J. Res. 109, the Congressional Review Act resolution of disapproval for the Securities and Exchange Commission's ''Staff Accounting Bulletin 121.'' H.J. Res. 109 was introduced by Reps. Mike Flood (R–NE) and Wiley Nickel (D–NC) and favorably reported by a bipartisan vote from the Financial Services Committee on February 29. The measure is scheduled for consideration by the House this week.

In March 2022, the Securities and Exchange Commission's (SEC) Office of the Chief Accountant released Staff Accounting Bulletin (SAB) 121, without consulting the prudential regulators or soliciting public comment, to address perceived risks to publicly traded companies that safeguard digital assets for their customers. Under SAB 121, an entity responsible for safeguarding digital assets for platform users must measure safeguarding assets and obligations on its balance sheet at the fair value of the related assets, which is a departure from accounting standards and the historical practice of treating custodial assets as off-balance sheet. As this effectively treats the custodied assets as those owned by a bank, SAB 121 effectively precludes banks from offering digital asset custody at scale since placing the value of client assets on their balance sheets will impact certain capital, liquidity, and other prudential requirements. Furthermore, SAB 121 undercuts the ability of banks to develop responsible use cases for distributed ledger technology (DLT) and encumbers regulated broker-dealers from custody services as a result of the net capital rule (Rule 15c3–1), which treats the on-balance sheet items as non-allowable assets.

On February 14, 2024, the Associations sent a joint letter to the SEC noting that over the past two years SAB 121 has curbed the ability of our member banks to develop and bring to market at scale certain digital asset products and services. This includes spot bitcoin exchange traded products (recently approved by the Commission for investors) and the use of DLT to record traditional financial assets (i.e. tokenization).

SAB 121 represents a significant departure from longstanding accounting treatment for custodial assets and threatens the industry's ability to provide its customers with safe and sound custody of digital assets. Other, non-bank digital asset platforms subject to SAB 121 are not required to meet the same capital, liquidity, or other prudential standards as banks and therefore do not face the economically prohibitive implications of SAB 121. Limiting banks' ability to offer these services leaves customers with few well-regulated, trusted options for safeguarding their digital asset portfolios and ultimately exposes them to increased risk.

The Associations respectfully request that Members of the House vote in favor of H. J. Res. 109.

Sincerely,

American Bankers Association,
Bank Policy Institutec,
Financial Services Forum,
Securities Industry and Financial Markets Association.

Mr. MCHENRY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the administration's approach to digital assets doesn't make a lot of sense.

The President has an executive order outlining work products that he wants from agencies. On one hand, they say we want to bring digital assets into regulated finance, and we need clear rules of the road.

On the other hand, the administration's appointees at the Securities and Exchange Commission have done everything they can to undermine that level of clarity, that is number one; number two, issuing guidance that undermines whatever the current clarity is and diminishing that; number three, thereby diminishing consumer protection.

It is a nonsensical approach. So the administration says they want to veto this resolution. Yet they have a whole workstream the President issued without any forcing mechanism and executive order asking for a regulated stable coin, which we have passed out of the House Financial Services Committee with bipartisan votes.

They have asked for a market regulation to give clarity of what is a digital asset, and a means of exchange so American consumers can participate in this innovation that is the basis of the new generation of internet technology that the globe is using and America is behind.

I think it is important that we engage, as best we can, whether it is with the stable coin bill that we passed out of committee—the market regulation bill we passed out of committee—that it brings that clarity the President's executive order asked for, and takes this first step to provide consumer protection so that their financial assets are protected.

If the firm goes bankrupt, they want to know they can get their asset back. Passing this repeal is the first step in that process.

This is very important for consumer protection. If you support consumer protection vote ''yes'' on this resolution. If you support safety and soundness for financial institutions vote ''yes.'' If you support reining in rogue regulators vote ''yes.'' This should be a wide bipartisan vote and a statement that the House supports digital assets, digital innovation, and thoughtful policymaking from our regulators and regulated finance.

Mr. Speaker, I urge adoption of this resolution. I also thank my colleagues on the Democrat side, Mr. NICKEL, and on the Republican side, Mr. FLOOD, for their thoughtful approach to policymaking, and digital assets generally, but on developing this Congressional Review Act proposal, in particular.

Mr. Speaker, I urge the adoption of the resolution, and I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1194, the previous question is ordered on the joint resolution.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCHENRY. 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 question will be postponed.

MINING REGULATORY CLARITY ACT OF 2024

Mr. STAUBER. Mr. Speaker, pursuant to House Resolution 1194, I call up the bill (H.R. 2925) to amend the Omnibus Budget Reconciliation Act of 1993 to provide for security of tenure for use of mining claims for ancillary activities, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1194, the amendment in the nature of a substitute printed in House Report 118–416 is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2925

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 ''Mining Regulatory Clarity Act of 2024''.

SEC. 2. USE OF MINING CLAIMS FOR ANCILLARY ACTIVITIES.

Section 10101 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f) is amended by adding at the end the following:

''(e) SECURITY OF TENURE.—

''(1) CLAIMANT RIGHTS.—

''(A) DEFINITION OF OPERATIONS.—In this paragraph, the term 'operations' means—

''(i) with respect to a locatable mineral, any activity or work carried out in connection with—

''(I) prospecting;

''(II) exploration;

''(III) discovery and assessment;

''(IV) development;

''(V) extraction; or

''(VI) processing;

''(ii) the reclamation of an area disturbed by an activity described in clause (i); and

''(iii) any activity reasonably incident to an activity described in clause (i) or (ii), regardless of whether that incidental activity is carried out on a mining claim, including the construction and maintenance of any road, transmission line, pipeline, or any other necessary infrastructure or means of access on public land for a support facility.

''(B) RIGHTS TO USE, OCCUPATION, AND OPERATIONS.—A claimant shall have the right to use and occupy to conduct operations on public land, with or without the discovery of a valuable mineral deposit, if—

''(i) the claimant makes a timely payment of—

''(I) the location fee required by section 10102; and

''(II) the claim maintenance fee required by subsection (a); or

''(ii) in the case of a claimant who qualifies for a waiver of the claim maintenance fee under subsection (d)—

''(I) the claimant makes a timely payment of the location fee required by section 10102; and

''(II) the claimant complies with the required assessment work under the general mining laws.

''(2) FULFILLMENT OF FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.—A claimant that fulfills the requirements of this section and section 10102 shall be deemed to satisfy any requirements under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) for the payment of fair market value to the United States for the use of public land and resources pursuant to the general mining laws.

''(3) SAVINGS CLAUSE.—Nothing in this subsection—

''(A) diminishes any right (including a right of entry, use, or occupancy) of a claimant;

''(B) creates or increases any right (including a right of exploration, entry, use, or occupancy) of a claimant on lands that are not open to location under the general mining laws;

''(C) modifies any provision of law or any prior administrative action withdrawing lands from location or entry;

''(D) limits the right of the Federal Government to regulate mining and mining-related activities (including requiring claim validity examinations to establish the discovery of a valuable mineral deposit) in areas withdrawn from mining (including under—

''(i) the general mining laws;

''(ii) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

''(iii) the Wilderness Act (16 U.S.C. 1131 et seq.);

''(iv) sections 100731 through 100737 of title 54, United States Code (commonly referred to as the 'Mining in the Parks Act');

''(v) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

''(vi) division A of subtitle III of title 54, United States Code (commonly referred to as the 'National Historic Preservation Act')); or

''(E) restores any right (including a right of entry, use, or occupancy, or right to conduct operations) of a claimant that existed prior to the date that the lands were closed to or withdrawn from location under the general mining laws and that has been extinguished by such closure or withdrawal.''.

The SPEAKER pro tempore. The bill, as amended, shall be debatable for 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources or their respective designees.

The gentleman from Minnesota (Mr. STAUBER) and the gentlewoman from New Mexico (Ms. STANSBURY) each will control 15 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. STAUBER).

GENERAL LEAVE

Mr. STAUBER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and insert extraneous material on H.R. 2925.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

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

Mr. Speaker, I rise today in support of H.R. 2925, the Mining Regulatory Clarity Act of 2024.

In May 2022, the United States Court of Appeals for the Ninth Circuit affirmed a lower court's decision revoking an approved mine plan for the Rosemont Copper Mine project in Arizona.

This determination commonly called the Rosemont decision upended decades of regulatory precedent and specific U.S. Forest Service regulations that allow approvals of operation on or off a mining claim so long as these operations meet environmental and regulatory standards.

Essentially, this court's ruling puts the cart before the horse and fails to reflect the process of how a company actually develops a mine. I think there is some confusion about the mine approval process and what the term ''valid'' claim means.

First, when looking to develop a mine, an operator must submit something called a Mine Plan of Operations to the United States Forest Service or the Bureau of Land Management. This plan must include the intended uses of the surface of the mining claim, including those for waste rock placements, mills, offices, and roads.

The Mine Plan of Operations is key in determining the economic feasibility of a mining site, which, in turn, factors into the basis of determining which mineral deposits are commercially developable and, therefore, valid.

If allowed to stand, the Rosemont decision would require the discovery and determination of a valid mineral deposit, meaning that operators must prove the existence of a commercially developable deposit on a claim before a plan of operations can be approved.

Remember, a mine cannot move forward if the Federal Government does not approve any facet of the Mine Plan of Operations. Further, mineral validity cannot be determined until after the economic viability of a site—as is laid out in the Mine Plan of Operations—is verified by the Federal Government, as well.