

Congress of the United States
Washington, DC 20510

May 30, 2024

The Honorable Joseph R. Biden
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Given the overwhelming bipartisan votes on 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 (SEC) relating to Staff Accounting Bulletin No. 121 (SAB 121), we urge you to sign H.J. Res. 109 into law or work with the SEC to rescind the staff guidance.

SAB 121 was published on March 31, 2022, and requires covered entities that safeguard digital assets on behalf of customers to consolidate these assets onto their balance sheet and provide certain disclosures.¹ This accounting treatment is contrary to that of all other assets and puts consumers at risk by precluding the most regulated financial institutions from safeguarding digital assets.

The Government Accountability Office (GAO) determined SAB 121 is a rule for purposes of the Administrative Procedure Act (APA) and Congressional Review Act (CRA).² By inappropriately issuing guidance instead of engaging in notice and comment rulemaking, the SEC's rulemaking was able to avoid a vote by the full commission on a contentious policy. It also provided SEC staff a pathway to avoid notice and comment provisions of the APA which prevented stakeholders, including the banking regulators, from being able to comment on the policy.

Rescinding SAB 121 is well within the SEC's authority and there is ample precedent for revisiting a staff accounting bulletin. In fact, most staff accounting bulletins over the last three decades have been revisions and rescissions of prior guidance. Instead of recognizing this misstep and correcting this guidance, SEC Chair Gary Gensler has insisted the SEC will not revise or rescind the guidance.

Nevertheless, Congress has spoken: the SAB 121 CRA vote sent a clear, bipartisan message to the SEC that this misguided policy is harmful to consumers and staff guidance was not appropriate to impose policy changes and must be overturned.

If SEC Chair Gensler is going to insist on the continued application of this misguided rule, then Congress' disapproval of this rule should be signed into law or allowed to go into effect.

Sincerely,

¹ <https://www.sec.gov/oca/staff-accounting-bulletin-121>

² <https://www.gao.gov/products/b-334540>



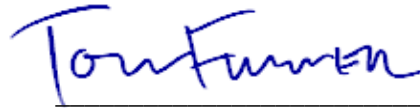
Cynthia M. Lummis
United States Senator



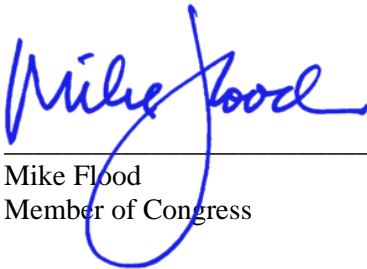
Patrick McHenry
Member of Congress



Andy Barr
Member of Congress



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