

Congress of the United States
Washington, DC 20510

September 23, 2024

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Gensler:

Given Congress' overwhelming bipartisan votes on H.J.Res.109, disapproving the Securities and Exchange Commission (SEC)'s Staff Accounting Bulletin No. 121 (SAB 121), we urge you to rescind the staff guidance.

SAB 121 was issued without consulting any of the prudential regulators. It would require custodians to recognize a liability and hold a corresponding offset on their balance sheets, measured at the fair value of the customer's digital assets. This accounting approach, which deviates from established accounting standards, would fail to accurately reflect the underlying legal and economic obligations of the custodian, and place consumers at a greater risk of loss.

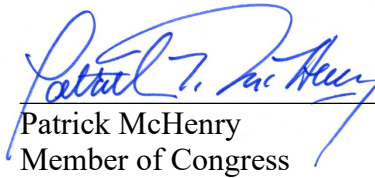
The Government Accountability Office issued a legal decision that SAB 121 is a rule for purposes of the Congressional Review Act. By issuing this rule under the guise of staff guidance, the SEC evaded the notice and comment rulemaking process required by the Administrative Procedure Act (APA). Rescinding SAB 121 is the only appropriate action and well within the SEC's authority. There is ample precedent for revisiting a staff accounting bulletin.

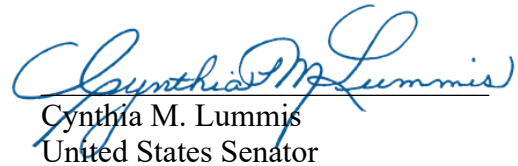
Instead of recognizing this failure and rescinding the guidance, the SEC's Office of Chief Accountant (OCA) has only caused further confusion, working with certain institutions to avoid the balance sheet reporting requirements.¹ These consultations, completed on a case-by-case and confidential basis, do not provide the transparency or certainty needed to ensure SAB 121's requirements are consistently applied across different institutions. Further, this approach defeats the SEC's own – albeit flawed – argument because it fails to ensure enhanced disclosures are provided to investors.

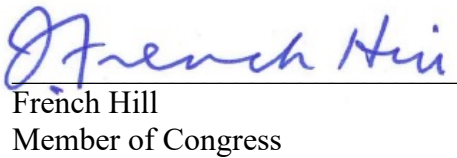
¹ SEC's Chief Accountant Paul Munter, Remarks before the 2024 AICPA & CIMA Conference on Banks & Savings Institutions: Accounting for Crypto-Asset Safeguarding Obligations—A Facts-Based Analysis, (Sep. 9, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/munter-speech-safeguarding-crypto-assets-09-09-24>.

Both the House and Senate vote on H.J. Res. 109 sent a clear message from Congress to the SEC. Issuing staff guidance to impose policy changes is not appropriate and violates both the spirit and the letter of the Administrative Procedure Act. We urge you to rescind SAB 121 and work with Congress to ensure Americans have access to safe and secure custodial arrangements for digital assets.

Sincerely,


Patrick McHenry
Member of Congress


Cynthia M. Lummis
United States Senator

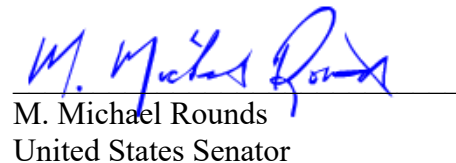

French Hill
Member of Congress

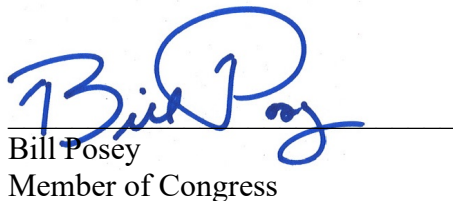

Tim Scott
United States Senator


Frank Lucas
Member of Congress


Mike Crapo
United States Senator


Pete Sessions
Member of Congress

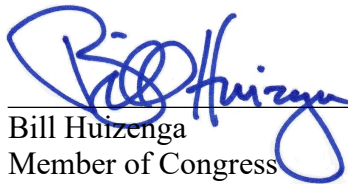

M. Michael Rounds
United States Senator


Bill Posey
Member of Congress


Thom Tillis
United States Senator


Blaine Luetkemeyer
Member of Congress


Bill Hagerty
United States Senator



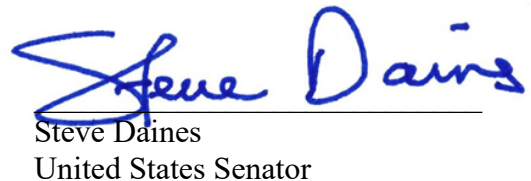
Bill Huizenga
Member of Congress



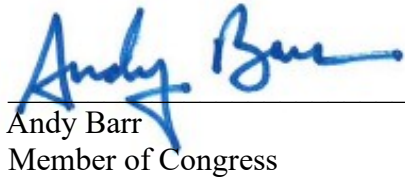
Katie Boyd Britt
United States Senator



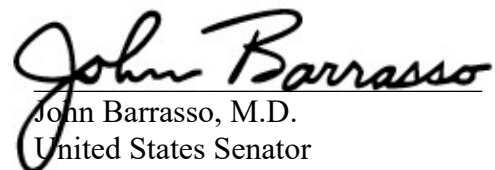
Ann Wagner
Member of Congress



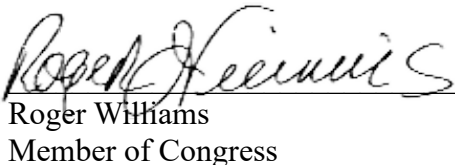
Steve Daines
United States Senator



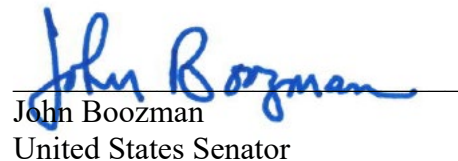
Andy Barr
Member of Congress



John Barrasso, M.D.
United States Senator



Roger Williams
Member of Congress



John Boozman
United States Senator



Tom Emmer
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Mike Braun
United States Senator



Barry Loudermilk
Member of Congress



Ted Budd
United States Senator



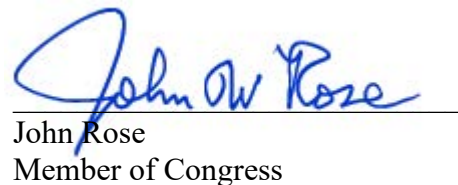
Alexander X. Mooney
Member of Congress



Pete Ricketts
United States Senator



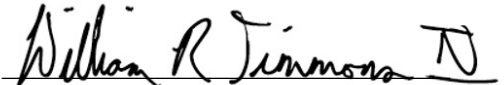
Warren Davidson
Member of Congress



John Rose
Member of Congress



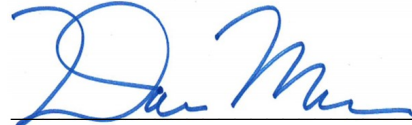
Bryan Steil
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William Timmons
Member of Congress



Ralph Norman
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Dan Meuser
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Scott Fitzgerald
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Andrew R. Garbarino
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Young Kim
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Byron Donalds
Member of Congress



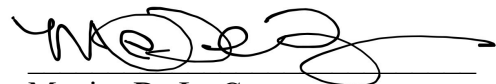
Mike Flood
Member of Congress



Michael V. Lawler
Member of Congress



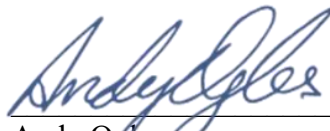
Zach Nunn
Member of Congress



Monica De La Cruz
Member of Congress



Erin Houchin
Member of Congress



Andy Ogles
Member of Congress

CC: Paul Munter, Chief Accountant, SEC's Office of Chief Accountant