

## **Cmte Financial Services (R)**

### **Contact:**

### **McHenry, Lummis, Colleagues Urge Prudential Regulators Not to Enforce SAB 121**

Letter follows GAO finding SAB 121 constitutes a “rule” for purposes of the CRA

Washington, Nov 15 -

The Chairman of the House Financial Services Committee, Patrick McHenry (R-NC), and Senator Cynthia Lummis (R-WY) led a [letter](#) with a bipartisan group of colleagues to the prudential regulators—the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board of Governors (Fed), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). The lawmakers are urging the regulators to clarify that SAB 121 is not enforceable considering the Government Accountability Office’s (GAO) finding that it constitutes a “rule” for purposes of the Congressional Review Act (CRA).

The letter was also signed by Senator Kirsten Gillibrand (D-NY), Rep. French Hill (R-AR), Rep. Ritchie Torres (D-NY), Rep. Mike Flood (R-NE), and Rep. Wiley Nickel (D-NC).

### **Read the full [letter](#) to the prudential regulators here or below:**

“Dear Vice Chair Barr, Chairman Gruenberg, Chairman Harper, and Acting Comptroller Hsu:

“We write regarding Securities and Exchange Commission (SEC) Staff Accounting Bulletin 121 (“SAB 121”) published on April 11, 2022.

“Last month, the Government Accountability Office (GAO) issued a legal decision that SAB 121 is a rule for purposes of the Congressional Review Act. SAB 121 was issued without consultation with any of your respective agencies and would require custodians to recognize a liability and a corresponding offset on their balance sheets, measured at the fair value of the customer custodial digital assets. This accounting approach, which deviates from established accounting standards, would not accurately reflect the underlying legal and economic obligations of the custodian, and places consumers at greater risk of loss.

“In its decision, GAO stated that ‘it is reasonable to believe that companies may change their behavior to comply with the staff interpretations found in the Bulletin’ due to the SEC’s responsibility and authority in monitoring public disclosures and pursuing enforcement actions against noncompliant entities.

“SAB 121 meets the definition of a rule under the Administrative Procedure Act (APA), and was never submitted to Congress or the GAO, nor was it subsequently published in the Congressional Record consistent with the requirements of the Congressional Review Act. Given that the SEC failed to meet these obligations, SAB 121 should have no legal effect and the Federal banking agencies and National Credit Union Administration should not require banks, credit unions and other financial institutions that provide custody services for digital assets to comply. This means that such entities need not recognize a liability and a corresponding asset offset on their balance sheets.”

“Enforcing this noncompliant rule would set a concerning precedent that would facilitate regulatory gamesmanship to circumvent the APA, effectively allowing the SEC to have regulatory authority over institutions which Congress did not authorize.

“We therefore ask you to clarify, through guidance or other action, that SAB 121 is not enforceable in light of the recent GAO determination. Thank you for your attention to this matter.”

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