CSBS Response to Senate Banking Committee RFI on Digital Asset Market Structure

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August 5, 2025

The Honorable Tim Scott
Chairman
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Cynthia Lummis
United States Senate
Washington, DC 20510

The Honorable Bill Hagerty
United States Senate
Washington, DC 20510

The Honorable Bernie Moreno
United States Senate
Washington, DC 20510

Re: Digital Asset Market Structure Request for Information

Dear Senators Scott, Lummis, Hagerty, and Moreno:

The Conference of State Bank Supervisors ("CSBS")[1] provides the following comments on the "Responsible Financial Innovation Act of 2025" discussion draft and select questions from the accompanying Request for Information ("RFI"). As the Senate Banking Committee considers digital asset market structure legislation, incorporating the following recommendations and changes will promote a more resilient, innovative, and competitive digital assets framework that benefits and protects consumers and businesses.

Custody

15d. What types of entities should be permitted to custody digital assets on behalf of clients?

In general, entities permitted to custody digital assets on behalf of clients should be restricted to "qualified custodians" pursuant to SEC Rule 206(4)-2.[2] Among other entities, qualified custodians include state banks and state trust companies, as well as national banks and national trust companies.[3]

15e. What qualifications, regulatory standards, or oversight of custody should be required?

Qualifications, regulatory standards, and oversight of digital asset custodians should include, among other standards and requirements, mandatory safeguarding of digital assets; strict segregation; prohibitions on commingling, rehypothecation, and lending; robust cybersecurity standards; independent audits; and capital and liquidity requirements. Moreover, since digital assets held in custody are not federally insured, a custodial entity's failure could pose a range of unique financial stability, consumer protection, and resolution risks, particularly if its activities or those of its affiliates extend beyond digital assets custody (*e.g.*, investing, lending, market-making). Therefore, regulatory standards for, and oversight of, digital asset custodians and their affiliates should be commensurate with the heightened risks posed by their uninsured activities, including more robust requirements related to capital and liquidity.

Banking

18. Title III of the discussion draft currently contemplates amending the federal banking statutes to explicitly authorize banks to engage in digital asset-related activities such as custody, payments, and lending. Is this clarity necessary and, if so, should any additional activities be included in the definition of permissible banking activities? Is any additional clarity needed that is not in Title III?

Title III should explicitly state that the authorized activities in Sec. 301(f) are only permissible for *insured depository institutions* ("IDI"), as defined in Sec. 3 of the FDI Act.[4] The term "national bank," which is utilized in Sec. 301(c), can encompass IDIs *and* uninsured national trust companies chartered by the OCC.[5] If not appropriately limited, Sec. 301 could be construed to enable uninsured national trust companies to exercise a broad range of banking powers, such as engaging in lending, payments, or derivatives transactions. In effect, uninsured national trust companies would enjoy all the banking powers of IDIs, while simultaneously avoiding a range of corresponding bank regulatory mandates. Allowing uninsured national trust companies to engage in the banking activities authorized under 12 U.S.C. § 24(Seventh) would create a regulatory loophole for entities to derive the benefits of a national bank charter without the attendant regulatory and supervisory guardrails.[6]

In addition, proposed paragraphs (13) and (6) in Sec. 301(f) raise very significant safety and soundness concerns for banks of any type, whether federally insured or not, and should be struck from the proposal. Together, they would authorize commercial banks to engage in "underwriting, dealing in, or making a market in digital assets" without limitation. Commercial banks – whose business involves deposit-taking and lending – have long been prohibited from engaging in these "investment banking" and related capital markets activities.[7] While the draft legislation would maintain that prohibition on underwriting and dealing activity for traditional equity securities, commercial banks would be permitted to engage in investment banking activities for digital assets, which present at least equal, if not more, volatility risk compared to traditional equity securities.

19. Must state-chartered depository institutions, which are regulated in a substantially similar manner to insured depository institutions, obtain state-by-state licenses if their activities are limited to payments and custody, and they are prohibited from lending or other credit intermediary activities?

Uninsured depository institutions present unique risks given the heightened potential for deposit runs if depositors lose faith in the institution, its financial condition, or its management. States have long-established and well-recognized rights to regulate financial services provided within their jurisdiction and to protect their citizens from the elevated risk of losses in the event of an uninsured depository institution's failure. State licensing and oversight are the primary means by which the management, business plans, capital and liquidity requirements, and resolution plans for these uninsured entities are reviewed. Our dual banking system allows each state to impose appropriate regulatory and supervisory standards to address the unique risks of these uninsured entities.

By contrast, IDIs are subject to common, nationwide regulatory and supervisory standards applicable to institutions chartered by both state and federal authorities. These common standards helped states to ease restrictions and facilitate interstate entry throughout the 1980s and 1990s. By the time the Riegle-Neal Interstate Banking and Branching Efficiency Act[8] was passed in 1994, nearly every state had provided for out-of-state banking activity within their state. Of relevance, Riegle-Neal allowed states to opt out of the law’s interstate branching provisions.

Contrary to the well-established federal and state framework for IDIs and interstate branching, allowing uninsured depository institutions chartered in one state (“home state”) to operate in another state (“host state”) without requisite host state licensing and oversight would violate basic tenets of state sovereignty and federalism. In effect, the application of a home state’s regulatory framework for non-federally-insured entities would undermine a host state’s right to regulate within its own borders and maintain the public welfare of its constituents. Indeed, certain state laws explicitly prohibit non-federally-insured depository institutions from operating within their borders.

Moreover, the contemplated provision would likely represent an unconstitutional intrusion on state authority under the 10th Amendment.[9]

In contrast to the provision contemplated in the RFI, the Senate Banking Committee should instead use the Responsible Financial Innovation Act to strike Section 16(d) of the GENIUS Act.[10] Section 16(d) enables a subset of state-chartered uninsured banks with payment stablecoin issuer subsidiaries to engage in any money transmission or custody activities nationwide “through” the subsidiary. As a result, the uninsured parent would have unfettered authority to bypass host state oversight of traditional money transmission and custody activities.

Section 16(d) of the GENIUS Act is an unprecedented erosion of longstanding host state authority to license and supervise traditional financial activities. The provision weakens vital consumer safeguards, invites regulatory arbitrage, and introduces needless financial stability risks. Importantly, Section 16(d) is completely unnecessary for a nationwide stablecoin framework, as payment stablecoin issuers would already be authorized by the GENIUS Act to operate nationwide for specified stablecoin-related activities. There is simply no justification for this sweeping preemption of state authority.[11]

The provision contemplated in the RFI – allowing any state-chartered, non-federally-insured depository institution to engage in such nationwide activities – would further undermine state authority. And, once again, such a provision is wholly unrelated to the regulatory clarity for digital assets that the underlying legislation seeks to provide.

20. What, if any, legislative action should be taken to enable traditional financial institutions, such as community banks, to compete in an era of

financial technology without harming the safety and soundness of such institutions? Are there certain supervision reforms that need to be made by the federal financial regulators to encourage innovation at tradit financial institutions?

Traditional financial institutions, including community banks, often rely on third-party relationships to deliver innovative products and services. These institutions need clear standards and *operational* guidance for third-party relationships associated with innovative products and services (*e.g.*, deposit gathering, payments, custody, or lending). Executable standards would benefit community banks, consumers, third-party service providers, and state and federal supervisors.

The Senate Banking Committee should encourage federal regulators to develop operational guidance that helps banks responsibly harness the benefits of new technologies while mitigating their associated risks and protecting consumers.[12] Further, federal regulators should directly engage with state supervisors, banks, third-party service providers, consumer groups, and other stakeholders in developing these standards and operational guidance.

Innovation

22. How should legislation address digital assets that are issued outside of the United States but traded and purchased by United States consumers?

Legislation should ensure that any foreign-issued assets meet the same high standards as domestically-issued assets and are appropriately registered and supervised in the United States at the state or federal level. U.S. consumers should be afforded protection from fraud and insolvency regardless of the point of origin of the product. Any products with access to the U.S. market should be required to comply with U.S. anti-money laundering and consumer protection laws at the point of sale. Further, foreign issuers with an established nexus to the U.S. market should be subject to the same oversight as American issuers, including registration, disclosure, examination, and enforcement. This framework would also create a level playing field that fosters legitimate innovation and protects U.S. consumers.

25. How should legislation address interest or yield-bearing digital assets, including stablecoins? Should interest or yield-bearing stablecoins be regulated like money market funds? If so, what, if any, changes should Congress consider to facilitate adoption of such products? Should legislation limit or prohibit the ability of digital asset intermediaries to offer rewards on digital assets,

including stablecoins? If so, how?

Stablecoins are not deposits, and as such, the GENIUS Act prohibits any payment stablecoin issuer from paying a stablecoin holder any form of interest or yield.[13] The GENIUS Act also contains critical limitations on payment stablecoin issuer activities to ensure they do not engage in the business of banking and their risk profiles remain appropriately aligned with the capital, liquidity, and risk-management requirements established in the bill.[14] Digital asset market structure legislation should preserve or strengthen these critical and carefully crafted limitations to maintain the separation between banking and commerce, protect community banks from disintermediation, and foster consumer protection.

Allowing issuers to pay interest on stablecoins, or to directly or indirectly (through affiliates, third parties, or other “partners”) offer other rewards, discounts, or financial incentives, could trigger deposit flight out of the banking system and into uninsured stablecoins. Among other negative consequences, meaningful deposit flight would heighten bank liquidity and broader financial stability risks, limit credit availability to consumers and businesses (particularly for small businesses and farmers), and increase the risk of consumer harm for holders of uninsured stablecoins and other digital assets.

26. What, if any, action should market structure legislation take with respect to the tokenization of real-world assets?

Any tokenization of real-world assets should occur within existing regulatory frameworks and not create new systemic risks. To the extent that tokenization and on-chain activities can facilitate more efficient activities within existing regulatory frameworks (such as expediting inter-bank payments or making securities settlement quicker), it is unlikely that any legislative action is needed or, if needed, should be limited to the changes necessary to facilitate these efficiencies. However, any new financial instruments via tokenization should be subject to stringent review and oversight in a manner consistent with their risk profile. When tokenization moves beyond efficiency gains to create new, speculatively tradable assets through fractionalization, it incurs significantly higher risks. Rather than focusing on the technology (*i.e.*, tokenization), legislation and regulation should focus on the underlying activity and treat similar activities with similar risks in a similar manner.

Preemption

35. Should federal legislation preempt certain state laws, and if so, how?

As the courts and Congress have repeatedly affirmed, preemption should be the exception, not the rule. Any preemption of state law should be extremely limited with a clear and compelling federal interest. Broad preemption of state laws risks creating a narrow, federal-only framework for digital assets that inhibits innovation, consumer protection, and financial stability.

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 digital assets. Indeed, state regulatory regimes have fostered important digital assets innovations for more than a decade, and federal preemption would undermine the very state laws that have sparked market competition, product development and experimentation, and consumer protection.

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Thank you for your consideration of CSBS's comments on the Responsible Financial Innovation Act discussion draft and accompanying RFI. State regulators look forward to continued engagement with the Senate Banking Committee as it considers digital assets legislation this fall.

Sincerely,

Brandon Milhorn
President and CEO

Endnotes

[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] 17 C.F.R. § 275.206(4)-2(d)(6).

[3] A national trust company is permitted to engage in fiduciary activities and "activities related thereto," which could include custody. *See* 12 U.S.C. §§ 92a and 27(a). However, national trust companies are not afforded the *banking* powers of 12 U.S.C. § 24(Seventh).

See Michael Townsley, *Banking on Trust Companies: A Critique of OCC Interpretive Letter 1176*, Banking & Financial Services Policy Report, Vol. 40, No. 3 (March 2021).

[4] 12 U.S.C. § 1813(c)(2).

[5] 12 U.S.C. § 27(a). ("A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.").

[6] OCC Interpretive Letter ("IL") 1176, which erroneously states that national trust companies can exercise core *banking* powers, in contravention of decades of OCC legal precedent and interpretation, creates another potential loophole. Such a novel interpretation of the National Bank Act is a major question of policy that cannot be implemented absent clear authorization by Congress. At a minimum, the significant change in policy adopted by OCC IL 1176 should have been the subject of a public notice and comment rulemaking under the Administrative Procedure Act. *See* OCC, *Interpretive Letter No. 1176: OCC Chief Counsel's Interpretation on National Trust Banks* (Jan. 11, 2021); *see also Banking on Trust Companies*, *supra* note 3.

[7] Commercial banks are permitted to engage in limited underwriting and dealing activity for federal and state debt obligations. *See* 12 U.S.C. § 24(Seventh); *see also* 12 C.F.R. § 1.

[8] P.L. 103-328 (1994).

[9] *See New York v. U.S.*, 505 U.S. 144, 166 (1992) ("[The Commerce Clause] does not authorize Congress to regulate state governments' regulation of interstate commerce."); *id.* at 178 ("Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents."); *see also Murphy v. National Collegiate Athletic Association*., 138 S.Ct. 1461, 1477 (2018). ("[T]he anticommandeering rule promotes political accountability. When Congress itself regulates, the responsibility for the benefits and burdens of the regulation is apparent. Voters who like or dislike the effects of the regulation know who to credit or blame. By contrast, if a State imposes regulations only because it has been commanded to do so by Congress, responsibility is blurred.").

[10] P.L. 119-27 (2025).

[11] CSBS, Letter Re: *GENIUS Act* (July 14, 2025).

[12] A recent joint statement by the federal banking agencies regarding banks engaging in crypto-asset safekeeping could serve as a helpful model for guidance in additional areas, including third-party risk management. *See* FRB, FDIC, and OCC, *Crypto-Asset Safekeeping by Banking Organizations* (July 14, 2025).

[13] GENIUS Act, Section 4(a)(11)*, supra* note 12.

[14] Notably, the House-passed CLARITY Act included an amendment to the definition of "digital asset service provider" that would expand the potential powers of payment stablecoin issuers to those possessed by "any entity registered or required to be registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission." (CLARITY Act, Section 512(1)). This definition change would blur the lines between payment stablecoin issuers and the broader digital asset marketplace and undermine the protections created by the GENIUS Act to help ensure stablecoin are, in fact, stable and capable of maintaining their peg to the U.S. dollar. GENIUS Act, Section 4(a)(7), *supra* note 12.

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