Letter to Senate Committee on GENIUS Act

COMMENT LETTER

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The Honorable Tim Scott
Chairman
United States Senate
Washington, D.C. 20510

The Honorable Elizabeth Warren
Ranking Member
United States Senate
Washington, D.C. 20510

Dear Chairman Scott and Ranking Member Warren:

On behalf of state regulators and the Conference of State Bank Supervisors 1(CSBS), we write to share our serious concerns with the current draft of S.394, the Guiding and Establishing National Innovation for U.S. Stablecoins of 2025 (GENIUS Act). State financial regulators play an essential role in protecting consumers, strengthening the U.S. financial ecosystem, and promoting responsible innovation. We recognize the importance of an effective and coordinated state and federal framework for PSIs. However, without significant and material changes to protect consumers, promote market stability, and ensure state/federal parity for payment stablecoin issuers (PSIs), we will be unable to support the legislation.

Consumer protection and market stability must be paramount considerations for any stablecoin framework in the United States. We are concerned that the GENIUS Act fails to meet these requirements due to limitations in its standards for stablecoin reserves and the failure to ensure adequate protection for consumer interests in bankruptcy proceedings. To address these concerns, we recommend the Committee:

1. **Address capital adequacy concerns.** Although the GENIUS Act directs federal regulators to set capital, liquidity, and risk management requirements, the proffered combination of demand deposit reserves, capital limited to ongoing operations, and a prohibition on leverage capital is insufficient to protect against redemption runs and other risks. We suggest either holding reserves in off-balance-sheet trusts or ensuring that capital requirements explicitly account for liquidity and counterparty exposures.

2. **Ensure protection for reserves to protect consumers in bankruptcy.** The bill provides for priority in bankruptcy proceedings for holders of payment stablecoins. As a result, when a payment stablecoin issuer fails, consumers holding payment stablecoins will have to go through the bankruptcy process, which could take weeks or months to get their money back. Requiring reserves to be held in off-balance sheet trusts would make consumer funds bankruptcy remote and ensure timely resolution of consumer claims if a stablecoin issuer should fail.

3. **Remove unlimited non-stablecoin activity for PSIs.** The GENIUS Act appropriately attempts to limit PSIs to payment stablecoin-related activities. However, Section 4(a)(6)(B) contains a rule of construction

allowing the relevant PSI regulator to approve non-stablecoin-related activities at a PSI, undermining the intended limitations. This provision should be removed to prevent systemic risks, including the erosion of the separation of banking and commerce.

Preserving the tenets of the dual banking system and providing for strong collaboration between state and federal regulators are also essential for effective supervision of PSIs. To ensure a consistent state and federal framework for PSIs and their customers and to promote a level playing field for state-authorized PSIs, we recommend the following additional adjustments to the bill:

1. **Ensure parity in consumer protection and operations.** The bill currently subjects state PSIs operating outside their chartering state to the consumer protection laws of the "Host State," just as federal nonbank PSIs are treated. To establish genuine parity, we recommend clarifying Section 7(g) so that state PSIs can engage in the same activities and operate with the same rights and privileges as federal nonbank PSIs under host-state law.

2. **Remove transition to federal regulatory framework.** As drafted, it appears that a state PSI with a market capitalization above $10 billion must transition to exclusive federal regulation (OCC for nonbank PSIs and Federal Reserve for depository PSIs). This threshold-based trigger is arbitrary and could be disruptive. We recommend removing the $10 billion threshold and designating the Federal Reserve as the primary federal regulator of all state PSIs. This approach leverages existing state-federal collaborations, minimizes disruption, and avoids an unlevel playing field.

3. **Remove Treasury certification of state regulatory frameworks.** The requirement for annual certification by the Secretary of the Treasury of state regulatory frameworks for PSIs is unnecessary. State regimes must already meet the federal standards in Section 4(a). The bill also grants federal regulators extensive information-sharing and enforcement authority over state PSIs, making recertification superfluous. Designating the Federal Reserve as the primary federal regulator of all state PSIs further negates the need for annual Treasury certifications.

The meaningful balance of authority between state and federal regulators is vital for ensuring consumer protection, market stability, and industry innovation. The GENIUS Act provides an important opportunity to implement comprehensive and responsible standards for stablecoin issuers. However, without the adoption of these proposed amendments, the legislation will fall short of establishing the 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 Senate Banking Committee

- 1 CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of

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