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House Financial Services Marks Up Bills on SEC's Crypto Custody Rule, Cyber Money-Laundering, HUD Secretary

Three Democrats Support GOP's CRA Resolution to Overturn Crypto Accounting Rule

The House Financial Services Committee today (Thursday, February 29) held a markup of bills related to the SEC's accounting rule for custody of cryptocurrency funds, money laundering via digital assets, wildfire insurance and transparency on the part of the Department of Housing and Urban Development. The committee originally had intended to mark up a larger group of 12 bills, but chose to truncate the session after House leaders moved to hold the week's final series of votes on Thursday afternoon instead of Friday (March 1). Materials from the markup are posted [here](#). The bills marked up were:

- 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" (Rep. Flood, R-NE)
- HR 6864, the HUD Accountability Act (Rep. Lawler, R-NY)
- HR 7280, the HUD Transparency Act (Rep. De La Cruz, R-TX)
- HR 7156, the Combating Money Laundering in Cyber Crime Act (Rep. Fitzgerald, R-WI)
- HR 7462, the Wildfire Insurance Coverage Study Act (Ranking Member Waters, D-CA)

Markup Action

During the markup, the committee:

- Adopted, by a vote of 31-20, H.J. Res. 109, providing for disapproval under the Congressional Review Act (CRA) of the SEC rule relating to Staff Accounting Bulletin No. 121, sponsored by Mike Flood (R-NE) and Wiley Nickel (D-NC). The bill would use the CRA to overturn a recent SEC accounting rule that requires banks to include customers' cryptocurrency assets on their balance sheets as a liability.

Chairman McHenry, in his opening [statement](#), said that "after [SEC] Chair [Gary] Gensler tried to tuck a major policy change into so-called staff guidance, the GAO ruled SAB 121 constitutes a rule. So now, our Committee is taking action to rescind this misguided rule and ensure Americans can custody digital assets in one of the safest ways possible – through highly regulated banks." In her statement, Ranking Member Maxine Waters (D-CA) said the resolution would "put our economy at risk by gutting the SEC's ability to protect investors and clear up confusion for industry. [The bulletin] is non-binding SEC staff guidance intended to help clarify how a company should account for its customers' cryptocurrencies. We often hear Republicans and the crypto industry complain about a lack of clarity from the SEC, but ironically, the resolution before us effectively blocks the SEC staff from providing that clarity around crypto."

Sponsor Rep. Flood said, "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. Unfortunately, the SEC has made it clear that they're going to double-down on SAB 121 instead. Despite the obvious evidence that this Bulletin was issued through a faulty process, and despite the negative ramifications of keeping banks from taking custody of retail investor assets, they have been unwilling to have a conversation about making changes. As a result, I think it's our responsibility to take this

issue up in Congress. The SEC shouldn't arbitrarily prevent well-regulated banks from taking custody of investors' digital assets. Instead, it should find a different path forward with the prudential regulators." Cosponsor Rep. Nickel said, "Whether you support crypto or not, you should want the most heavily regulated financial institutions that are experts in custodial banking to safeguard assets. Otherwise, people will have to turn to riskier, unregulated options putting both consumers and the financial system at risk."

But Brad Sherman (D-CA), long a cryptocurrency skeptic, said that because of the high risk of digital assets' being stolen, banks should have to disclose crypto held in custody, even if it's not directly on their balance sheets. "You can't argue, given all of the fraud and all of the theft in the crypto space, that an entity could hold hundreds of millions or billions of dollars of crypto and not even tell its investors that it is running that risk," Sherman said. "Crypto is not currently a currency. Currently, it's an electronic pet rock."

Three Democrats voted for the bill: Rep. Nickel, Josh Gottheimer (NJ) and Ritchie Torres (NY). Sen. Cynthia Lummis (R-WY) has introduced a companion resolution in the Senate.

- Adopted, by a vote of 49-0, HR 7156, the *Combating Money Laundering in Cyber Crime Act*, sponsored by Scott Fitzgerald (R-WI). The bill would give the U.S. Secret Service authority to investigate various crimes related to digital asset transactions and to counter transnational cyber-criminal activity, including unlicensed money transmitting businesses, structured transactions and fraud against financial institutions. The bill also extends for five years the Treasury secretary's reporting requirement on the Financial Criminal Enforcement Network (FinCEN) relating to benefits realized by law enforcement agencies from partnering with financial institutions. The bill would also extend, for four years, the requirement that the executive director of the International Monetary Fund support the increased use of the administrative budget of the IMF to prevent money laundering and the financing of terrorism.

In his opening statement, Chairman McHenry said the bill "will ensure the Secret Service has the tools to investigate any and all money laundering crimes. This includes money laundering involving digital assets or cybercrime." Gregory Meeks (D-NY) said the bill "addresses gaps in our ability to investigate illicit crimes using digital assets. As financial criminals increasingly, persistently look to utilize digital assets in this work, this legislation allows us to better equip those investigating and preventing it." Meeks said the bill "allows us to better address threats from nations like and including Russia and North Korea. By expanding the scope of U.S. Secret Service investigations and bringing digital assets in line with other fungible property used to commit crimes... [the bill] brings another element of protection and defense in line with the 21st century."

- Adopted, by a vote of 47-2, HR 7462, the *Wildfire Insurance Coverage Study Act*, sponsored by Ranking Member Waters. The bill would require the Government Accountability Office (GAO) to conduct a study relating to the availability of insurance coverage for damages related to wildfires.

In her opening [statement](#), Ranking Member Waters said, "Climate change is making wildfires much more devastating and deadly, including in my home state of California, and unfortunately right now in Texas and Oklahoma - where whole communities are being destroyed by wildfires. At the same time, insurance companies are declining coverage, and while I understand that insurance companies cannot calculate the cost of the potential of these disasters, I believe that Congress needs to think about what we need to do to help prepare and protect families and small businesses."

- Adopted, by a vote of 50-0, HR 6864, the *HUD Accountability Act*, sponsored by Mike Lawler (R-NY). The bill would require the HUD secretary to testify on an annual basis before the House Financial Services Committee and the Senate Banking Committee.

In his opening statement, referring to both HR 6864 and HR 7280, Chairman McHenry said, "For an agency with more than \$77 billion in budget authority and more than 9,000 employees, these basic oversight requirements should be a

no-brainer. Both changes will help the agency and this committee function better. They will also ensure HUD is appropriately utilizing taxpayer resources. If we're serious about prioritizing HUD and housing, both bills should be universally supported."

In her statement, referring to both HR 6864 and HR 7280, Ranking Member Waters said, "Republicans are proposing bills that prove that they are all talk when it comes to combating our nation's worsening affordable housing and homelessness crisis. I am deeply disappointed that while over 653,000 people experience homelessness every night and millions more are just one crisis away from becoming homeless, the only solution Republicans have is to require the HUD Secretary and the Inspector General to testify annually. Time and time again, Republicans have proven that they would rather point the finger at everyone else than put forward serious legislation to address the crisis themselves. In fact, their abysmal report on housing proves this." Waters said that if Republicans were serious about housing, they should act on *Housing Crisis Response Act* (HR 4233), the *Ending Homelessness Act* (HR 4232) and the *Downpayment Toward Equity Act* (HR 4231), which she said would together "represent the single largest and most comprehensive investment in fair and affordable housing in U.S. history and will finally make housing a reality for everyone."

- Adopted, by a vote of 50-0, HR 7280, the *HUD Transparency Act*, sponsored by Monica De La Cruz (R-TX). The bill would require annual testimony from the HUD Inspector General by October 1 of each year before the Financial Services Committee and the Senate Banking Committee.

By a vote of 49-2, the committee adopted an amendment by Emanuel Cleaver (D-MO) to ensure that any testimony by the HUD inspector general include a discussion of the state of funding and staffing resources at HUD, after the amendment was revised to simply add Cleaver's language to the bill instead of replacing large parts of Cruz's text.

If you have questions, please contact [Will Heyniger](#) or [Bob Schellhas](#) at Washington Council Ernst & Young.

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