November 4, 2025

U.S. Department of the Treasury
ATTN: Office of General Counsel
1500 Pennsylvania Avenue NW
Washington, DC 20220
Docket no. TREAS-DO-2025-0037
RIN 1505-ZA10

Re: *GENIUS Act Implementation*

The Conference of State Bank Supervisors ("CSBS")[1] provides the following comments regarding the U.S. Department of the Treasury ("Treasury") advance notice of proposed rulemaking ("ANPRM") on the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act.[2] The GENIUS Act tasks Treasury, in coordination with federal agencies and state regulators, with issuing regulations that provide regulatory clarity for payment stablecoin issuers, protect consumers, and recognize the role of states in the GENIUS Act regulatory framework.

The ANPRM identifies areas where Treasury's responsibility and authority warrant additional clarification regarding the application of the GENIUS Act or the role of state-level regulatory regimes in regulating payment stablecoin issuers ("issuers"). State banking regulators recommend that any rulemaking implementing the GENIUS Act recognize and reinforce that:

I. **The United States financial system and the payment stablecoin market will benefit from a regime that respects the role of the states and allows issuers to choose between federal and state frameworks based on their organizational structures and business strategy.**
   - The principles for determining whether a state level regime is "substantially similar" to the federal regulatory framework should be flexible and focus on whether the state regime faithfully implements the fundamental requirements of Section 4 of the GENIUS Act. State regimes should not have to strictly follow the implementing regulations adopted by the federal banking agencies to qualify as "substantially similar."[3]
   - State regulatory regimes may include additional requirements that do not conflict with the GENIUS Act. The Stablecoin Certification Review Committee's ("SCRC") obligation to approve any state certification that "meets or exceeds" the requirements of Section 4(a) shows Congress intended to permit state regulatory regimes to treat the GENIUS Act as a floor, not a ceiling.[4]

[1] CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of Columbia, and the U.S. territories.
[2] Department of Treasury, Advance Notice of Proposed Rulemaking, *GENIUS Act Implementation*, 90 Fed. Reg. 45159 (Sept. 19, 2025).
[3] *See* answers to Questions 18 & 19.
[4] *Id.*

- The GENIUS Act's state certification timelines are unrealistically short. Treasury should develop a streamlined certification process that includes an "application of interest" for states whose legislative or regulatory processes may not align with the unreasonable statutory deadline.[5]
- The GENIUS Act does not authorize preemption of host state consumer protection laws with respect to federal or out-of-state issuers, beyond specified exceptions for chartering, licensing, or authorizations to do business.[6]
- Foreign payment stablecoins should not be available in the United States unless the foreign country regime where the issuer registers meets the requirements and standards of the GENIUS Act and the foreign payment stablecoin regulator has comprehensive oversight capabilities sufficient to ensure the issuer's *global* compliance with that regime.[7]
- State regulators may license state branches of foreign banking organizations as state qualified issuers.[8]

II. The GENIUS Act does not authorize issuers to engage in the business of banking or money transmission.

- To avoid evasion of the GENIUS Act prohibition on an issuer paying holders interest or yield, Treasury should adopt a broad interpretation of these terms. Any payment made by an affiliate or related third party to a holder of a payment stablecoin should be prohibited if the issuer could not make the payment directly.[9]
- An issuer may not lend money, reserve assets, or digital assets beyond what is explicitly authorized in the GENIUS Act.[10]
- Exclusion of payment stablecoin issuance and related activities from state money transmission or other financial licensing requirements *does not authorize*, explicitly or implicitly, issuers to engage in unlicensed fiat money transmission or other non-stablecoin-related financial activities.[11]
- The SCRC should strictly construe requirements related to public non-financial services companies issuing payment stablecoins to ensure those activities do not present material risks to financial stability or competition. Treasury should work with the Comptroller to apply similar standards to private non-financial services companies seeking to issue payment stablecoins.[12]

Below, we provide answers to specific, relevant questions from the ANPRM, in the order in which they appear in that document.

[5] *Id.*
[6] *See* answer to Question 47.
[7] *See* answer to Question 34.
[8] *See* answer to Question 57.
[9] *See* answer to Question 14.
[10] *Id.*
[11] *See* answer to Question 4.
[12] *See* answer to Question 17.

4. Is the scope of the term "digital asset service provider" sufficiently clear as defined in the GENIUS Act? If not, what additional clarification should be provided?

> **No, the scope of the term "digital asset service provider" is not sufficiently clear. Treasury should clarify that nothing in the scope of "digital asset service provider," including "exchanging digital assets for monetary value," "transferring digital assets" or "participating in financial services relating to digital asset issuance," authorizes issuers to (1) lend either national currency or digital assets, including their own payment stablecoin, beyond what is explicitly authorized in the GENIUS Act, (2) operate as a money transmitter, or (3) engage in any other financial activity beyond what the GENIUS Act authorizes.**

The GENIUS Act allows, but does not require, a federal or state regulator to authorize an issuer to engage in digital asset service provider activities, including incidental activities.[13] Federal regulators should not grant broad authorization for all issuers to engage in all digital asset service provider activities. Instead, federal regulators should only grant digital asset service provider authorities to issuers on a case-by-case basis, calibrating any approval of such activities to the business model, risk profile, and risk management capabilities of the issuer. Any such authorization should include enhanced capital requirements for authorized digital asset service provider activities consistent with Section 4(a)(4)(C).

The GENIUS Act does not authorize federal regulators to approve an issuer to engage in digital asset service provider activities if, as an issuer, the applicant does not intend to actively engage in issuing payment stablecoins or intends to issue only a *de minimis* quantity of payment stablecoins. Authorizing such activities would effectively create a backdoor registration framework for digital asset service providers who are not legitimate issuers – an outcome unsupported by the text or intent of the GENIUS Act.

Federal regulators should not interpret the listed digital asset service provider activities in Section 2(7) as authority for issuers to engage in financial services not directly related to those specified activities or otherwise expressly enumerated in the GENIUS Act, including lending, fiat money transmission, credit card issuance, insurance underwriting, or other financial activities. Federal regulators cannot reverse the Section 4(a)(7)(A) limit on the activities of issuers by expansively reading a rule of construction and the digital asset service provider definition[14] to permit such unrelated financial activities.[15] Congress has not clearly and expressly preempted state law for activities unrelated to the enumerated stablecoin and

[13] *See* Section 4(a)(7)(C).
[14] *See* Sections 1(7) and 4(a)(7)(B).
[15] *See Whitman v. American Trucking Assns*. 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

digital asset service provider activities specified in the GENIUS Act.[16] The Act simply did not authorize such a dramatic change in the application of state law.[17]

This construction also prevents issuers from having a risk profile that does not match the narrowly framed capital, liquidity, and risk management requirements established in the GENIUS Act. Those requirements are tailored to reflect the limited authorities of issuers and do not reflect a congressional expectation that issuers would be engaged in activities that create significant credit or counterparty risks. Allowing an issuer to engage in other financial activities not only threatens its own reserves and capital, but could also trigger contagion within the digital asset and broader financial ecosystems.

14. Should any regulations be issued to clarify the meaning of "pay," "interest," "yield," "solely," or otherwise clarify the scope of Section 4(a)(11)? In particular, should any regulations be issued to clarify whether, and to what extent, any indirect payments are prohibited?

> **a. Yes, regulations should be issued to clarify the meaning of "pay," "interest," "yield," and "solely." To avoid evasion of Section 4(a)(11), regulations should broadly define "pay," "interest" and "yield" to cover all transfers of value to the holder of a payment stablecoin and comprehensively define "solely" to include administrative or ministerial actions by the holder.**

Section 4(a)(11) of the GENIUS Act prohibits issuers from paying the holder of a payment stablecoin any form of interest or yield, solely in connection with the holding, use, or retention of such payment stablecoin. Section 4(h)(1) directs federal payment stablecoin regulators to issue regulations as necessary to carry out the requirements of Section 4, and "to prevent evasion thereof."

The GENIUS Act's prohibition on paying interest or yield is intended to focus payment stablecoin use on payments and disincentivize the holding of large uninsured stablecoin balances, which could trigger deposit flight out of the banking system and into payment stablecoins.[18] Among other negative consequences, meaningful deposit flight could heighten bank liquidity and broader financial stability risks, limit credit availability to consumers and businesses (particularly for small businesses and farmers), increase the cost of bank deposits and funding, and increase the risk of consumer harm for holders of uninsured stablecoins and other digital assets.[19] Treasury and the federal banking regulators

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[16] *See, e.g.*, *Wyeth v. Levine*, 555 U.S. 555, 565 ("[i]n all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'") (*quoting Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) and *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

[17] *See West Virginia v. EPA*, 597 U.S. 697, 721-23 (2022) (emphasizing importance of "clear congressional authorization" for federal agency assertions of authority over "extraordinary cases" given the "economic and political significance" of the assertion) (*citing FDA v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 159-160 (2000) and *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)).

[18] Treasury Borrowing Advisory Committee, Presentation, *Digital Money*, April 30, 2025 at 2 ("The potential impact on bank deposits may depend on whether stablecoins are yield-bearing.").

[19] Andrew Nigrinis, "*The Coming Stablecoin Shock to America's Credit Markets*," Open Banker (Oct. 16, 2025).

should issue regulations implementing the GENIUS Act's prohibition on paying interest or yield to mitigate these risks.

The terms "interest," "yield," and "pay" should be defined to collectively capture all direct and indirect transfers of value to a holder, in whatever form. This definition would prevent evasion of this GENIUS Act prohibition via alternative payment structures or semantic distinctions. For instance, payments of "rewards" or "bonuses" to holders should be treated as interest or yield. The limitation should also be agnostic about the form of value: payments in fiat, payment stablecoins, or other digital assets should all be prohibited to avoid evasion. The definitions of interest or yield should also include irregular or unpredictable payments by the issuer, such as payments tied to account age, based on random drawings, or other similar eligibility criteria designed to creatively circumvent GENIUS Act limitations.

Regulations should also define "solely" so that issuers cannot evade the statutory prohibition by requiring the holder to engage in administrative or ministerial acts or tasks. To be permitted, any payment should require a holder to engage in effort or accept risks beyond the ordinary course of holding, using, or retaining a payment stablecoin. In particular, holding payment stablecoins in a specific wallet or on a specific exchange should not be a sufficient additional obligation to permit payments under this section. "Solely" must be interpreted comprehensively to effectively implement the prohibitions in Section 4(a)(11).

> **b. Yes, regulations should be issued to clarify whether, and to what extent, any indirect payments are prohibited. The 4(a)(11) prohibition should apply to payments made to a holder by affiliates of an issuer and third parties who have certain business relationships with the issuer.**

Section 4(a)(11)'s prohibition on paying yield or interest will be meaningless if issuers can evade it by arranging for an affiliate or business partner to pay the yield or interest instead. If this provision does not apply to indirect payments, an issuer could reimburse an exchange, wallet provider, or other entity, including an affiliate, for interest or yield that they pay to holders. Such an interpretation would nullify congressional intent.

Federal regulators and Treasury should use their rulemaking authority under Section 4(h)(1) and Section 13 to prohibit evasion of Section 4(a)(11). Regulations should impute to the issuer any payments by affiliates and third parties who have a business relationship with the issuer. Examples of a third-party relationship that should prohibit paying yield for holding a payment stablecoin could include direct contractual agreements regarding payment of yield, revenue sharing arrangements between the issuer and the affiliate or third-party related to fees or reserve interest, exclusive or preferred service agreements between the parties, or a significant equity stake in the issuer. In cases like these, the same reasoning that motivated Congress to prohibit payments by the issuer would apply to attempts to evade that prohibition through the third party.

17. What factors should the SCRC consider in making a finding that, if a non-financial company issues payment stablecoins, it will not pose a material risk to the safety and soundness of the U.S. banking system, the financial stability of the United States, or the Deposit Insurance Fund? Are there any factors that should be excluded from consideration?

a. To adequately address the potential systemic risk associated with non-financial services companies issuing payment stablecoins, the SCRC should strictly construe GENIUS Act requirements to ensure those activities do not present material risks to financial stability or competition.

A public non-financial services company may not issue a payment stablecoin unless it receives special approval by a unanimous vote of the SCRC. The GENIUS Act adds additional conditions for approval and places the burden of demonstrating those conditions are met on the applicant. This congressional approach reflects a balancing of the risks to financial stability, the banking system, and competition posed by the blending of banking and commerce. The SCRC has no statutory obligation to approve a public non-financial services company's application, and even one dissenting SCRC vote precludes approval. Given the associated risks, the Act's high standard for unanimous SCRC approval, and the lack of any required approval or appeal mechanism, the SCRC should not approve any application without a clear showing that the operations of the public non-financial services company will not pose a material risk to the banking system or Deposit Insurance Fund, financial stability, or competition.

In considering whether a material risk exists, the SCRC should weigh factors such as the size and interconnectedness of the applicant, the projected volume of issuance of its payment stablecoin, and the impact of the applicant issuing a payment stablecoin on competition in both the financial system and the applicant's main business market. In its competition analysis, the SCRC should consider the important role that the GENIUS Act's anti-tying requirement plays in reducing systemic risk. It should assess whether the non-financial services applicant can use its existing market power to favor its own payment stablecoin over competitors even without an explicit requirement (*e.g.*, by providing discounts or incentives to use its payment stablecoin) in a way that reduces competition. To support its analysis, the SCRC should coordinate with the Department of Justice regarding these anti-competitive impacts.

b. Treasury should work with the Comptroller to consider the same risk factors for private non-financial services companies as the SCRC does for public non-financial services companies.

Working together, Treasury and the Comptroller should apply equivalent standards to all non-financial services companies seeking to issue payment stablecoins. Private non-financial services companies present the same inherent risks that public non-financial services company issuers pose. Treasury should leverage its rulemaking authority, along with the authority of the Comptroller, to mitigate the systemic risks posed by all non-financial services firms seeking to issue payment stablecoins. This should include, among other things, strict application of the prohibitions on tying and on payment of interest and yield. The Comptroller should also use the discretion provided under Section 5(c)(5) to implement standards for approving private non-financial services companies in the same rigorous manner as SCRC review and approval for public non-financial services companies.

> **c. Treasury should consider how a foreign jurisdiction assesses the risks from private non-financial services companies who issue payment stablecoins before concluding the foreign regulatory regime is comparable.**

The SCRC approval requirement does not apply to foreign private non-financial services companies seeking to issue a payment stablecoin. Such companies may have opaque management or control processes that make oversight difficult. As part of its comparability determination, Treasury should specifically assess whether a foreign regime permits private non-financial services companies to issue payment stablecoins, and whether the foreign regime adequately accounts for the systemic risks posed by these companies in its regulation, supervision, and oversight. The Comptroller should also assess whether a foreign private non-financial services company applicant is subject to comprehensive consolidated supervision by a foreign financial regulator and reject any applicant that fails to meet this standard or that otherwise poses a threat to financial stability.

18. What broad-based principles should be considered in determining whether a state-level regime is "substantially similar" to the federal regulatory framework? Are there any principles that should be excluded from consideration?

> **Answered jointly with #19.**

19. How is a determination that a state-level regime is "substantially similar" to the federal regulatory framework, as described in Sections 4(c)(1) and (2) of the GENIUS Act, similar to or different from a determination that a state-level regime "meets or exceeds the standards and requirements" for issuing payment stablecoins, as described in Section 4(c)(5)?

> **a. Treasury should determine that a state-level regime is "substantially similar" to the federal regulatory framework if it: (1) meets or exceeds the standards and requirements described in Section 4(a) of the GENIUS Act and (2) the state payment stablecoin regulator has the supervisory and oversight authority to implement those standards and requirements. It should not be a requirement for the state-level regime to specifically match the regulatory implementation of federal payment stablecoin regulators.**

Section 4(c) requires the SCRC to approve a state certification if the state-level regulatory regime "meets or exceeds the standards and requirements described in subsection (a)." That is the only criteria the GENIUS Act provides for the SCRC to determine whether to approve or deny a state application. In its "broad-based principles" for implementing Section 4(c), Treasury should implement that statutory standard by clearly articulating that the GENIUS Act creates a federal floor and that state-level regimes are "substantially similar" if they (1) meet or exceed the requirements and standards in Section 4(a) and (2) the state payment stablecoin regulator has the legal and supervisory authority to enforce those requirements and standards.

When evaluating whether a state has legal and enforceable requirements governing the conduct of state-qualified issuers that meet or exceed the standards in Section 4(a), Treasury should accept a wide range of implementation choices and not mandate a single path for establishing a state regime. For instance, states should be able to establish a state-level regime via legislation, based on existing regulatory authority (*e.g.*, the New York BitLicense),[20] or by issuing regulation or enforceable guidance (including, but not limited to, regulation or guidance issued pursuant to Section 4.05 of the Money Transmission Modernization Act).[21] Flexibility for states to choose their own pathway for implementation is both sensible, given the variations in existing state law authorities, and imperative, given the tight timeline for states to submit an initial certification.

States, unlike the federal payment stablecoin regulators, have over a decade of experience regulating digital asset providers,[22] in addition to a long history of regulating banks, credit unions, money transmitters, and a wide array of financial services firms. The states have extensive experience and expertise in designing and implementing supervisory programs for large and complex financial services companies. Consequently, when evaluating state authority to implement and enforce requirements that meet or exceed Section 4(a), Treasury should presume that a state regulatory regime is "substantially similar" if the state payment stablecoin regulator has the necessary legal authority to supervise for and enforce the regulatory requirements applicable to state issuers.

Treasury may not issue any principle that would deny a determination of substantial similarity because a state sets legal requirements for issuers that exceed, but do not contradict, the GENIUS Act. Under Section 4(c)(5), the SCRC is required to certify a state regulatory regime if it exceeds the requirements and standards in 4(a). That language demonstrates congressional intent to set the 4(a) requirements as a floor and permit state variation above it. Treasury's broad-based principles should respect this intent.

Similarly, Treasury's principles should not require state regulatory frameworks to specifically match the regulations adopted by federal payment stablecoin regulators. Section 4(c)(5) requires states to meet or exceed the standards and requirements under Section 4(a), without reference to federal regulations. An applicant's choice between a state or federal payment stablecoin regime should reflect its consideration of various factors, including different business models, strategies, and operating conditions. Treasury should not preemptively impose a one-size-fits-all regulatory regime that threatens innovation and choice.

Other sections of the GENIUS Act reinforce that states have independent authority to implement GENIUS Act requirements. Section 7(d) grants state payment stablecoin regulators rulemaking authority under Section 4 to the same extent as federal payment stablecoin regulators. It does not instruct states

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[20] *See* 23 CRR-NY I 200 Notes (2023).

[21] Section 4.05, Money Transmission Modernization Act. To date, 31 states have enacted the model law in whole or in part, and 18 states having adopted Section 4.05.

[22] *See, e.g.,* World Economic Forum, *Digital Assets Regulation: Insights from Jurisdictional Approaches*, at 25 (2024) ("Due to a lack of federal-level regulatory guidance states have taken the lead on building and implementing the appropriate policies, which has helped companies navigate growth in these states…. The US is an important digital assets market and the country's laissez-fair approach has promulgated the advent of tokenized money market funds and *dollar dominance of the stablecoin segment*.") (emphasis added).

to adopt or defer to federal regulations. Section 13(b) instructs federal payment stablecoin regulators, Treasury, and state payment stablecoin regulators to coordinate on GENIUS Act rulemaking. It does not give primacy to federal regulators in determining the content of those rules.

b. Treasury should set out procedures for the SCRC's review of state initial certifications and recertifications, including for states that are not ready to seek an initial certification one year after the GENIUS Act's effective date.

Treasury regulations governing state regulatory regime certifications should set a standard format for information submission, including the attestation required in Section 4(c)(4)(B). It should commit the SCRC to provide, within a fixed timeline, an acknowledgement that the certification is complete or a written explanation of what additional information the state payment stablecoin regulator must submit to complete the certification.

The SCRC's procedural rule should also recognize that the GENIUS Act sets an unreasonably short deadline for states to submit an initial certification. States must submit their initial certification not later than one year after the effective date of the GENIUS Act. Not only does this limit states' ability to exercise their authority to regulate issuers if they are not prepared to meet this deadline, it risks creating a bottleneck as the SCRC reviews a potentially significant number of state certifications submitted at the deadline. We encourage Treasury to engage with Congress on a legislative fix that explicitly permits states to initially apply when they are ready.

Notwithstanding an amendment to the initial certification timing requirement, the Treasury rulemaking should offer state regulators the opportunity to seek a summary SCRC denial of their initial certification without prejudice to a subsequent review. Within the one-year timeline provided by the GENIUS Act, the SCRC should allow a state to express interest in regulating issuers and acknowledge that its regulatory regime is not yet substantially similar. The SCRC should then deny certification, while preserving the state's ability to reapply in the future under Section 4(c)(5)(E). The Treasury rulemaking should clarify that states that have availed themselves of this summary denial have no deadline by which they must resubmit for certification.

Treasury should also clarify that, for purposes of the annual recertification required by Section 4(c)(4)(C), the SCRC will only deny a recertification if a state changes its regulatory regime such that it no longer meets or exceeds the requirements of the GENIUS Act or the state regulator no longer has the legal and supervisory authority necessary to enforce the standards and requirements in its regulatory regime. Absent an amendment to Section 4(a) of the GENIUS Act or a material regulatory change, if the SCRC modifies the principles for determining substantial similarity in a way that would lead it to deny a state's annual recertification, it should provide as much advance notice as possible for affected states to update their regulatory regimes. A clear standard like this will provide state regulators and state issuers confidence that they are operating under a stable regulatory framework that will not arbitrarily shift.

32. As Treasury identifies factors for determining whether a foreign jurisdiction has a regulatory and supervisory regime that is comparable to the requirements established under the GENIUS Act, including standards for issuing payment stablecoins provided in Section 4(a), what specific factors should Treasury consider, including factors that should disqualify a foreign jurisdiction from being determined to be comparable? Are there factors that should be excluded from consideration?

> **In considering if a foreign jurisdiction has comparable requirements to those established under the GENIUS Act, Treasury should set at least equivalent expectations to those the SCRC uses to review state certifications of substantial similarity.**

Setting at least equivalent expectations means that Treasury should consider whether a foreign payment stablecoin regulatory regime meets the standards and requirements set out in Section 4(a) of the GENIUS Act. Mandating consistency with this section of the GENIUS Act will reduce incentives for issuers to register outside of the United States in search of less stringent requirements, while still recognizing legitimate differences in supervisory and regulatory models. It will also help provide relatively uniform protections to all U.S. payment stablecoin holders. As discussed above, the comparability determination also should include whether the foreign jurisdiction's regulatory regime permits private non-financial services companies to issue payment stablecoins and, if applicable, how those companies are supervised.[23]

Treasury should also consider whether the foreign payment stablecoin regulator has the global supervisory oversight and authority needed to ensure that a foreign issuer complies with all applicable legal and regulatory requirements, wherever it operates. Such an approach would be similar to the Federal Reserve's review of whether a foreign banking organization ("FBO") seeking to establish a U.S. office is subject to comprehensive, consolidated supervision by its home country supervisor.[24] Conducting this assessment as part of a comparability determination will reduce incentives for issuers to operate in foreign jurisdictions that formally meet or exceed GENIUS Act standards, but lack the authority, ability, or inclination to enforce those requirements globally. Supervision or oversight failures abroad could drive contagion within the United States, affecting federal and state-regulated issuers or the broader financial system.

Treasury also should ensure that the foreign payment stablecoin regulator has information sharing agreements with relevant federal and state payment stablecoin regulators. These agreements will allow faster identification of potential issues and regulatory action to protect holders and financial stability.

Finally, Treasury should work with the Comptroller to set and implement clear standards and timelines for exercising the Comptroller's authority to rescind an approval of registration for a foreign issuer who is not in compliance with GENIUS Act requirements or whose foreign regulatory regime is no longer

[23] *See* Answer to Question 17 above.
[24] Federal Reserve, *Consolidated Supervision of Bank Holding Companies and the Combined U.S. Operations Foreign Banking Organizations*, SR 08-9 (Last revised Oct. 1, 2020).

comparable. Those standards should emphasize the importance of swift action to protect American stablecoin holders, preserve financial stability, and combat illicit finance.

45. What are the potential costs associated with registration under state regimes as compared to federal regimes, including any administrative burdens or impacts on innovation?

> **Answered jointly with #46.**

46. What are the potential advantages of registering under state regimes compared to federal regimes, particularly in terms of administrative efficiency and support for innovation?

> **Registering under state regimes supports administrative efficiency and innovation by taking advantage of state experience regulating money transmitters and other financial firms providing digital asset services. A vibrant state registration regime would capture benefits to innovation long reflected in the dual banking system. The only meaningful administrative burden or negative impact on innovation associated with registering under state regimes is the joint oversight of issuers who grow to exceed a $10 billion threshold, which can be mitigated by creating a clear standard for granting waivers under Section 4(d)(3).**

The United States financial system benefits from robust and collaborative state and federal regulatory regimes that allow financial services providers to choose the regulatory authorities and governing statutes that best match their organizational structure, products and services, and business strategy. These state and federal regulatory frameworks enable competition and innovation, which is critical in emerging areas such as payment stablecoins. State regulatory regimes have fostered important digital assets innovations for more than a decade, sparking market competition, product development, and experimentation, all while helping protect consumers.[25]

Nearly every state[26] regulates and requires licenses or registration for money transmitters. Many have experience with chartering or licensing and regulating financial firms engaged in activities related to digital assets. As with money transmission, mortgage lending and servicing, and other state-regulated financial activities, the ability of states to license a wide variety of business models, products, and services helps fit state-specific market needs, while avoiding the limitations of a one-size-fits-all national license. Effective implementation of the GENIUS Act's "substantially similar" standards for state payment stablecoin regimes should have similar pro-innovation effects and will take advantage of state experience regulating and supervising other complex financial services.

The GENIUS Act, however, does create a cost associated with registering under a state regulatory regime – the need to transition to joint oversight with a federal regulator when an issuer exceeds $10 billion in

[25] CSBS and North American Securities Administrators Association, "Model State Consumer and Investor Guidance on Virtual Currency" (Apr. 23, 2014).
[26] Montana does not regulate money transmitters.

outstanding issuance. Federal regulators should mitigate this cost by setting clear standards for waiving the joint oversight requirement and granting those waivers where appropriate.

There are no other meaningful costs associated with registration under state regimes compared to federal regimes. All issuers will be required to meet the national regulatory floor established by Section 4(a). As with federal issuers, Section 7(f) provides that a state issuer licensed and supervised in an SCRC-certified state can operate nationally. All state and federally licensed issuers will be subject to applicable state consumer protection laws.[27]

47. The GENIUS Act establishes federal safeguards to protect consumers. How should the economic benefits of consumer protection be measured?

> **Treasury should recognize that achieving the benefits of consumer protection requires appropriate application of Section 7(f) of the GENIUS Act, which preserves the application of host state consumer protection law to all state and federal qualified issuers.**

The GENIUS Act recognizes the benefit of state consumer protection law by explicitly preserving its application to both federal and state qualified issuers. Section 7(f)(1) provides that host state consumer protection laws apply to both federal and out-of-state issuers to the same extent. Section 7(f)(4) broadly states that nothing in the GENIUS Act preempts state "consumer protection laws, including common laws, or the remedies available thereunder."[28] Rulemakings by Treasury and federal regulators implementing the GENIUS Act must recognize these limitations on federal preemption and reinforce the importance of state consumer protection laws.

54. Are any regulations or guidance necessary to address risks associated with the resolution of a bankrupt or failed PPSI, including those that may have stablecoins in international circulation?

> **Yes, Treasury and the federal banking regulators should implement regulations that automatically require issuers to freeze issuance and redemption if the issuer's identifiable reserves become insufficient to meet the GENIUS Act requirement under Section 4(a)(1)(A) or the issuer is otherwise unable to meet reasonable expectations of requests to redeem payment stablecoins.**

Uninsured stablecoins carry a risk of redemption runs. Because reserves can be held in assets other than dollars, the sale of permissible reserve assets at a loss creates a risk that a previously compliant reserve no longer meets the GENIUS Act 1-for-1 reserve requirements. For example, if an issuer must sell $10 billion in Treasuries at a loss of 1% to satisfy a redemption wave, the reserve would experience a $100 million loss. If the reserve is not overcollateralized or the issuer does not have sufficient capital to

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[27] *See* Section 7(f)(4).

[28] The only exceptions to this preemption are laws governing "the chartering, licensure, or other authorization to do business" as "a permitted payment stablecoin issuer." *See, e.g.,* Section 7(f)(3)(B) (governing out-of-state issuers) and Section 7(f)(4) (governing federal issuers).

replenish the reserve,[29] the run would likely intensify, and the associated reserve liquidations would leave the issuer without adequate funds to honor redemption requests.

To protect against such a scenario, both federal and state regulators should have the authority to direct an issuer to freeze redemptions if losses would cause reserves to fall below the 1-for-1 requirement and if the issuer does not have access to alternative liquidity sources or capital sufficient to cover the shortfall. As part of their regular supervisory oversight, federal and state regulators should require issuers to plan and prepare for likely run scenarios. Applicable supervisory requirements should also examine capital sufficiency based on business model, operating risk, or financial losses, require issuers to demonstrate the ability to freeze issuance and redemptions, and provide for an orderly winddown of reserve assets outside of bankruptcy. These regulatory and supervisory requirements will protect holders outside of bankruptcy, and in the event of a run, could also help provide holders with access to their funds without the delays and costs of litigating a claim in bankruptcy.

56. Which of the topics addressed in this ANPRM are most critical for establishing the GENIUS Act regulatory framework? Are there any other factors Treasury should consider in sequencing and prioritizing these rulemakings?

> **The topics relating to maintaining the authority of states to regulate issuers and preventing issuers from engaging in a broader range of financial services are the most critical for establishing the GENIUS Act regulatory framework.**

Preserving state authority to regulate, license, and supervise issuers consistent with GENIUS Act principles will set a strong baseline for national payment stablecoin markets, promote innovation, and preserve the ability of issuers to choose diverse business models. State regulatory regimes also will include critical consumer protections for payment stablecoin holders – requirements applicable to both federal and state issuers. Broader financial stability concerns can be mitigated through federal and state regulatory mandates that promote confidence in issuer reserves, including adequate capital standards, liquidation or resolution planning, and the ability to freeze issuance and redemption when 1-to-1 reserve requirements are not met.

Preventing issuers from engaging in unauthorized financial services like lending or money transmission will also help maintain financial stability and reduce the risk of broader financial system contagion from payment stablecoins. Such restrictions on issuer financial activities are consistent with clear limits in the GENIUS Act. The federal regulatory framework should clearly define authorized issuer financial activities and prevent evasion of limits on lending or paying interest. Adherence to these GENIUS Act limitations will help ensure a level regulatory and supervisory playing field for institutions engaged in traditional banking activities, while allowing issuers to innovate in a manner that helps protect consumers and mitigate financial stability risks.

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[29] Critically, capital requirements established in accordance with Section 4(a)(4)(A) must scale with the size and complexity of the issuer and include a capital buffer sufficient to replenish the reserve should redemption demand force a sale of reserve assets before maturity or otherwise at a loss.

57. Are there other topics not addressed in this ANPRM that should be considered in future Treasury rulemakings?

> **Treasury should explicitly clarify that state branches of FBOs may seek to become a state qualified issuer.**

The GENIUS Act explicitly permits federal branches to apply to be a federal qualified issuer, but is silent on state branches. A state branch approved by a state regulator to issue payment stablecoins would meet both prongs of the definition of a state qualified issuer in Section 1(31). It would (1) be legally established under the laws of the state and approved as an issuer, and (2) it would not meet any of the criteria requiring or permitting it to apply to a federal payment stablecoin regulator.

The main source of ambiguity is the requirement in Section 1(23) that a permitted issuer be "a person formed in the United States." Treasury should clarify that because a federal branch qualifies as a person formed in the United States, so too does a state branch.

CSBS looks forward to continuing to work with Treasury on the implementation of the GENIUS Act.

Sincerely,

Brandon Milhorn
President and CEO