

## **GENIUS Act Feedback from the American Bankers Association**

Thank you for the opportunity to provide feedback on S. 394, the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act introduced on February 4, 2025. We appreciate the opportunity to engage with Congressional stakeholders on development of a regulatory framework for stablecoin.

We have reviewed the legislation and discussed it with our member banks in a series of working group calls. The key issues we reviewed include how effectively the legislation applies the principle of “same activity, same risk, same regulation,” mitigates financial stability and consumer protection risk, and preserves the foundational value of financial intermediation through the banking system and bank deposits relative to payment stablecoins. These issues were evaluated through the robustness of the regulatory framework; the degree of supervision and mechanism for enforcement; the application of the Bank Secrecy Act (BSA) to the payment stablecoin ecosystem; and the limits placed on nonbanks, including commercial activities restrictions, master account access, and the ability to pay interest on tokens. In addition, we want to ensure that banks can issue stablecoin on an equal footing to nonbanks, and that tokenized deposits are not captured in the definition of payment stablecoin.

As you will see below, our fundamental concerns about insufficient regulation, supervision, and enforcement applying to all payment stablecoin issuers remain. We’re attempting to provide detailed and constructive feedback before the requested deadline in a genuine effort to be transparent, as we hope to work with you to find common ground to advance this initiative. Further, while we are providing this feedback in writing, we request a meeting to ensure we are accurately interpreting the plain text and intent of the legislation and effectively communicating our feedback. We hope to continue to work with you in a constructive way to address these concerns.

This document is organized into three sections: overarching concerns, section-by-section comments with clarifying questions in italics, and a list of key risks that influence our thinking on payment stablecoin regulation.

### **Overarching Concerns**

1. The bill does not establish a sufficient federal floor for regulation that applies to all stablecoin issuers, nor provide sufficient authority to regulators to establish adequate rules.
2. The bill applies insufficient ongoing supervision and enforcement authority by a federal prudential regulator for state qualified payment stablecoin issuers.
3. The bill does not sufficiently apply the Bank Secrecy Act (BSA) to all entities engaged in the transmission of currency or value that substitutes for currency.
4. The bill does not adequately limit the activities of a payment stablecoin issuer’s nonbank parent company or affiliates.
5. The bill does not address insolvency of a payment stablecoin issuer.

## **Section-by-Section Comments**

### **Sec 2 (Definitions)**

- The definition of Payment Stablecoin should include the issuer's affirmative obligation to redeem payment stablecoins in a timely manner, maintain reserves, and comply with other requirements described in Sec 4 (a). The definition should clarify that a payment stablecoin is not a digital asset representing a deposit held at an insured depository institution (IDI).
- The bill should allow for IDIs to be a Permitted Payment Stablecoin Issuer directly or through a subsidiary. The burden of operating through a subsidiary is significantly higher for community banks and may preclude their participation in this ecosystem. Further, other jurisdictions may allow IDIs to issue payment stablecoins directly creating an unlevel global playing field. Requiring payment stablecoin issuance out of a subsidiary has certain benefits related to limiting complexity due to insolvency and contagion risk, but that risk can be evaluated and the proposed model approved or not during the application process.
- *Is the bill intended to capture non-USD denominated stablecoins? Based on the definition, it seems to, except that reserves appear mostly dollar-denominated, and the reciprocity section is limited to dollar-denominated stablecoin issued abroad.*

### **Sec 3 (Limitation on who may Issue a Payment Stablecoin)**

- The bill should make clear that it is unlawful for a non-approved payment stablecoin issuer to issue a payment stablecoin for use by any US person. As drafted, the bill ties unlawful activity to the payment stablecoin being *issued* in the U.S., which isn't sufficient to capture a non-approved payment stablecoin issuer operating abroad and issuing non-approved stablecoins to US persons.
- The bill should attach criminal penalties and an enforcement mechanism for unlawfully issuing a payment stablecoin used by a US person and make clear that the penalty applies to domestic and foreign entities. Section 6 (b)(5)(A) appears to allow for civil penalties for nonapproved stablecoin issuers.
- The bill should further prohibit and attach penalties to exchanges and other digital asset service providers that allow US persons to buy, sell, and hold an unlawfully issued payment stablecoin.

### **Sec 4 (Requirements for Issuing Payment Stablecoins)**

#### **Regulatory Framework**

- The bill provides insufficient authority to federal regulators to develop requirements applicable to payment stablecoin issuers.
  - o Such authority should not be limited to accounting for specific functionality, particularly given the payment stablecoin market is new and risks may not be fully understood. For example, capital requirements must account for various types of risk and not be limited to only what is necessary to ensure ongoing operations.
  - o In addition to developing appropriate rules around capital, liquidity, and risk management, regulators need authority to develop rules around reserves, including concentration, diversification, and the potential requirement for some percentage

of reserves to be held as deposits in IDIs; redemption, including process, timeliness, and disclosure of fees; operational risk and resiliency; interest rate risk; consumer protection; BSA compliance; GLBA compliance; IT risk; and cybersecurity.

- The bill appears to limit regulation and supervision of Federal qualified nonbank payment stablecoin issuers to the Comptroller exclusively, which neglects FinCEN's role and potentially other regulators with jurisdiction based on the issuer's activities.
- In addition to requiring a process for redemption, the bill should clarify that payment stablecoin issuers have an affirmative obligation to redeem payment stablecoins in a timely manner, subject to AML and sanctions compliance obligations.
- The bill should prohibit payment stablecoin issuers from paying interest, dividends or any type of yield on payment stablecoins. In addition to avoiding consumer confusion distinguishing a payment stablecoin from a bank deposit, assets that earn a return should be subject to securities regulation. In fact, on February 18, 2025, the SEC approved a form of yield-generating stablecoin<sup>1</sup>, confirming that such an arrangement falls under securities law.
- The bill should prohibit payment stablecoins from being covered by FDIC deposit insurance.
- The bill should require payment stablecoin issuers be able to "freeze" and "burn" payment stablecoins to comply with lawful orders from US law enforcement.
- The bill should include preemption of state laws with respect to a subsidiary of a national bank IDI to the same extent as if that subsidiary were a national bank. Further, the bill should, at a minimum, include express federal preemption on the regulation of payment stablecoin issuers as to the requirements described in Sec 4 (a).

#### Regulatory Framework: Reserves

- In the list of permitted reserves, the bill should clarify that "central bank reserve deposits" refers only to USD reserves at Federal Reserve Banks.
- The bill should require disclosure of reserve composition on at least a daily basis, in line with requirements for money market mutual funds. It is critical that consumers can find accurate information about a payment stablecoin reserves to maintain confidence in the peg.
- The bill should require that reserves be held functionally away from the payment stablecoin issuer, either with a third-party custodian or at least in a functionally distinct affiliate.
- The bill should make clear that reserves may include funds held as demand deposits (not necessarily insured), and further that reserves held in that form are regular deposits and not subject to lending or rehypothecation limitations at the IDI where they are placed. In particular, cash reserves backing a payment stablecoin may be held by a bank custodian as property of the bank with an associated liability to the payment stablecoin issuer and are not required to be held in a manner that is insolvency remote from the bank.

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<sup>1</sup> <https://www.figuremarkets.com/resources/figure-markets-announces-ylds-first-yield-bearing-stablecoin/>

- The bill should clarify that bank custodians of payment stablecoin reserves do not face AML and sanctions compliance obligations arising from the payment stablecoins they have not issued. In other words, merely holding the reserves for a payment stablecoin that the custodian has not issued does not obligate the custodian to perform KYC, transaction monitoring or other screening related to transactions involving the payment stablecoin itself. That obligation should lie with the payment stablecoin issuer and digital asset service providers facilitating those transactions.

#### State Regulatory Regimes

- If there are to be state-level regulatory regimes, the bill should require such state-level frameworks be reviewed and approved by a federal regulator to determine whether they meet the federal standard and are substantially similar to the federal framework.
- The bill proposes a size threshold to determine when a payment stablecoin issuer can be state-regulated and a process for determining if a state regulatory regime is substantially similar to the federal framework. The size threshold is a step in the right direction to ensure larger payment stablecoin issuers are sufficiently regulated. Similarly, the certification process for state regulatory regimes is a step in the right direction, but still insufficient. The process should require affirmative review and approval by a primary federal regulator rather than the Secretary of the Treasury.
  - o The bill should clarify that the size threshold is based on the value of stablecoin outstanding on a consolidated basis and not the market capitalization of the issuer.
  - o The bill should clarify that upon exceeding the size threshold or if a state regulatory regime is not substantially similar, the payment stablecoin issuer is considered a Federal Qualified Payment Stablecoin Issuer for purposes of the regulatory framework, supervision and enforcement. The plain text leaves open a question as to whether supervision and enforcement would be carried out by a federal regulator.
  - o The bill should not introduce a waiver concept to permit large payment stablecoin issuers to remain under the state regulatory regime. At a minimum, that assessment should be revisited annually.
  - o *Is the intent to allow an IDI to opt for state-level regulation under Sec 4 (b)?*

#### Activities Limitation

- The Rule of Construction in the limitation on activities subsection should be removed, as it undermines the intent of the limitation. Further, the bill should extend the limitation on activities to the nonbank parent company and nonbank affiliates of payment stablecoin issuers. And, it should limit affiliate transactions and potential conflicts of interest that result.
  - o To be specific, it doesn't appear that this bill would prevent Meta/Facebook from issuing Libra through a payment stablecoin subsidiary. *Is that the intent?*
  - o In general, the same limitations that apply in the Bank Holding Company Act to bank holding companies should apply to non-bank owners or controllers of stablecoin issuers.

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#### Sec 5 (Approval of Subsidiaries of Insured Depository Institutions and Federal Qualified Nonbank Payment Stablecoin Issuers)

- The bill should not limit the factors that regulators may consider when evaluating applications. For example, as drafted the bill would not permit a regulator to consider financial stability risk in evaluating payment stablecoin issuer applications. Further, the bill should require affirmative approval from a federal regulator for all payment stablecoin issuers; deemed approval is unacceptable.
- *Does Sec 5 suggest that all nonbanks apply to a primary federal regulator? What about those that opt for state-level regulation?*

#### Sec 6 (Supervision and Enforcement with respect to Subsidiaries of Insured Depository Institutions and Comptroller-Regulated Entities)

- The bill should include the provision in the STABLE Act's Sec 6(a)(1)(E) clarifying that Comptroller-Regulated Entities are financial institutions for the purposes of the Gramm-Leach Bliley Act.
- *Does Sec 6 (b)(5)(A) [Failure to be Approved] apply to foreign domiciled entities issuing a payment stablecoin?*

#### Sec 7 (State Qualified Payment Stablecoin Issuers)

- The bill must ensure that state regulators have expertise to effectively supervise payment stablecoin issuers, and if they do not, supervision must be conducted by a federal regulator.
- The bill must allow for a faster response from a federal regulator, particularly in the event of a run, contagion, or de-peg situation. The bill permits the Federal Reserve to act only in exigent circumstances against a state qualified payment stablecoin issuer, and the Comptroller against a comptroller-regulated entity, each after 5 days written notice to a state regulator.
- The bill should define Host State and Home State and clarify Sec 7 (g).
- While the bill subjects all payment stablecoin issuers to the BSA, the bill should further provide the same level of supervision of the issuer's BSA compliance for all payment stablecoin issuers. It is not enough to apply the same ruleset without sufficient corresponding supervisory oversight. This is particularly important for state qualified payment stablecoin issuers.

#### Sec 8 (Customer Protection)

- The bill should apply the BSA to digital asset service providers, including digital wallet providers and custodians of payment stablecoins.
- The bill should require that digital asset service providers only hold payment stablecoins issued by permitted payment stablecoin issuers or facilitate payment stablecoin transactions of payment stablecoins issued by permitted payment stablecoin issuers.

#### Sec 9 (Treatment of Insolvent Payment Stablecoin Issuers)

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- The bill should introduce a resolution process for payment stablecoin issuers that is distinct from the Chapter 11 bankruptcy process or otherwise clarify that reserves backing outstanding payment stablecoin are not property of the issuer's bankruptcy estate, and therefore not subject to the ordinary (and elongated) bankruptcy claims process.

#### Other

- The bill should prohibit nonbank payment stablecoin issuers from being granted master accounts at the Federal Reserve.
- The bill should prohibit the use of government funds to make stablecoin holders whole in the event of a payment stablecoin issuer's failure to redeem outstanding stablecoins.

## **Key Risks**

Following are some of the critical risks of payment stablecoin that has shaped our feedback:

Stablecoins introduce risk to the financial system and consumers that use them.

- Potential that issued stablecoins can't be redeemed at par --> potential run risk --> fire sale of reserve assets (financial instability, consumer harm)
  - Insufficient or unavailable reserves (loss of peg)
    - Not enough reserves at issuance
    - Reserves lose value
    - Reserves lost due to fraud/misuse/hack
    - Reserves subject to claim from creditors (whether at issuer or custodian)
    - Reserves pledged elsewhere
    - Reserves lack sufficient liquidity
  - Failed issuer (no entity to redeem)
  - Hacked/lost wallet (missing stablecoin)
  - Stablecoin lost due to fraud
  - Poor recordkeeping
  - Bad actor/Fraudulent issuer
- Potential use to finance illicit activity
- Consumer confusion over stablecoin use, value, redemption

Stablecoins disintermediate banking, which is more than a competitive issue. Banking is critical to powering the economy and preserving financial stability.

- Deposit substitute (impacts funding for loans)
- Payment mechanism (impacts bank revenue via transaction fees, interchange)
- Cross-border payments (impacts correspondent business, transaction fees)
- With scale, supports a parallel defi financial system