

May 31, 2024

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Ave. NW  
Washington, D.C. 20500

Re: 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).

Dear Mr. President:

The American Bankers Association, Bank Policy Institute, Financial Services Forum, and Securities Industry and Financial Markets Association (Associations) write to express our support for H.J. Res. 109, the Congressional Review Act resolution of disapproval for the Securities and Exchange Commission's "Staff Accounting Bulletin 121." H.J. Res. 109 was introduced by Reps. Mike Flood (R-NE) and Wiley Nickel (D-NC) and Sen. Cynthia Lummis (R-WY). Strong bipartisan majorities in Congress passed this resolution of disapproval, by a vote of 60-38 in the Senate on May 16 and 228-182 in the House on May 8.

In March 2022, the Securities and Exchange Commission's (SEC) Office of the Chief Accountant released Staff Accounting Bulletin (SAB) 121, without consulting the prudential regulators or soliciting public comment, to address perceived risks to publicly traded companies that safeguard digital assets for their customers. SAB 121 requires public companies to record the fair value of user-safeguarded digital assets on their balance sheets, which deviates from normal accounting treatment of custodied assets as off-balance sheet assets. SAB 121 effectively precludes regulated banking organizations from offering digital asset custody at scale since it treats the assets as if they are owned rather than simply custodied by a banking organization. Institutions that are forced to record custodied digital assets on balance sheet are subjected to higher capital, liquidity, and other prudential requirements, unlike their non-bank competitors.

Precluding regulated banking organizations from effectively providing digital asset safeguarding services at scale harms investors, customers, and ultimately the financial system, with the market limited to custody providers that do not afford their customers the legal and supervisory protections provided by federally-regulated banking organizations. Furthermore, SAB 121 undercuts the ability of banks to develop responsible use cases for distributed ledger technology (DLT) and encumbers regulated broker-dealers from custody services as a result of the net capital rule (Rule 15c3-1), which treats the on-balance sheet items as non-allowable assets. On February 14, 2024, the Associations sent a joint letter to the SEC<sup>1</sup> noting that over the past two years SAB 121 has curbed the ability of our member banks to develop and bring to market at scale certain digital asset products and services.

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<sup>1</sup> <https://www.aba.com/advocacy/policy-analysis/joint-comments-to-sec-on-sab-121>

SAB 121 represents a significant departure from longstanding accounting treatment for custodial assets and threatens the industry's ability to provide its customers with safe and sound custody of digital assets. Other, non-bank digital asset platforms subject to SAB 121 are not required to meet the same capital, liquidity, or other prudential standards as banks and therefore do not face the economically prohibitive implications of SAB 121. Limiting banks' ability to offer these services leaves customers with few well-regulated, trusted options for safeguarding their digital asset portfolios and ultimately exposes them to increased risk.

The Associations respectfully request that you sign H.J. Res. 109 into law.

Sincerely,

American Bankers Association  
Bank Policy Institute  
Financial Services Forum  
Securities Industry and Financial Markets Association