

118TH CONGRESS  
1ST SESSION

# H. R. 5741

To prohibit certain Federal agencies from requiring certain institutions to include assets held in custody as a liability, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2023

Mr. FLOOD (for himself, Mr. TORRES of New York, Mr. HILL, and Mr. NICKEL) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To prohibit certain Federal agencies from requiring certain institutions to include assets held in custody as a liability, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Uniform Treatment  
5 of Custodial Assets Act”.

6 **SEC. 2. ACCOUNTING TREATMENT OF CUSTODY ACTIVI-**  
7 **TIES.**

8 (a) IN GENERAL.—The appropriate Federal banking  
9 agency, the National Credit Union Administration (in the

1 case of a credit union), and the Securities and Exchange  
2 Commission may not require or take supervisory action  
3 that would cause a depository institution, national bank,  
4 Federal credit union, State credit union, trust company,  
5 or any affiliate thereof—

6 (1) except as provided in subsection (b), to in-  
7 clude assets held in custody or safekeeping, or the  
8 assets associated with a cryptographic key held in  
9 custody or safekeeping, as a liability on such institu-  
10 tion's financial statement or balance sheet;

11 (2) to hold additional regulatory capital against  
12 assets in custody, or safekeeping, or the assets asso-  
13 ciated with a cryptographic key held in custody or  
14 safekeeping, except as necessary to mitigate against  
15 operational risks under regulations with general ap-  
16 plication, as determined by—

17 (A) the appropriate Federal banking agen-  
18 cy or State bank supervisor;

19 (B) the National Credit Union Administra-  
20 tion (in the case of a credit union); or

21 (C) a State credit union supervisor; or

22 (3) to recognize a liability for any obligations  
23 related to activities or services performed for digital  
24 assets that such institution does not have beneficial  
25 ownership of if that liability would exceed the ex-

1       pense recognized in the income statement as a result  
2       of the corresponding obligation.

3       (b) EXCEPTION FOR COMMINGLING.—Cash held for  
4 a third party by an institution described in subsection (a)  
5 may be treated as a liability on such institution’s financial  
6 statement or balance sheet if such cash is commingled  
7 with the general assets of such institution.

8       (c) DEFINITIONS.—In this section:

9           (1) AFFILIATE.—The term “affiliate” has the  
10 meaning given the term in section 2 of the Bank  
11 Holding Company Act of 1956 (12 U.S.C. 1841).

12           (2) CREDIT UNION TERMS.—The terms “Fed-  
13 eral credit union” and “State credit union” have the  
14 meaning given those terms, respectively, in section  
15 101 of the Federal Credit Union Act (12 U.S.C.  
16 1752).

17           (3) FDIA TERMS.—The terms “appropriate  
18 Federal banking agency”, “depository institution”,  
19 and “State bank supervisor” have the meanings  
20 given the terms, respectively, in section 3 of the  
21 Federal Deposit Insurance Act (12 U.S.C. 1813).

22           (4) STATE CREDIT UNION SUPERVISOR.—The  
23 term “State credit union supervisor” means a State

1       official described in section 107A(e) of the Federal  
2       Credit Union Act (12 U.S.C. 1757a(e)).

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