COMMENT LETTER

Digital Asset Market Structure Legislation

May 13, 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 commitment to fostering innovation in United States financial services while preserving the central tenets of the dual banking system. As the Committee proceeds to markup on the Digital Asset Market Clarity Act ("Clarity Act"), we look forward to continuing to work with you to improve the legislation (as reflected in the May 11, 2026 published draft) and promote a resilient, innovative, and competitive digital assets market in the United States.

We acknowledge the progress made to limit the sweeping preemption language contained in previous discussion drafts, particularly with respect to state regulation of money transmission. Nevertheless, we reiterate concerns previously expressed in our August 2025 and January 2026 letters and urge the Committee to make additional improvements to the bill as it proceeds through the Senate.[2]

Preserving State Authority

We appreciate the addition of the rule of construction in Section 205 of the draft. This language reinforces state authority to address fraud and money laundering occurring through virtual currency ("VC") kiosks, as identified by state and federal law enforcement. To date, 34 states have legislation or regulatory guidance specifically addressing VC kiosks, and three states — Tennessee, Indiana, and Minnesota — have completely banned their operation. Providing a national regulatory floor for VC kiosks, while preserving the authority of states to take additional steps to protect their consumers, is a balanced and thoughtful approach to abating criminal activity and fraud associated with these kiosks.[3]

We also appreciate the addition of Section 108(d), which specifically preserves states' ability to apply their consumer protection laws to digital asset activities unless expressly precluded by the Clarity Act. Recognizing continued consumer protection authority with respect to digital assets will allow states to continue the crucial work of combating fraud, scams, and abusive business practices.

Outstanding GENIUS Act Concerns

Repeal Section 16(d) of the GENIUS Act and reverse its erosion of longstanding state authority to license and supervise financial activities within their borders.

As we noted in our August 2025 letter, Section 16(d) of the GENIUS Act violates basic principles of state sovereignty and federalism by undermining a host state's rights to regulate financial services within its borders. The provision 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. 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 institution's failure. We urge the Committee to repeal Section 16(d) of the GENIUS Act.

Finalize a durable consensus on the prohibition on interest or yield payments by stablecoin issuers and affiliated third parties to stablecoin holders.

As recognized by the Sense of Congress in Section 404(b), the ability of stablecoin issuers and affiliated third parties to pay interest and yield on stablecoin balances could contribute to deposit flight from banks and limit credit availability to consumers and businesses (particularly small businesses and farmers). CSBS has generally supported proposed OCC regulations implementing the GENIUS Act prohibition on interest and yield payments.[4]

We appreciate the Committee's efforts to reach a durable compromise between banks and digital asset firms that permits innovation while preserving critical lending activities, particularly through community banks. To be effective, any effort to clarify the GENIUS Act interest and yield prohibition via the Clarity Act must be clear, well-understood, and easily enforced. We encourage the Committee to work with all affected stakeholders to ensure that the final bill provides this critical market certainty.

Remaining Clarity Act Improvements

Since 1913,[5] national bank trust powers have been limited to the fiduciary powers outlined in 12 U.S.C. § 92a. Without any Congressional authorization, the OCC abandoned this interpretation in 2021 and has unilaterally expanded what it views as permissible activities of national trust charters.[6] Though no change of law is required to preserve the plain meaning of the National Bank Act and the limited fiduciary activities of national trust charters, Congress should take this opportunity to make clear that nothing in the Clarity Act expands the powers of the OCC relative to these national trust companies.

Section 401(c) should clarify that nothing in the subsection grants national trust charters authority to conduct any activities that were not authorized before the Clarity Act.

The authorized activities of uninsured national trust companies have always been distinct from, and more limited than, insured national bank powers. The authorized activities of national trust companies do not include the business of banking activities enumerated in 12 U.S.C. § 24 (Seventh).[7] Adding a clarifying savings clause in Section 401(c) would prevent the Clarity Act's expansion of the business of banking authorities from being improperly construed by the OCC as expanding the authorized activities of national trust charters.

To ensure activities with similar risks are regulated in a similar manner, Section 401(g) should be amended to align authorized digital asset activities with existing limitations on equivalent 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 related to non-digital assets. 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 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 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 examination 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 in 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.

Clarifying Application of Stablecoin Certification Review Committee

In the GENIUS Act, Congress recognized that maintaining a state pathway for licensing stablecoin issuers was critical to support innovation. We urge you to reiterate to Treasury and the Stablecoin Certification Review Committee that nothing in the GENIUS Act creates a hard cutoff for states to seek certification of a stablecoin regulatory regime. An alternative reading of the law could needlessly foreclose future state licensing frameworks

and deprive founders of choice regarding their business models and licenses. This clarity is particularly important for states whose legislatures may not meet annually.

Conclusion

As the Clarity Act moves forward, CSBS stands ready to assist the Committee in addressing these important concerns. Your leadership is vital to ensure that the national regulatory framework for digital assets fosters innovation while protecting consumers and financial stability.

Sincerely,

Brandon Milhorn

President and CEO

cc: The Honorable Mike Crapo

The Honorable Mike Rounds

The Honorable Thom Tillis

The Honorable John Kennedy

The Honorable Kevin Cramer

The Honorable Bill Hagerty

The Honorable Cynthia Lummis

The Honorable Katie Britt

The Honorable Pete Ricketts

The Honorable Jim Banks

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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  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

  Changes address several concerns raised in CSBS's letter to Committee members in August 2025. CSBS sent additional recommendations for improvement in a January 2026 letter (based on the January 12, 2026 published draft). *See* CSBS, Letter Re: *Digital Asset Market Structure Request for Information* (Aug. 5, 2025) and Letter Re: *Digital Asset Market Structure Legislation* (Jan. 14, 2026).

- 3

  See Financial Crimes Enforcement Network, *FinCEN Notice on the Use of Convertible Virtual Currency Kiosks for Scam Payments and Other Illicit Activity* (Aug. 4, 2025).

- 4

  See CSBS, Letter Re: *Implementing the GENIUS Act* (May 1, 2026).

- 5

  See, H.R. Rep. No. 63-69, at 73 (1913) ("'[T]he committee . . . believes . . . Congress may reasonably relax some of the restrictions now surrounding the business of national banks and allow . . . limited trustee functions . . . [with] strictly segregated assets.").

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  OCC Interpretive Letter No. 1176 (Jan. 11. 2021). Interpretive Letter No. 1176 did not cite any judicial or administrative authorities to support its blending of fiduciary activities and the business of banking.

- 7

  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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