Digital Asset Market Structure Legislation

COMMENT LETTER

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January 14, 2026
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The Honorable Tim Scott
Chairman
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Elizabeth Warren
Ranking Member
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

Re: Digital Asset Market Structure Legislation

Dear Chairman Scott and Ranking Member Warren:

The Conference of State Bank Supervisors[1] ("CSBS") appreciates the Committee's consideration of several of our recommendations for improving earlier drafts of the digital asset market structure legislation. As the Digital Asset Market Clarity Act ("Clarity Act") proceeds to markup and the Senate floor, we will continue to advocate for opportunities to improve the legislation to create a resilient, innovative, and competitive digital assets market structure framework.

In particular, CSBS appreciates the progress made in limiting the sweeping preemption contained in previous discussion drafts, particularly with respect to state regulation of money transmission. Recent changes address several concerns raised in CSBS's letter to Committee members in August 2025.[2] The Committee has also taken initial steps to rein in previous drafts' expansion of the powers of banks and trust companies so that digital asset activities are governed by similar risk frameworks as non-digital assets.

Despite these improvements, we urge the Committee to make the following additional improvements to the bill (based on the January 12, 2025 published draft).

Resolve Outstanding GENIUS Act Concerns

We again urge the Committee to strike Section 16(d) of the GENIUS Act and reverse its erosion of longstanding state authority to license and supervise traditional financial activities within their borders.

As we noted in our August 2025 letter, Section 16(d) of the GENIUS Act violates basic tenets of state sovereignty and federalism by undermining a host state's rights to regulate within its own borders and is completely unnecessary to fulfill the purposes of the GENIUS Act. Section 16(d) enables a subset of uninsured banks chartered in one state ("home state") to engage in money transmission or custody activities in another state ("host state") through a permitted payment stablecoin issuer subsidiary. Section 16(d) gives the uninsured parent unfettered authority to bypass host state oversight of traditional money transmission and custody activities. This authorization contradicts the long-established and well-recognized rights of states to regulate financial services within their jurisdiction and to protect citizens from the elevated risk of losses in the event of an uninsured depository's failure.

Section 404 should be revised to broadly prohibit indirect payments of interest or yield through affiliates or third-party business relationships, including where those payments are conditioned solely on an administrative or ministerial task like holding stablecoins in a specific wallet.

Under the GENIUS Act, a permitted payment stablecoin issuer may not pay interest or yield to a payment stablecoin holder solely in connection with the holding, use, or retention of the stablecoin. This prohibition 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 and limit credit availability to consumers and businesses (particularly for small businesses and farmers). This prohibition would be meaningless if issuers could evade it by arranging for an affiliate or business partner to pay the yield or interest and reimburse them directly or indirectly via a share of the revenue earned on reserves.

We appreciate the Committee's efforts in Section 404 to address these efforts at evasion. We support the prohibition in 404(b)(1) on payment of interest by digital asset service providers solely in connection with the holding of a payment stablecoin.[3] CSBS previously urged Treasury to work with federal banking regulators to clarify that payments made to holders by an affiliate or pursuant to a covered business relationship, like a revenue sharing arrangement, are also imputed to the issuer, and that administrative actions such as using a specific wallet or platform do not qualify as doing more than "solely" holding a payment stablecoin. Unfortunately, the permissible activities in 404(b)(2) and the rule of construction in 404(f)(2) would explicitly authorize such arrangements, undermining the goals of prohibiting stablecoin issuers from paying interest. We urge the Committee to revisit these exceptions and to prevent evasion of the interest and yield restrictions on permitted payment stablecoin issuers.

Section 401: Further Align Bank Powers with Analogous Authorities for Non-Digital Assets

Section 401(c) should be amended to clarify that:

- ***the powers of national trust charters do not include the business of banking, including any new authorities granted under the Clarity Act;***
- ***the powers of national trust charters are limited to engaging in digital asset service provider activities (as defined in the GENIUS Act) when operating as a permitted payment stablecoin issuer; and***
- ***the enumerated powers in Section 401(g) are only available to insured national banks.***

The use of the term "national bank" in 401(c) could create ambiguity regarding the approved activities of insured national banks compared to uninsured national trust charters. The authorized activities of uninsured national trusts have always been distinct from, and more limited than, insured national bank powers.[4]

To ensure similar activities with similar risks are regulated similarly, Section 401(g) should be amended to further align authorized digital asset activities with existing limitations on non-digital asset activities, particularly by striking Section 401(g)(13).

The non-exclusive list of newly authorized digital asset activities in 401(g) expands the authorized activities of *all* banks well beyond analogous authorities for non-digital assets. The Committee clearly recognized the presence of this issue in previous drafts, as it partially addressed this concern by removing a provision that would have included "purchasing or selling digital assets for any investment or trading purpose" in the business of banking. This change is appropriate, as insured depositories do not have a similar blanket authorization for trading or dealing in equity securities given the safety and soundness risks associated with the potential volatility of those assets. Nevertheless, Section 401(g)(13) still authorizes commercial banks to engage in "underwriting, dealing in, or making a market in digital assets," when they lack such authority in equity securities. The Committee should revisit these permitted activities to ensure equivalent activities are regulated consistently with respect to risk.

Section 205: Clarify Ability of States to Set Lower Transaction Limits for Digital Asset Kiosks

Preemption in Section 205 of state transaction limits enacted after the effective date of the Clarity Act should only apply to transaction limits that are higher than those set by the Secretary of the Treasury.

Twenty-one states have legislation or regulatory guidance specifically addressing digital asset kiosks. Most of these states require kiosk operators to obtain a money transmission license and meet requisite financial and reserve requirements. States have also implemented daily transaction limits to protect consumers, particularly vulnerable populations like senior citizens, with limits ranging from $1,000 - $2,500 for new customers and up to $10,500 for existing customers.[5] State regulation of these kiosks is increasing rapidly due to concerns about rampant fraud and money laundering.

CSBS appreciates the goal of Section 205 and supports a federal floor for digital asset kiosk regulation. This provision includes a rule of construction in subsection (r) clarifying that states may enact a law or rule that provides greater protection to customers, as long as it does not conflict with this section. Subsection (s) ensures that a state law on transaction limits enacted before the effective date of the Clarity Act shall not be preempted.

Treasury should clarify that state transaction limits for new and existing customers enacted after the effective date of the Clarity Act will not be preempted if they are lower and more protective than those set under Section 205. The bill delegates authority to set transaction limits to the Secretary of the Treasury. A state transaction limit that is lower than the one set by the Secretary would provide greater consumer protection. While subsection (s) could be construed to only apply to state transaction limits higher than those set by the Secretary, that is not the only possible interpretation. Clarifying that preemption only applies to state transaction limits that exceed the federal floor (are less protective) would be consistent with this section's recognition of the role of states in regulating digital asset kiosks, while establishing a consumer protection floor for digital asset kiosk transactions.

CSBS would also support additional clarity and certainty on transaction limits. The Committee could consider setting an interim transaction limit for all customers, further cabining the Secretary's discretion on setting the level of limits for new and existing customers, or limiting the ability of states to enact transaction limits higher than those set by the Secretary to those in place at the time of the Clarity Act's enactment. We look forward to continuing to engage with the Committee regarding the specifics of this new provision.

Sections 203 and 204: Partner with the States to Effectively Combat Illicit Finance

Section 203 should require state regulator notification that a state-licensed entity is participating in the pilot program and a rule of construction ensuring that this information is sharable during an exam for compliance with BSA/AML requirements.

The Independent Financial Technology Working Group created in Section 204 should include representatives from state bank and securities regulators

Sections 203 and 204 of the Clarity Act establish a pilot information sharing program and a working group designed to help combat the use of digital assets for purposes of illicit finance. These provisions involve participation by money services businesses and other financial services companies that are primarily licensed and supervised by states, including for BSA/AML compliance. Nevertheless, the sections do not involve input from state regulators or notification requirements related to state-licensed entities. Obtaining the expertise of state regulators will contribute to achieving the goals of the information sharing pilot program and the Independent Financial Technology Working Group.

Conclusion

We appreciate your leadership in ensuring these important concerns are addressed and ask that you adopt the recommendations in this letter. We look forward to continuing our conversations as Congress crafts legislation that fosters competition and innovation in digital assets while upholding the regulatory standards necessary to preserve financial stability and protect consumers.

Sincerely,

Brandon Milhorn

President and CEO

cc:

The Honorable David McCormick
The Honorable Bernie Moreno
The Honorable Jack Reed
The Honorable Mark Warner
The Honorable Chris Van Hollen
The Honorable Catherine Cortez Masto
The Honorable Tina Smith
The Honorable Raphael Warnock
The Honorable Andy Kim
The Honorable Angela Alsobrooks
The Honorable Ruben Gallego
The Honorable Lisa Blunt Rochester

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  [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.

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  [1]*See* CSBS, Letter Re: *Digital Asset Market Structure Request for Information* (Aug. 5, 2025).

- 3

[1]*See* CSBS, *Comment to the U.S. Department of Treasury re: GENIUS Act Implementation* (Nov. 4, 2025).

- 4

[1]*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).

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[1]*See* e.g., Arizona H.B. 2387 and Illinois S.B. 2319.

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