CSBS Comments on Clarity for Payment Stablecoins Act

COMMENT LETTER

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July 25, 2023
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The Honorable Patrick McHenry
Chairman
House Financial Services Committee

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee

Chairman McHenry and Ranking Member Waters,

On behalf of the Conference of State Bank Supervisors,[1] I am writing to stress the importance of maintaining a robust state regulatory framework for new financial services technologies and to preserve the integrity of the dual banking system. We appreciate the Committee's work and responsiveness to previous comments state regulators submitted regarding draft versions of this bill. We also believe the bill's aim to ensure a viable framework for state-regulated stablecoin issuers is critical for the future of this activity and broader financial services industry. However, we still have concerns with multiple provisions of the Clarity for Payment Stablecoins Act of 2023,[2] which are detailed below. This letter provides several proposed changes to the draft text and state regulators stand ready to assist the Committee on any of these issues as you and your staff move forward.

The provisions below create an unprecedented shift in the balance of authority between state and federal regulators, threatening the vibrant financial services industry enabled by state regulation.

Expansion of OCC Chartering Authority

- The current draft opens the door to federal chartering of nonbank stablecoin issuers by the OCC, introducing new levels of risk and federal preemption into the financial system.

As currently drafted, the term "Primary federal payment stablecoin regulator," is defined in Sec. 2(16)(A)(iii) and (16)(A)(iv) to mean "with respect to a Federal qualified nonbank payment stablecoin issuer that is not a national bank, the Board; and" and "with respect to any entity chartered by the Comptroller, the Comptroller." Taken together, this contemplates the OCC chartering a "nonbank payment stablecoin issuer" as an uninsured national bank.

A nonbank payment stablecoin issuer chartered as an uninsured national bank would inject myriad uncertainties and risks into the U.S. banking and financial system. To name just a few issues, such an entity might:

- Enjoy unprecedented levels of federal preemption as a national bank.
- Secure automatic and mandatory membership in the Federal Reserve System by virtue of its national bank charter.
- Provide a path for large tech companies to establish a nonbank payment stablecoin issuer through a national bank charter, thereby dismantling the separations between banking and commerce.
- Ultimately expand the federal safety net to nonbank commercial entities involved in stablecoin issuance through a national charter.

Proposed changes to bill text:

1. In Sec. 2(16)(A)(iii), strike "that is not a national bank"
2. Strike Sec. 2(16)(A)(iv)
3. Add a rule of construction to read "nothing in this Act may be construed to authorize the chartering of a national bank whose operations are limited to the activities described in this Act."

Treatment of Bank Subsidiaries Issuing Stablecoins

- The draft bill should clarify that any stablecoin-issuing subsidiary is an "operating subsidiary" of an insured depository institution (IDI).

Among other things, Sec. 5(a)(1)(A) establishes the approval process for an IDI seeking to issue payment stablecoins through a subsidiary, stating: "Any insured depository institution that seeks to issue payment stablecoins through a subsidiary…shall file an application with the primary Federal payment stablecoin regulator."[3] Furthermore, Sec. 6 establishes supervision and enforcement of stablecoin issuer subsidiaries of IDIs.[4] However, the bill is silent as to what type of subsidiary a stablecoin issuer would be (i.e., operating, financial, or statutory). The bill should clarify that any such stablecoin subsidiary is an "operating subsidiary" of an IDI (as opposed to financial subsidiary or statutory subsidiary) based in part on the very limited activities the bill contemplates for stablecoin issuers and the state consumer financial protection laws applicable to IDI operating subsidiaries. For example, Sections 1044 and 1045 of the Dodd Frank Act, which relate to laws applicable to operating subsidiaries and affiliates of national banks, explicitly preserves the applicability of state laws related to "…any subsidiary, affiliate, or agent of a national bank…"[5]

Proposed changes to bill text:

1. Add new definition in Section 2(21). "Subsidiary of an Insured Depository Institution." With respect to an insured depository institution, the term ''subsidiary of an insured depository institution'' has the same meaning as "subsidiary" in section 3 of the Federal Deposit Insurance Act."
2. Sec. 6(a)(1)(A) should read: "Each permitted payment stablecoin issuer that is a subsidiary of an insured depository institution shall be subject to supervision by the primary Federal payment stablecoin regulator in the same manner as such insured depository institution, including but not limited to applicable statute under 12 U.S.C. 25b."

Coordination and Information Sharing Between State and Federal Regulators

Under this text, the federal banking agencies are not required to consult with state regulators on decisions related to approval or denial of stablecoin applications. Certain states currently license and supervise several stablecoin

issuers through virtual currency regulatory regimes and/or money transmission laws. Before being granted authority to operate nationally, federal authorities should seek advice from the regulators that have supervised these entities. This should include consultation on applications by state-chartered IDIs seeking to engage in stablecoin issuance via a subsidiary, as well as entities seeking to become "Federal qualified nonbank payment stablecoin issuers" subject to regulation and supervision by the Federal Reserve. Moreover, any regulatory framework that involves joint state and federal oversight should require in statute robust and unencumbered information sharing between the relevant regulators.

These changes will better strike the balance needed to address this new and evolving technological landscape. In order to preserve the vibrant financial system that is the envy of the world, we must protect the balance between state and federal regulation of the financial services industry. We urge the Committee to make these changes before advancing any stablecoin legislation and stand ready to assist the Committee in their work.

Sincerely,

James M. Cooper
President and CEO

cc: Members of the House Financial Services Committee

Footnotes

1. The Conference of State Bank Supervisors (CSBS) is the national organization of bank regulators from all 50 states, American Samoa, District of Columbia, Guam, Puerto Rico and U.S. Virgin Islands. State regulators supervise 79% of all U.S. banks and a variety of non-depository financial services. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System to license and register non-depository financial service providers in the mortgage, money services businesses, consumer finance and debt industries.
2. Clarity for Payment Stablecoins Act of 2023. Dated July 20, 2023, 9:11am.
3. Clarity for Payment Stablecoins Act of 2023. Sec. 5(a)(1)(A)
4. Clarity for Payment Stablecoins Act of 2023. Sec. 6(a)(1)(A)
5. Section 1045, Public Law 111-203: Dodd-Frank Wall Street Reform and Consumer Protection Act. July 21, 2010.

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