

**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.

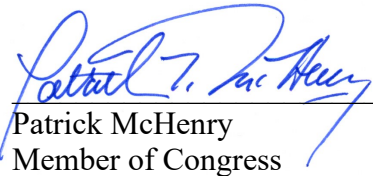
Instead of recognizing this failure and rescinding the guidance, the SEC's Office of Chief Accountant (OCA) has only caused further confusion, working with certain institutions to avoid the balance sheet reporting requirements.<sup>1</sup> These consultations, completed on a case-by-case and confidential 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.

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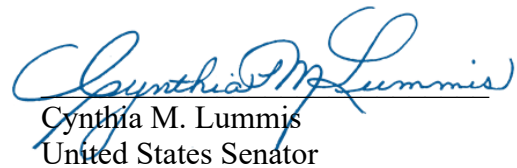
<sup>1</sup> SEC's Chief Accountant Paul Munter, Remarks before the 2024 AICPA & CIMA Conference on Banks & Savings Institutions: Accounting for Crypto-Asset Safeguarding Obligations—A Facts-Based Analysis, (Sep. 9, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/munter-speech-safeguarding-crypto-assets-09-09-24>.

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



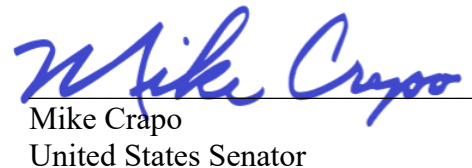
French Hill  
Member of Congress



Tim Scott  
United States Senator



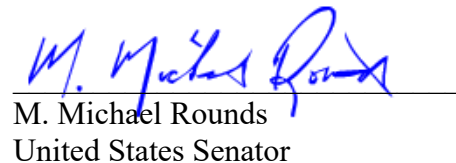
Frank Lucas  
Member of Congress



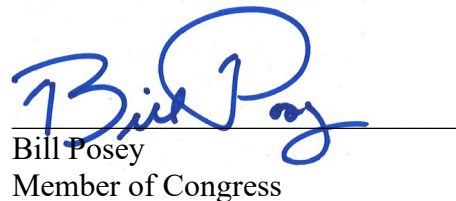
Mike Crapo  
United States Senator



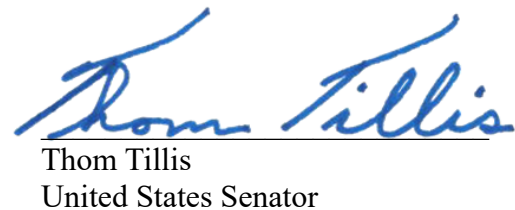
Pete Sessions  
Member of Congress



M. Michael Rounds  
United States Senator



Bill Posey  
Member of Congress



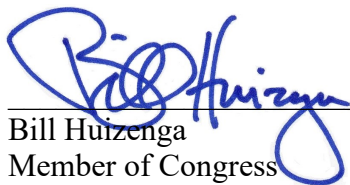
Thom Tillis  
United States Senator



Blaine Luetkemeyer  
Member of Congress



Bill Hagerty  
United States Senator




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Bill Huizenga  
Member of Congress



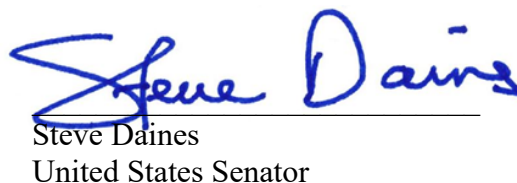
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Katie Boyd Britt  
United States Senator



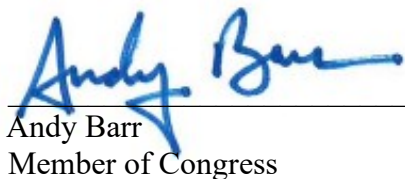
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Ann Wagner  
Member of Congress



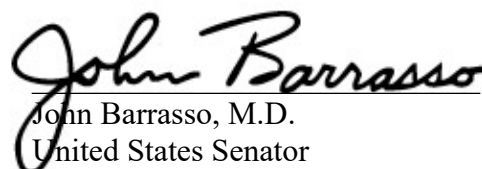
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Steve Daines  
United States Senator



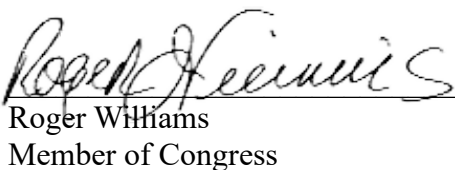
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Andy Barr  
Member of Congress



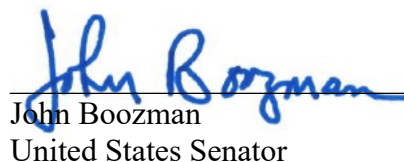
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John Barrasso, M.D.  
United States Senator



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Roger Williams  
Member of Congress



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John Boozman  
United States Senator



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Tom Emmer  
Member of Congress



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Mike Braun  
United States Senator



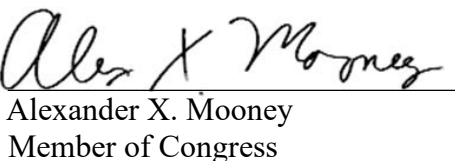
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Barry Loudermilk  
Member of Congress



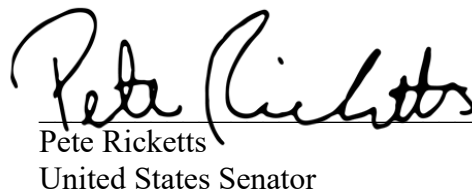
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Ted Budd  
United States Senator



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Alexander X. Mooney  
Member of Congress



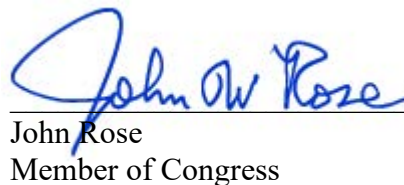
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Pete Ricketts  
United States Senator



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Warren Davidson  
Member of Congress



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John Rose  
Member of Congress



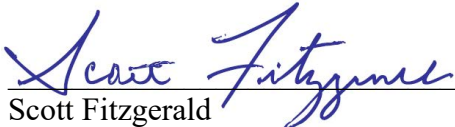
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Bryan Steil  
Member of Congress



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Ralph Norman  
Member of Congress




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Scott Fitzgerald  
Member of Congress



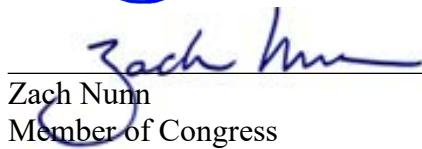
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Young Kim  
Member of Congress



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Mike Flood  
Member of Congress



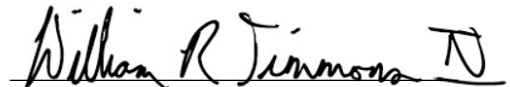
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Zach Nunn  
Member of Congress



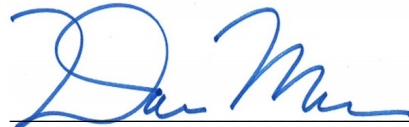
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Erin Houchin  
Member of Congress



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William Timmons  
Member of Congress



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Dan Meuser  
Member of Congress



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Andrew R. Garbarino  
Member of Congress



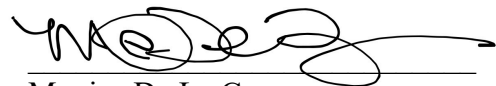
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Byron Donalds  
Member of Congress



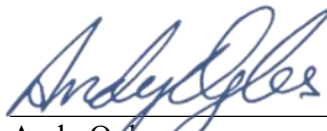
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Michael V. Lawler  
Member of Congress



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Monica De La Cruz  
Member of Congress



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Andy Ogles  
Member of Congress

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