

Congress of the United States
Washington, DC 20515

November 15, 2023

The Honorable Martin Gruenberg
Chairman of the Board
Federal Deposit Insurance Commission
550 17th Street, NW
Washington, DC 20429-9990

The Honorable Michael Barr
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Todd Harper
Chairman of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

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.¹ 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”² 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

¹ U.S. Government Accountability Office, B-334540, Securities and Exchange Commission – Applicability of the Congressional Review Act to Staff Accounting Bulletin No. 121, (Oct. 31, 2023).

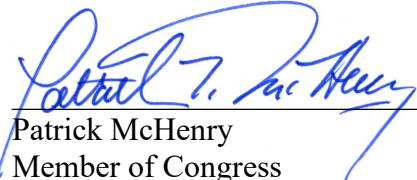
² *Id.* at 8.

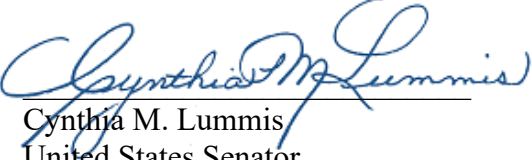
Federal banking agencies and National Credit Union Administration should not require banks, credit unions and other financial institutions that provide custody services for digital assets to comply. This means that such entities need not recognize a liability and a corresponding asset offset on their balance sheets.

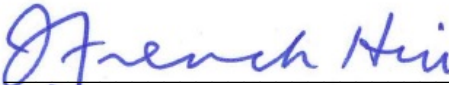
Enforcing this noncompliant rule would set a concerning precedent that would facilitate regulatory gamesmanship to circumvent the APA, effectively allowing the SEC to have regulatory authority over institutions which Congress did not authorize.

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


Cynthia M. Lummis
United States Senator


French Hill
Member of Congress


Kirsten Gillibrand
United States Senator


Ritchie Torres
Member of Congress


Mike Flood
Member of Congress


Wiley Nickel
Member of Congress