



United States House of Representatives  
One Hundred Eighteenth Congress  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

September 23, 2024

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

Dear Chair Gensler:

We write to you as part of our ongoing efforts to examine and understand the Securities and Exchange Commission's (SEC) engagement with the prudential regulators as it relates to financial institutions' ability to safeguard digital assets. Specifically, Staff Accounting Bulletin (SAB) 121 imposes burdensome and impractical requirements on regulated financial institutions seeking to offer digital asset custodial services to their customers.<sup>1</sup> While Congress's concerns about SAB 121 have been well-documented,<sup>2</sup> our concerns surrounding the lack of interagency communication leading up to SAB 121's publication continues to increase after examining communications provided to the House Committee on Financial Services (the Committee) by the prudential regulators.<sup>3</sup>

In response to our requests, the Board of Governors of the Federal Reserve (Federal Reserve), Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) produced documents to the Committee containing communications between and among the prudential regulators. Based on these documents, it is apparent that three federal prudential regulators dedicated considerable time and resources to creating both an Interagency Statement on Crypto-Asset Custody Services and a related request for information (RFI) regarding crypto-asset custody ancillary activities during the months leading up to SAB 121's publication. However, SAB 121's publication may have disrupted this interagency initiative.

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<sup>1</sup> Securities and Exchange Commission, Staff Accounting Bull. No. 121 (Mar. 31, 2022), *available at* <https://www.sec.gov/oca/staff-accounting-bulletin-121>.

<sup>2</sup> 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, 118<sup>th</sup> Cong. (2024) (Passed out of both chambers on bipartisan basis. Vetoed by President Biden on May 31, 2024).

<sup>3</sup> See Letter from Representatives McHenry, Hill, Huizenga to Board of Governors of the Federal Reserve System Chair Jerome Powell (Apr. 25, 2023); Letter from Representatives McHenry, Hill, Huizenga to Federal Deposit Insurance Corporation (FDIC) Chairman Martin Gruenberg (Apr. 25, 2023); Letter from Representatives McHenry, Hill, Huizenga to Acting Comptroller of the Currency Michael Hsu (Apr. 25, 2023).

Additionally, it appears that the federal prudential regulators were not privy to the SEC's initial decision to issue SAB 121.<sup>4</sup>

Shortly after SAB 121's publication, emails between agencies' employees suggest that the document contained "various ambiguities" and left open questions regarding its scope.<sup>5</sup> It is unclear if any communications occurred between the SEC and any of the prudential regulators to discuss the regulatory treatment of digital asset custodial services prior to SAB 121's publication. It also remains unclear what impact SAB 121's publication had on the interagency workstream, which was intended to include both an Interagency Statement as well as an RFI. Ultimately, neither document was published despite the considerable time and resources dedicated to the initiative.

It is imperative to ensure that no agency undermines another through rushed actions, which risks introducing uncertainty and instability into our financial system. Following these discoveries, we seek to better understand the internal communications at the SEC and between the SEC and the Federal Reserve, OCC, and FDIC. This will assist the Committee as it works to evaluate the SEC's justification for publishing SAB 121 despite the ongoing interagency initiatives amongst the federal prudential regulators.

To that end, please provide the following records and communications:

1. All non-public records and communications between the SEC, the Federal Reserve, OCC, and FDIC related to digital asset custody;
2. All non-public records and communications between the SEC, the Federal Reserve, OCC, and FDIC related to the need for additional guidance or regulation related to digital asset custody.
3. All SEC internal communications referring or related to SAB 121 prior to its publication on March 31, 2022; and
4. All SEC internal communications referring or related to the Federal Reserve, OCC, or FDIC's regulatory treatment of digital asset custody prior to March 31, 2022.

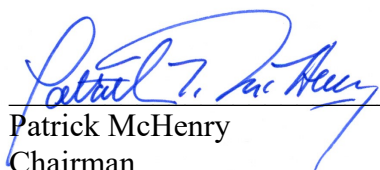
Please provide this material as soon as possible, but no later than October 7, 2024. The Committee on Financial Services has jurisdiction to oversee the activities of the Securities and Exchange Commission pursuant to Rule X of the Rules of the House of Representatives. Thank you for your attention to this important matter.

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<sup>4</sup> See Letter from FDIC Chairman Martin Gruenberg to Senator Lummis and Representative McHenry (Apr. 18, 2023) (stating "FDIC staff was not consulted by the SEC before the issuance of SAB 121"); Letter from OCC Acting Comptroller Michael Hsu to Senator Lummis and Representative McHenry (Apr. 6, 2023) (stating "The SEC did not consult with the OCC prior to the issuance of SAB 121."); Letter from Federal Reserve Vice Chair Michael Barr to Senator Lummis (Apr. 27, 2023) (stating "Federal Reserve staff were not consulted by the SEC regarding the development and issuance of SAB 121.").

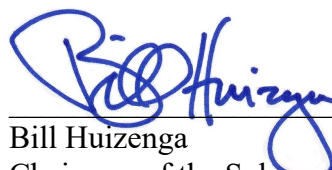
<sup>5</sup> Documents on file with the Committee.

Sincerely,



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Patrick McHenry  
Chairman



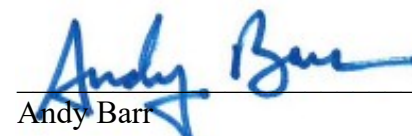
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Bill Huizenga  
Chairman of the Subcommittee on  
Oversight and Investigations



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French Hill  
Chairman of the Subcommittee on  
Digital Assets, Financial Technology  
and Inclusion



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Andy Barr  
Chairman of the Subcommittee on  
Financial Institutions and Monetary  
Policy

CC: Securities and Exchange Commission Inspector General Deborah Jeffrey