Letter to House Committee on STABLE Act

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Submitted by dscott@csbs.org on Tue, 04/01/2025 - 10:40

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The Honorable French Hill
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hill and Ranking Member Waters:

On behalf of state regulators and the Conference of State Bank Supervisors (CSBS),1 I write to raise serious concerns with the introduced draft of H.R. 2392, the Stablecoin Transparency and Accountability for a Better Ledger Economy (STABLE) Act. CSBS supports an effective and coordinated national framework for payment stablecoin issuers (PSIs). However, significant and material changes are necessary to prevent regulatory arbitrage, protect consumers, and promote a stable and predictable stablecoin market.

For more than a decade – while the federal government stood largely idle or in opposition – the states have provided innovative frameworks for digital asset firms and stablecoin issuers to grow and offer new services to consumers. Several states have digital asset frameworks in place2 and already regulate over $50 billion in stablecoin activity.3

We stand ready to work with the Committee and Congress to make the following critical changes:

1. focus stablecoin issuer activities to protect market stability and predictability,

2. eliminate dangerous, unnecessary preemption of state authority,
3. provide actual parity for state stablecoin issuers,
4. ensure sufficient capital and liquidity requirements, and
5. protect consumers in the event of issuer bankruptcy.

As currently drafted, the STABLE Act would effectively centralize power over a nascent industry in a single federal agency. This approach would undermine the strategic advantage of cooperative federalism that has enabled American innovation for centuries and positioned the United States as the world leader in financial services.

To ensure a consistent national framework for PSIs and their customers, we urge the Committee to make the following adjustments to the bill:

1. Focus stablecoin issuer activities to protect market stability and predictability.

The original discussion drafts of the STABLE Act appropriately limited PSIs to activities ancillary to issuing stablecoins. In those proposals, federal regulators would not have been authorized to approve additional activities. CSBS largely supported this narrowly tailored approach. The prior framework would have helped to constrain run risks at PSIs and prevented an erosion of capital and liquidity through risks associated with non-stablecoin related activities.

The current STABLE Act draft eliminates these critical protections. Authorizing federal regulators to permit non-stablecoin related financial activities poses operational and financial stability risks to PSIs and the broader market,[4] particularly when combined with capital and liquidity restrictions also in the bill.[5]

To promote responsible stablecoin innovation, Section 4(a)(7)(G) should be removed to prevent these and other systemic risks.

2. Eliminate dangerous, unnecessary preemption of state authority.

As presently drafted, the STABLE Act would expand federal preemption to:

- the parent of a federal PSI;[6]
- state authority over PSI subsidiaries of national banks;[7]
- PSI subsidiaries of state-chartered banks; and
- other non-stablecoin activities approved by federal regulators.

Instead of a targeted authorization to support stablecoin innovation, the bill would constitute a staggering and unprecedented expansion of federal power. Surely such broad preemption of state authority is not intended.

The original discussion drafts of the STABLE Act limited preemption, allowing federal PSIs to operate nationwide. Congress should return to this construct.

Combined, these two provisions create an unsafe environment where the OCC can pick winners and losers across the financial services industry, substituting a single agency leader's judgement for that of the states and Congress relative to consumer protection and safety and soundness. In addition to the potentially disastrous impact on market stability, the Comptroller – from one Administration to the next and regardless of political party – would dictate the activities of federal PSIs, greatly reducing competition and harming innovation across the financial sector.

3. Provide actual parity for state stablecoin issuers.

By setting standards that both state and federal stablecoin issuers must follow, the bill attempts to create a national framework for all PSIs. States that authorize PSIs must share information with federal partners and certify to the Treasury Department that the state regime complies with the stablecoin framework. Given these substantive and procedural protections, the bill should authorize state PSIs to operate with the same rights and privileges as federal PSIs, including offering their products and services in multiple states.

As currently drafted, however, the bill fails to provide this parity, stacking the deck in favor of a federal PSI. State PSIs operating outside their home state would be subject to undefined host state "obligations . . . that exceed those of such issuer's home State."

To establish genuine parity, the bill must amend Section 7(g) so that state PSIs can engage in the same activities and operate with the same rights and privileges as federal PSIs. Without parity, the state pathway is not viable. Control of stablecoin activities will have been effectively consolidated into one federal agency – the OCC – with broad authority to preempt state oversight.

Consumer protection and market stability must be paramount considerations for any stablecoin framework in the United States. The STABLE Act fails to meet these requirements due to limitations in its capital and liquidity standards and the failure to ensure adequate protection for consumer interests in bankruptcy proceedings. To

address these issues, we further recommend that the Committee:

4. Ensure sufficient capital and liquidity requirements.

Although the STABLE Act directs federal regulators to set capital, liquidity, and risk management requirements, capital is restricted to an amount "sufficient to ensure . . . ongoing operations," and regulators are prohibited from requiring leverage and risk-based capital. This approach is insufficient to mitigate financial stability risks and prevent redemption runs. These risks are further exacerbated by the limitless "other activities" authorization for federal PSIs.[8]

We suggest either holding reserves in off-balance-sheet trusts or ensuring that capital requirements explicitly account for additional liquidity and counterparty exposures.

5. Protect consumers in the event of issuer bankruptcy.

The bill fails to provide adequate protection in bankruptcy proceedings for holders of payment stablecoins. If a PSI fails, consumers holding stablecoins would be subjected to myriad uncertainties with respect to their funds, including potentially long delays in attempting to access them.[9]

Requiring reserves to be held in off-balance sheet trusts would make consumer funds bankruptcy remote and help ensure timely resolution of consumer claims if a stablecoin issuer should fail.[10]

The meaningful balance of authority between state and federal regulators is vital for consumer protection, market stability, and industry innovation. The STABLE Act provides an important opportunity to implement comprehensive and responsible national standards for stablecoin issuers. However, without the adoption of critical changes, the legislation will fall short of establishing the national framework necessary to promote American leadership in digital assets.

We appreciate your consideration of these recommendations and look forward to working with you to maintain a dynamic, diverse, and innovative financial marketplace.

Sincerely,

Brandon Milhorn
President and CEO

cc: Members of the House Financial Services Committee

Endnotes

- 1CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of Columbia, and U.S. territories.
- 2*See, e.g.*, Cal. Fin. Code § 3101 et seq.; La. R.S. § 6:1381 et seq.; 23 NYCRR § 200.3 et seq.; Tex. Fin. Code § 152.001 et seq.; Wyo. Stat. § 13-12-101 et seq. State regulators supervise firms utilizing distributed ledger technologies in financial services for capital, liquidity, 1-to-1 reserves in high quality permissible investments, cybersecurity, BSA, and other key compliance areas. These firms are examined regularly, often on a multistate basis or through the One Company, One Exam program. *See* CSBS, Regulators Announce One Company One Exam for Payments Companies.
- 3*See, e.g.*, Greenlisted Coins, New York Department of Financial Services.
- 4Section 4(a)(7)(G) ("A permitted payment stablecoin issuer may only— undertake such non-payment stablecoin activities that are allowed by the primary Federal payment stablecoin regulator.").
- 5See below for our concerns related to capital and liquidity adequacy.
- 6Section 5(c) ("The provisions of this section . . . supersede any State licensing requirement *for any nonbank entity*" (emphasis added)). The bill contains no limits on the activities that the parent "nonbank entity" of a federal PSI may conduct. For example, a state would no longer be permitted to protect consumers in their state by licensing, regulating, and supervising money transmitters, payday lenders, consumer lenders, mortgage lenders, and other nonbanks that simply establish a federal PSI subsidiary.
- 7*See* 12 U.S.C. § 25b(h).
- 8Section 4(a)(7)(G).
- 9Priority positions in bankruptcy are secondary to secured and administrative debts in bankruptcy. Further, the bill's requirement in Section 8(b)(1) that issuers "treat and deal with . . . cash . . . as belonging to such customer and not as the property of [the issuer]" is at odds with the priority provisions in Section 8(c)(2).
- 10For example, the Money Transmission Modernization Act removes customer funds from the bankruptcy estate of a failed issuer by statutorily categorizing all customer funds as held in trust for the benefit of customers. Customers can then access their funds without waiting in the bankruptcy line with creditors. *See* Money Transmission Modernization Act, Section 10.03(b).

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