

May 1, 2026

Chief Counsel's Office, Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 1E-216
Washington, DC 20219

Re: *Implementing the GENIUS Act*

The Conference of State Bank Supervisors ("CSBS")¹ and the Money Transmitter Regulators Association provide the following comments regarding the Office of the Comptroller of the Currency's ("OCC") notice of proposed rulemaking implementing the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act.² The proposal seeks to implement GENIUS Act requirements for payment stablecoin issuers under the OCC's jurisdiction and certain related activities.

The GENIUS Act reflects clear Congressional intent to extend and adapt the dual banking system's cooperative federalism principles to the payment stablecoin market. For nearly a decade, U.S. dollar-denominated stablecoins have developed under the regulation and supervision of states. State regulators have more direct experience overseeing stablecoin issuers than any other U.S. financial services regulator. Congress recognized states' foundational role in this market. Thus, the GENIUS Act incorporated many state-developed regulatory approaches, preserved a state pathway for stablecoin issuer regulation, and set a national floor that applies to both state and federally qualified issuers alike.

As the OCC implements the GENIUS Act for issuers subject to its jurisdiction, its rules should adhere to the careful balance established between state and federal authority, as well as the proven regulatory approaches for stablecoin issuers and their activities. Specifically, the OCC should:

- Consider the experience of state regulators with respect to digital asset service provider activity and capital, liquidity, and risk management requirements associated with stablecoins and other digital assets;
- Respect existing National Bank Act and GENIUS Act limits on the activities of national trust charters and payment stablecoin issuers, rather than distorting the limits of those authorities;
- Honor the GENIUS Act's protections for state consumer protection law, its provisions allowing a waiver for the transition from state to federal oversight, and its notice requirement for the exercise of "unusual and exigent circumstances" authority; and
- Implement the statutory prohibition on yield paid by issuers in a clear and consistent way that recognizes the distinction between payment stablecoins and bank deposits.

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 OCC, Notice of Proposed Rulemaking, [Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency](#), 91 Fed. Reg. 10202 (Mar. 2, 2026).

I. The OCC should define issuer authorities and responsibilities in a manner consistent with the GENIUS Act and informed by the states' well-tested regulatory requirements for stablecoin issuers.

The GENIUS Act strives to foster responsible innovation in stablecoin payments while setting clear limits on issuer activities and their conduct, with the aim of reducing run risk and limiting contagion. State regulators have nearly a decade of experience successfully balancing these considerations, and CSBS and MTRA encourage the OCC to apply that experience.

To that end, the OCC should clearly define the scope of permissible digital asset service provider activities and establish a transparent approval framework. As part of that framework, stablecoin issuer applicants should be required to specifically enumerate their proposed activities. The OCC should also clarify that state regulators retain inherent authority over digital asset service provider activities that are authorized by state law.

Along with implementing clear activity limits, the OCC should establish a capital framework for issuers that, like existing state frameworks, relies on objective, risk-based standards that scale with issuer reserves or outstanding stablecoin issuance and authorized financial activities. Finally, the OCC should clarify expectations for parent company and intra-group support arrangements to mitigate contagion risk and safeguard insured deposits.

- a. The OCC should require applicants to publicly identify proposed digital asset service provider activities to enable effective supervisory review.*

Through decades of experience with monoline financial service providers, one of the largest risks to safety and soundness is the undertaking of activities outside the scope of the licensed activity. For stablecoins to remain stable and reliable, the material risk of other activities must be identified and mitigated. Accordingly, the OCC should only authorize issuers to engage in digital asset service provider activities if they specifically enumerate such services in their application.³ Otherwise, the OCC cannot meaningfully assess whether an applicant meets the capital, liquidity, and risk management requirements of the GENIUS Act.

The GENIUS Act allows, but does not require, a federal or state regulator to authorize an issuer to engage in digital asset service provider activities, including incidental activities.⁴ The proposed rule appropriately recognizes this is not an independent authorization to engage in these activities.⁵ To fully implement this principle, the OCC should require, as part of the application, a detailed description of the specific digital asset service provider activities an issuer proposes to conduct. It should require applicants to publicly release that list and other relevant portions of the application, as is required for national banks and national trust charters. The OCC should also clarify that approval extends only to the activities described in the application and evaluated during the initial review. Any expansion beyond the initially approved

³ See OCC, *supra* note 2, at 10252 (Question 31).

⁴ *Id.*

⁵ OCC, *supra* note 2, at 10203.

scope should require subsequent OCC approval to ensure continued compliance with Section 4 of the GENIUS Act.

Such detail and transparency are necessary for the OCC to meet its own statutory obligations. Section 5(c) of the GENIUS Act requires the OCC to evaluate whether an applicant can comply with Section 4 requirements and to consider other factors necessary to ensure safety and soundness.⁶ The OCC's evaluation of the application depends on a clear understanding of the applicant's proposed activities. Absent requisite specificity, the OCC cannot assess whether the applicant's capital, liquidity, and risk management frameworks satisfy Section 4.

- i. The OCC should clearly define the scope of permissible digital asset service provider activities.

Issuers need clear public guidance to ensure that they are not exceeding the scope of the activities permitted by the GENIUS Act. A defined list will also give markets comfort that issuers are not engaged in unduly risky digital asset activities and allow applicants to understand the scope of their permissible activities. Such a list should include permitted direct support activities, digital asset service provider activities, and activities incidental to both issuance and digital asset service provider activities.⁷

Bespoke authorizations based on non-public supervisory discussions do not permit adequate public input, especially on questions of first impression. Relying on non-public supervisory consultation, as offered by the OCC in the preamble, does not permit adequate public input and risks creating an opaque and uneven playing field.⁸ Instead, the OCC should publish a framework or list of permissible activities, developed through notice and comment, to promote transparency and consistent application of the GENIUS Act. Stablecoins need to derive confidence from the market based on their stability, and “[s]unlight is said to be the best of disinfectants.”⁹

- ii. The OCC should clarify that authorization to issue stablecoins does not preempt state licensing regimes governing digital asset service provider activities.

The OCC should clarify that its supervisory authority over federal qualified payment stablecoin issuers does not displace state supervision of their digital asset service provider activities when they rely on a state authorization to engage in those activities. In such a case, notwithstanding the OCC's exclusive visitorial authority for federal qualified payment stablecoin issuers, those issuers must remain subject to the applicable state licensing, supervision, and enforcement requirements for their activities authorized under state law.

As the proposal states, Section 4(b)(1) of the GENIUS Act provides the OCC with exclusive supervisory authority over federal qualified issuers.¹⁰ The proposal also correctly concludes that Section 4(a)(7)(B) does not provide an independent grant of authority for issuers to engage in digital asset service provider

⁶ 12 U.S.C. § 5904(c).

⁷ See OCC, *supra* note 2, at 10252 (Question 32).

⁸ OCC, *supra* note 2, at 10211.

⁹ Louis D. Brandeis, *What Publicity Can Do*, HARPER'S WKLY., Dec. 20, 1913, at 10, 10.

¹⁰ *Id.* at 10203.

activities.¹¹ Instead, issuers must rely on separate authority derived from federal or state law.¹² From this, it follows that the GENIUS Act does not preempt licensing and examination requirements for state-authorized digital asset service providers who become federal qualified issuers.

If an issuer must rely on state law to conduct certain activities, then those activities must remain subject to state licensing and supervisory requirements. Typically, a state license or authorization to engage in digital asset service provider activity includes being subject to state jurisdiction and visitorial authority.¹³ An issuer cannot rely on state authorization to conduct such activity under the GENIUS Act while avoiding the supervision and enforcement that are an inherent condition of that authorization.

The GENIUS Act only preempts state licensing and authorization requirements with respect to doing business as a federally-authorized issuer, not as a state-authorized digital asset service provider.¹⁴ Accordingly, if the OCC wishes to exercise exclusive visitorial authority over federally qualified issuers' digital asset service providers activities, it should require exclusive federal authorization for such activities. Otherwise, the OCC should disclaim exclusive visitorial authority over these activities authorized by state law.

Congress could not have intended a supervisory framework that shields an issuer from state-authorized supervision of state-authorized digital asset service provider activities. The OCC should clarify this disconnect in the proposed rule.

- b. The OCC should revise its capital requirements to reflect the size of an issuer's balance sheet, the composition of its assets, and its authorized digital asset service provider activities.*

The OCC should adopt a capital requirement tied to a percentage of outstanding issuance or reserve asset value. Section 4(a) of the GENIUS Act requires the OCC to propose capital requirements tailored to the business model and risk profile of issuers. The OCC's current approach unwisely departs from established state requirements for issuers that have worked well to date, lacks a necessary deduction for intangible assets from regulatory capital, and does not adequately account for risks arising from digital asset service provider activities.

- i. The OCC should adopt a capital approach calibrated based on outstanding issuance or reserve assets.*

The OCC's proposed approach does not provide an objective methodology, instead listing a variety of factors that it will consider in setting both *de novo* and ongoing capital requirements.¹⁵ This significantly

¹¹ *Id.* at 10211.

¹² *Id.*

¹³ See, e.g., N.Y. Comp. Codes R. & Regs. 23 § 200.13, Wyo. Admin. Code 021.0002.20 § 12, Neb. Rev. Stat. Ann. §8-3023(1).

¹⁴ 12 U.S.C. § 5906(f)(4).

¹⁵ OCC, *supra* note 2, at 10239-40.

departs from existing state regimes, which often treat stablecoins as stored value and apply money transmitter capital requirements based on the size of the issuer's balance sheet.¹⁶

The OCC does not explain or even acknowledge its departure from this established standard. Instead, it uses an analogy to general national trust charter capital requirements, consistent with OCC Bulletin 2007-21, as well as its analysis underlying the December 2025 approvals for several national trust charters that intend to engage in stablecoin issuance.¹⁷

These justifications are flawed.

First, as OCC Bulletin 2007-21 acknowledges, trust companies have traditionally not held assets on their balance sheets. Stablecoin issuers do. The OCC has not explained why it chose as its regulatory analogue an entity type with a completely different business model. Second, the OCC's recent approvals for national trust charters, which it treats as paradigmatic, are not public. Commenters cannot know if the OCC's specific analysis is reasonable, because the actual methodology is shrouded in secrecy.

This lack of transparency is especially troubling because there is strong reason to believe that OCC's proposed *de novo* minimum capital requirements are much too low. Proposed Section 15.41(a)(1) would establish a \$5 million minimum initial capital requirement, with the possibility of higher requirements determined through the application process.

The expected range of \$6 million to \$25 million given in the proposal preamble represents a significant departure from state capital requirements for issuers. For example, a stablecoin issuer with \$45 billion in stablecoin issuance would be required to maintain approximately \$250 million in capital under the state licensing regime. This is 10x the maximum contemplated by the OCC and is based on an issuance volume both the OCC and industry expect to be low for the leading issuers. The higher minimum capital requirement deployed by the states can be interpreted as necessary for ongoing operations, as it amounts to less than a 0.5% capital ratio and is sufficient to absorb a 1.25% loss on a \$20 billion short-term Treasury portfolio.

The OCC has not acknowledged or accounted for this major reduction from existing state standards. Given the lack of a federal insurance backstop, appropriately calibrated capital requirements sufficient to allow ongoing operations will help prevent the need for emergency measures during stress scenarios and maintain confidence in the stablecoin market.

The OCC's approach to establishing ongoing capital requirements suffers from a similar problem. Proposed Section 15.41(a)(2) would require issuers to maintain capital commensurate with risk, but it does not establish a minimum floor or provide objective metrics for calibration. The absence of a capital floor suggests that an issuer's capital could fall below \$5 million based on its operating history and loss experience. Again, this departs from state supervisory frameworks, which generally require capital to

¹⁶ See Conference of State Bank Supervisors, Money Transmission Modernization Act § 10.01 (2021)(hereinafter "MTMA").

¹⁷ OCC, *supra* note 2, at 10239-40.

adjust over time as issuance activity grows.¹⁸ The absence of a defined floor or clear calibration methodology creates a risk that capital would not scale with issuance activity, leading to undercapitalization as issuers expand.

The risk of undercapitalization scales with issuance activity. A 1% reduction in the value of reserve assets will lead to bigger absolute losses at a large issuer than at a small issuer with similar reserve diversification. Scaling capital requirements will offset this dynamic and protect issuers. Reserve asset valuations are most likely to fall during financial stress, which is also when holders may seek to rapidly redeem stablecoins for cash. Selling pressure can drive reserve asset prices down further, triggering a fire sale dynamic in safe assets that then affects other issuers' reserve valuations, with big issuers having a larger gap between their par and fair value reserve valuations. A properly calibrated capital regime based on issuance activity will help ensure those larger issuers can maintain ongoing operations during periods of financial stress for issuers of all sizes.

The OCC should set an objective capital requirement based on reserves or outstanding issuance value.¹⁹ The proposal notes operational and liquidity risks associated with growing issuer size and suggests an alternative capital calculation tied to outstanding issuance could serve as an appropriate benchmark.²⁰ Such an approach would be much closer to the one that has applied to stablecoin issuers to date, under which U.S. dollar-denominated stablecoins have become dominant in the market. The OCC should adopt a capital approach based on reserves or outstanding issuance value.

ii. The OCC should require issuers to deduct intangible assets from regulatory capital.

The proposed capital requirements are already dangerously thin, and they are further weakened by the proposed rule's lack of deductions from regulatory capital for goodwill and other intangible assets. This departs from general regulatory best practices with respect to capital, and specifically from the OCC's capital rules for national trust charters, which are ostensibly the model for the agency's issuer capital requirements, as well as from the Money Transmission Modernization Act's tangible net worth capital requirements, which govern many stablecoin issuers today.²¹ The OCC should require issuers to deduct intangible assets from their regulatory capital calculations as well.²²

The OCC acknowledges that intangible assets may exhibit valuation volatility, so it would rely on an operational backstop of highly liquid assets and supervisory calibration to mitigate those risks.²³ That approach is insufficient. Intangible assets cannot be relied upon to readily absorb losses or meet redemption demands during stress periods. There is no justification for including them as part of the regulatory capital calculation. Including these assets in regulatory capital would overstate an issuer's financial resilience and weaken the OCC's ability to assess whether an issuer can satisfy its obligations

¹⁸ See, e.g. N.Y. Comp. Codes R. & Regs. 23 § 200.8, Wyo. Stat. § 13-12-106.

¹⁹ See OCC, *supra* note 2, at 10265 (Question 181).

²⁰ *Id.* at 10240.

²¹ See MTMA, *supra* note 16.

²² *Id.* at 10265 (Question 178).

²³ *Id.*

under the GENIUS Act. Deducting intangible assets ensures that capital measures reflect actual loss-absorbing capacity and supports a more reliable supervisory framework.

- iii. The OCC should more explicitly calibrate capital requirements for issuers engaged in digital asset service provider activities and require them to comply with any applicable state law capital requirements.

If the OCC permits issuers to engage in digital asset service provider activities, it should ensure that those activities are subject to capital requirements commensurate with their risk. Heightened capital requirements for such issuers are necessary to prevent regulatory arbitrage. While the proposed rule recognizes that capital should reflect the complexity of an issuer's activities, it does not establish a clear methodology for calibrating additional capital as issuers expand into digital asset service provider activity.²⁴ In contrast, banks, brokers, and other financial institutions that can also engage in those activities are subject to heightened capital requirements at both the state and federal level. The OCC should preserve a level playing field.

In addition, if an issuer is authorized to engage in digital asset service provider activities by state law, it should maintain capital no less than that required by the authorizing statute and applicable state regulatory requirements. As discussed above, the OCC must preserve the inherent role of state regulators in this circumstance. That role should include approval of capital requirements, where appropriate. State capital requirements account for risk of losses from digital asset service provider activities which may be subject to credit, market, and operational risks in excess of those faced by issuers that do not engage in those activities. Calibrating capital requirements to riskier activities will reduce the risk of a run on the reserve assets if the digital asset service provider activities lead to significant losses and erode available capital.

- c. *The OCC should quickly update its third-party risk management guidance to apply to stablecoin issuers based on the existing requirements applied by state regulators.*

The OCC should not delay in updating its Third-Party Risk Management Framework to apply to issuers. Section 4(a) of the GENIUS Act requires issuers to maintain appropriate operational, compliance, and information technology risk management systems, including with respect to third-party relationships. Proposed Section 15.13(a)(7) requires issuers to oversee service provider arrangements. The preamble notes that the OCC anticipates any updates to its Third-Party Risk Management guidance will explicitly address permitted issuers.²⁵ However, it does not provide a timeframe. Given the significant information technology risks faced by issuers, the OCC must act quickly. This will also ensure that requirements for new nonbank issuers remain in line with requirements for bank subsidiary issuers, who are subject to the guidance.

To avoid disrupting existing oversight arrangements, the OCC should coordinate with state regulators. States have addressed third-party service provider risks at digital asset companies for years and are also

²⁴ *Id.* at 10238.

²⁵ *Id.* at 10223, n.69.

the primary regulators of many of the service providers in the digital asset ecosystem.²⁶ Coordinated development and application of expectations would reduce fragmentation and strengthen oversight of third-party relationships.

- d. *The OCC should clarify expectations for parent company and intra-group support arrangements to prevent contagion risk and ensure consistency across issuer structures.*

The OCC should clarify its expectations regarding parent company support arrangements and intra-group relationships to ensure appropriate management of risks arising from these arrangements. The GENIUS Act's regulatory framework contemplates that stablecoin issuers operate with clearly defined financial and operational boundaries, particularly where the issuer is part of a broader corporate group. However, the OCC's proposal does not clearly describe how affiliate support arrangements or intra-group liquidity relationships will be treated, leaving uncertainty regarding how risks may be transmitted within a corporate group, particularly for issuers that are subsidiaries of insured depository institutions ("IDIs").

The OCC should require issuers to disclose all affiliate support arrangements in their applications and clearly define the terms under which such support may be provided.²⁷ In particular, these arrangements should preclude all support arrangements from an IDI. Any support arrangement should also specify how it would function under stress conditions without exposing the parent IDI to loss or creating the impression that stablecoin liabilities are backed by insured deposits.²⁸

The OCC should apply these expectations in a way that does not advantage issuers without an affiliated IDI. Without comparable standards, issuers may structure their operations to take advantage of differences in supervisory expectations across corporate forms. Applying consistent expectations to affiliate support arrangements would reduce the risk of regulatory arbitrage and promote more uniform risk management.

II. The OCC may not use the GENIUS Act to justify expanding the authorities or relaxing the regulation of national trust charters.

The proposal would allow national trust charters that issue stablecoins to engage in the full range of trust and related activities permitted by the OCC's recent National Bank Chartering rule. This violates both the text and the policy basis of the GENIUS Act.²⁹ The OCC's expansive reading of Section 16(a) contradicts Treasury's and the FDIC's proposed interpretations, other provisions of the law, and clear Congressional intent to confine stablecoin issuers to the limited range of activities enumerated in Section 4(a)(7). Adopting the OCC's broad reading would introduce significant financial risk from

²⁶See, e.g., New York Department of Financial Services, "[Virtual Currency Businesses: Regulated Entities](#)" (listing digital assets infrastructure companies licensed and supervised by New York's Department of Financial Services).

²⁷ See FDIC, Notice of Proposed Rulemaking, [Approval Requirements for Issuance of Payment Stablecoins by Subsidiaries of FDIC-Supervised Insured Depository Institutions](#), 90 Fed. Reg. 50409, 59412 (Dec. 19, 2025).

²⁸ See FDIC, Notice of Proposed Rulemaking, [GENIUS Act Requirements & Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers & Insured Depository Institutions](#), 91 Fed. Reg. 18534, 18535 (Apr. 10, 2026).

²⁹ OCC, *supra* note 2, at 10211.

undercapitalized stablecoin issuers and increase the likelihood of contagion spreading throughout the financial system.

These risks are compounded by the OCC's recent rulemaking on National Bank Chartering.³⁰ By failing to define the scope of permissible nonfiduciary trust activities in that rule, the OCC would now create a regulatory framework where a stablecoin issuer can potentially engage in a broad range of risky financial activities, while subject to limited capital and liquidity requirements intended for a much narrower business model. Even worse, the OCC proposes to extend this tailored capital regime to all national trust charters, regardless of whether they issue stablecoins.

Taken together, the result of the OCC's radical and textually unsupported expansion of national trust charter powers could create the exact concentration of financial risk that Congress explicitly sought to avoid in the GENIUS Act.

- a. *A national trust charter that is an issuer may not engage in activities outside of those enumerated in Section 4(a)(7).*

Section 15.10(a) of the proposal permits issuers to perform the activities enumerated in the GENIUS Act and a small group of directly supporting activities. As discussed in Section I, the OCC appropriately declines to interpret the GENIUS Act as providing an independent grant of authority for issuers to engage in digital asset service provider activities.³¹

Unfortunately, the proposal takes the exact opposite tack when interpreting a narrow rule of construction in GENIUS Act Section 16(a), which would undo the applicability of Section 4(a)(7)'s limitations to national trust charters approved to issue stablecoins.³² This interpretation flies in the face of the statutory text, as confirmed by other proposed releases from other federal agencies, and would have severe negative consequences for stablecoin issuers and the safety of the financial system if adopted.

- i. Section 16(a) is not intended to abrogate the activity limits that apply to issuers.

The proposal would use a limited authority in Section 16(a) to gut the deliberate structure of the GENIUS Act. Section 16(a) states that nothing in this chapter may be construed to limit the authority of a depository institution, credit union, national bank, or trust company to engage in activities permissible pursuant to applicable state and federal law. It then provides three examples of the kinds of activities that it preserves – issuing tokenized deposits, using a distributed ledger for recordkeeping and transfers, and providing custodial services for stablecoins, reserves, and keys.

³⁰ OCC, Final Rule, [National Bank Chartering](#), 91 Fed. Reg. 9977 (Mar. 2, 2026); see also CSBS, Comment Letter re: [OCC National Bank Chartering](#) (Feb. 23, 2026).

³¹ OCC, *supra* note 2, at 10211.

³² *Id.*

The OCC's proposed regulation fails to faithfully implement this section. It omits the statute's three limiting examples, while the preamble's interpretation massively expands the provision's scope. It says that "consistent with this provision" an uninsured national bank that is a permitted issuer may engage in fiduciary, trust, or other related activities consistent with applicable law.³³ This interpretation is not, in fact, consistent with Section 16(a). When combined with the OCC's overly expansive interpretation of trust and related activities in its recent trust charter rulemaking, there is no clear limit on what an issuer that is a national trust charter can do.

The OCC's reading swallows not only all limits on issuer activity but also threatens other GENIUS Act limits. For instance, under the OCC's interpretation, the Section 16(a) rule of construction could allow bank subsidiaries and trusts that become issuers to avoid the prohibition on interest or yield in Section 4(a)(11). In general, banks via subsidiaries and trusts can pay yield to stablecoin holders under federal or state law. Under the OCC's logic, the prohibition on interest or yield that is triggered by becoming an issuer could also be trumped by the reservation of authority of Section 16(a). The effect of the interpretation is to create a two-class system of stablecoin issuers without ever specifically enumerating this difference or creating different regulatory frameworks. Congress did not intend this result.

Importantly, the Treasury Department and the Federal Deposit Insurance Corporation ("FDIC") have both rejected the OCC's broad interpretation. Treasury's rulemaking on substantial similarity requirements for state stablecoin regimes explicitly proposes, consistent with 16(a), to only treat such frameworks as substantially similar if they limit issuer activities to those "certain enumerated activities"³⁴ – tokenized deposits, distributed ledger, and custodial services – where those activities are permitted by another federal or state law.³⁵ The FDIC's proposal does not include the 16(a) rule of construction or enumerated activities within its proposed activity limits. The OCC should align its interpretation with the plain language interpretations advanced by other federal agencies.

The OCC should adopt an interpretation of "activities permissible" in Section 16(a) that is limited to the specific types of digital assets activities enumerated in the examples and incidental or directly supporting activities, where otherwise authorized. Limiting 16(a) to specifically enumerated activities is consistent with Treasury's interpretation of the provision and the well-established principle that the breadth of a statutory provision should be interpreted in light of the examples provided.³⁶ If Congress intended to permit trust companies that are stablecoin issuers to engage in fiduciary, trust, or other related activities with respect to non-digital assets, then it would have included some example of this sort in the list. It did not, and the OCC should not read that authorization into the statute.

³³ *Id.*

³⁴ See Treasury Department, Notice of Proposed Rulemaking, [GENIUS Act Broad-Based Principles for Determining Whether a State-Level Regulatory Regime is Substantially Similar to the Federal Regulatory Framework](#), 91 Fed. Reg. 16844, 16857 (Apr. 3, 2026).

³⁵ *Id.* at 16865, Proposed 1521.4(h)(i)(C).

³⁶ See *Yates v. United States*, 574 US 528, 545 (2015) (applying ejusdem generis canon).

- ii. Applying the OCC's interpretation of 16(a) would create an open-ended authorization for state trust companies and depository institutions that issue stablecoins to engage in any activity that a state legislature might authorize.

If adopted, the OCC's interpretation would mean that state-chartered uninsured depository institutions and state-chartered trust companies that issue stablecoins could engage in any activity permissible under state law. Section 16(a) applies to all depository institutions and trust companies, both federally- and state-chartered. Based on state laws in effect today, this means that the same entity that issues stablecoins can also accept retail deposits,³⁷ lend,³⁸ or engage in any other activity permissible for an uninsured bank or trust. State legislatures can also authorize uninsured banks or trust companies to engage in a wide range of non-financial activities. Accepting the OCC's interpretation would flatly contradict the limits on issuer activities in GENIUS Act Section 4(a)(7). Treasury recognized this, which is why its principles for substantial similarity define meeting or exceeding the 4(a)(7) requirement as sticking to a specific list of GENIUS Act permitted activities.

The OCC's interpretation of 16(a) creates further confusion for supervision of non-depository trust companies. Under the GENIUS Act, such companies can register with the OCC as a federally qualified permitted stablecoin issuer ("FQPSI") or come under joint OCC oversight if their issuance exceeds \$10 billion. Applying the OCC's interpretation of 16(a), such state-chartered trust companies would be able to both issue stablecoins and do whatever other activities they are permitted to do under state law. As the OCC has asserted its exclusive jurisdiction over FQPSIs, this interpretation would result in a state trust company, engaging in state-authorized trust activities subject to state law, being subject to the OCC's sole supervision for all those activities. Again, this cannot be the result that Congress intended. Treasury and the FDIC's proposed interpretation of 16(a) avoids this absurdity.

- iii. Permitting a national trust charter to engage in the full range of activities that the OCC believes are permissible poses a risk to stablecoin holders and financial stability.

The result of applying the OCC's interpretation of Section 16(a) would be stablecoin issuers engaging in activities involving leverage, credit risk, or market risk tied to longer duration assets. Stablecoin holders and reserve assets will be threatened by activities completely unrelated to stablecoin issuance.

This threat is further elevated because the OCC's recent National Bank Chartering Rule and trust charter approvals have created significant ambiguity about the full scope of activities that a national trust charter can engage in. The OCC has declined to set any limit on these activities, either via rulemaking or public statement. It has waived 12 CFR Part 3 capital requirements in favor of bespoke, opaque calculations. The OCC's regulatory ambiguity already opens the door for trust charters to engage in activities that their regulatory regime is not designed for, taking on risks that they lack the requisite

³⁷ See, e.g., Wyo. Stat. Ann. § 13-12-104.

³⁸ See, e.g., Vt. Stat. Ann. Tit. 8 § 12604.

capital, liquidity, or risk management requirements to address — all without the backstop of federal deposit insurance to protect consumers.

Now, the OCC's proposed rule would permit this expansive range of activities to be performed by stablecoin issuers that are covered by the GENIUS Act's tailored regulatory framework designed for entities restricted to the activities in Section 4(a)(7). Capital requirements for issuers are limited to those sufficient to ensure the ongoing operations of issuers.³⁹ A similar principle applies to operational, compliance, and information technology risk management requirements.⁴⁰ All of these requirements are limited because Congress intended that issuers would engage in limited financial activities. Allowing an issuer to engage in a much broader range of activities undermines that basic expectation that Congress clearly established through the GENIUS Act.

The OCC has attempted to unlawfully graft new impermissible authorities into its national trust charter. Doing so will exacerbate stablecoin run risk, as unmanaged, undercapitalized risk-taking activities unrelated to stablecoin issuance put reserve assets and minimal capital structures at risk. There is no reason to expose stablecoin holders to these risks or to conclude that Congress intended for the OCC to do so, especially given the explicit lack of federal backstop. The OCC should follow the law and comply with the GENIUS Act, limiting the activities of national trust charters that issue stablecoins to those enumerated in the statute.

b. The proposal to change the capital requirements for non-issuer national trust charters is an unstated and unjustified reversal of OCC policy.

The OCC should not finalize its proposed reduction of capital requirements for national trust charters that do not issue stablecoins. Proposed Section 15.41(d) permits a national trust charter to elect to comply with the minimum capital and backstop requirements for issuers, rather than the minimum capital and leverage requirements of 12 CFR Part 3. The effect of this revision is to permit national trust charters to elect a lower capital regime.

As discussed above, the proposal would set minimum capital requirements for *de novo* national trust issuers at \$5 million in common equity tier 1 ("CET1") and additional tier 1 capital. Issuers would need to maintain capital commensurate with the level and nature of all risks to which they are exposed, with no objective minimum. In contrast, Part 3, which applies to national trust charters today, sets minimum risk-based capital ratios of 4.5 percent of CET1, 6 percent for Tier 1, and 8 percent total capital, as well as a 4 percent leverage ratio requirement.⁴¹ It also requires national banks to maintain capital commensurate with the level and nature of all risks to which they are exposed.

Permitting national trust charters that do not issue stablecoins to switch from a Part 3 capital regime to a Part 15 capital regime functions as a capital reduction. Both regimes require ongoing capital in line with

³⁹ 12 U.S.C. § 5903(a)(4).

⁴⁰ 12 U.S.C. § 5903(a)(6).

⁴¹ 12 C.F.R. § 3.

the level and nature of risks to which the issuer is exposed. National trust charters with capital requirements above the Part 3 minimum would presumably be subject to the same capital requirement under Part 15. They would have no reason to elect a different capital treatment. The only trust charters to switch would be those that could reduce their minimum capital requirement by eliminating the applicability of the Part 3 risk-based capital and leverage ratios. Given the off-balance sheet nature of most trust activities, the beneficiaries would be those national trust charters that carry assets on their balance sheet.

The proposal does not adequately justify permitting this reduction in capital. The first justification, delivered in one sentence, is “to promote parity” among uninsured national trust banks.⁴² This justification rests on the OCC’s flawed interpretation of 16(a), which conflicts with the views of Treasury and the FDIC. National trust charters that issue stablecoins should not be able to engage in the other activities permissible for national trust charters. The GENIUS Act capital requirements for issuers are intended to cover a much narrower range of activities. There is no need for parity among entities when they have different permissible activities, different risk profiles, and, thus, different capital needs.

The second justification, in its entirety is that “[a]s acknowledged in OCC Bulletin 2007-21, the leverage and risk-based capital ratios in 12 CFR part 3 generally are not optimal measures of capital adequacy.”⁴³ Using this bulletin to justify reducing capital requirements is upside down. When read in its complete context, OCC Bulletin 2007-21 says, “However, these ratios generally are not optimal measures of capital adequacy for NTBs, *as the risks posed by off-balance sheet asset management activities are not captured in capital ratio calculations.*”⁴⁴

In 2007, the OCC stated that that Part 3 capital ratios are *usually not high enough* given the off-balance sheet nature of the risks faced by national trust charters. Now, the OCC is proposing to allow all national trust charters to opt out of even these basic minimums on an ongoing basis, and justifying it using that same 2007 statement, which would have required more capital, not less. It does so without explaining or providing data to support this reversal or even acknowledging that a reversal is happening. That goes against basic tenets of administrative law.⁴⁵ The OCC should remove proposed Section 15.41(d) from its final rule, as it is neither necessary to implement the GENIUS Act nor supported by reasoning or evidence.

⁴² OCC, *supra* note 2, at 10239.

⁴³ *Id.* at 10244.

⁴⁴ Emphasis added.

⁴⁵ See *Motor Vehicle Manufacturers Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (“An agency’s view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis. . . .”).

III. The OCC should faithfully implement GENIUS Act provisions that define the role of state law and state regulators.

The GENIUS Act recognizes that the United States financial system benefits from robust and collaborative state and federal regulatory regimes. These parallel regimes work together to allow financial services providers to choose the regulatory authorities and governing statutes that best match their organizational structure, products and services, and business strategy. Dual state and federal regulatory frameworks bolster competition and innovation, which is critical in emerging markets such as payment stablecoins. State regulatory regimes have fostered important digital assets innovations for more than a decade, sparking market competition, product development, and experimentation, all while helping protect consumers.⁴⁶

Maintaining and preserving the benefits of that dual system requires federal rules to respect the careful balance that Congress struck in the GENIUS Act. The OCC's rulemaking acknowledges this balance in several ways. However, there are opportunities to amend this rulemaking to fully achieve the legal and policy goals of the GENIUS Act, specifically relating to its consumer protection, waiver, and "unusual and exigent circumstances" provisions.

- a. *The OCC should clarify that it expects issuers to comply with and that the OCC will enforce all applicable state consumer protection laws, in line with the GENIUS Act.*

State laws include critical consumer protections for payment stablecoin holders – legal requirements applicable to both federal and state issuers. Section 7(f)(1) provides that host state consumer protection laws apply to both federal and out-of-state issuers to the same extent. Section 7(f)(4) broadly states that nothing in the GENIUS Act preempts state "consumer protection laws, including common laws, or the remedies available thereunder."⁴⁷

The OCC's proposal acknowledges that "nothing in the GENIUS Act preempts State consumer protection laws." This is an important recognition. However, to properly give effect to state laws, the OCC should make several additions to its rule. First, it should add compliance with state consumer protection laws to the regulatory requirements for issuers. Second, it should clarify that footnote 18 of the proposal does not imply that the National Bank Act may preempt state consumer protection laws that regulate GENIUS Act authorized activities. And third, it should require foreign issuers to submit to state jurisdiction for applicable state consumer protection laws.

⁴⁶ CSBS and North American Securities Administrators Association, "[Model State Consumer and Investor Guidance on Virtual Currency](#)" (Apr. 23, 2014).

⁴⁷ The only exceptions to this preemption are laws governing "the chartering, licensure, or other authorization to do business" as "a permitted payment stablecoin issuer." See, e.g., GENIUS Act Section 7(f)(3)(B) (governing out-of-state issuers) and Section 7(f)(4) (governing federal issuers).

- i. The OCC should add an explicit requirement to comply with state consumer protection laws to its regulations.

To ensure that OCC regulated issuers comply with their legal obligations to follow state law, the OCC should add an explicit requirement to the regulatory text. The OCC’s proposal treats Section 7(f)(4) of the GENIUS Act as self-executing and declines to propose text to implement it, even as the OCC asserts exclusive visitorial authority over national trust charter issuers and federally-qualified issuers.⁴⁸ A regulatory requirement set by the OCC is therefore the only way that these entities will be examined for compliance with state consumer protection laws that apply to them. Without explicit examination, it will be difficult to assess issuer compliance.

The OCC should clarify in its final rule that the internal controls required in proposed Section 15.13(a)(1) include providing for compliance with state consumer protection laws. This clarification would ensure that internal audit and OCC examinations focus on these laws. Additionally, it should add reports on compliance with state consumer protection laws to the reports that the OCC will require under proposed Section 15.14(j). Together, these changes will reinforce the OCC’s expectation that issuers will comply with state consumer protection laws and create a framework for monitoring that compliance.

- ii. The OCC should clarify that National Bank Act preemption does not apply to state consumer protection laws that regulate GENIUS Act authorized activities.

The OCC should clarify in its final rule that state consumer protection laws cannot prevent or significantly interfere with a national bank’s GENIUS Act authorized activities. Footnote 18 of the proposal suggests that, notwithstanding the GENIUS Act’s preservation of state consumer protection law, the National Bank Act may also be relevant in assessing whether state consumer protection law applies to uninsured national banks who issue stablecoins.⁴⁹

The National Bank Act preempts state law when it “prevents or significantly interferes” with the exercise by a national bank of its powers.⁵⁰ The Supreme Court and appellate courts have recently made clear that this standard requires a nuanced analysis of whether a state statute interferes with a national banks’ statutory powers, as granted by Congress.⁵¹ The GENIUS Act, however, is the sole source of statutory authority for national banks to engage in stablecoin activities, and *it explicitly states that it is not intended to preempt state consumer protection laws*. This reflects a Congressional judgment that state consumer protection laws, other than those governing chartering, licensing, or authorization to do business, are vital to protect consumers and meet the goals of the GENIUS Act. It would be inconsistent with the GENIUS Act to read its later-enacted and specific preservation of state consumer protection

⁴⁸ OCC, *supra* note 2, at 10203.

⁴⁹ *Id.* at 10204.

⁵⁰ 12 U.S.C. § 25b; *Cantero v. Bank of America, N.A.*, 602 U.S. 205, 219-21 (2024).

⁵¹ *Id.* at 215; *Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 24 (1st Cir. 2025); *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025).

laws relative to stablecoin issuer activities as preempted by the general authority in the National Bank Act.

Congress could have elected to exempt national banks from state consumer protection laws or directed the OCC to apply the 12 USC 25b preemption standards in its rule of construction. It did neither. The OCC should clarify that it may not, and will not seek to, preempt state consumer protections laws applicable to stablecoin issuers via rule.

- iii. The OCC should require foreign issuers to submit to state jurisdiction for laws that are applicable under Section 7 of the GENIUS Act.

State consumer protection laws apply to foreign issuers operating in the United States, the same as they do to any other issuer or any other foreign financial company operating in a state. The GENIUS Act preserves state authority and grants no preemptive or exclusive authority to the OCC with respect to the operations of foreign issuers. States, therefore, have the authority to enforce those laws in cases where they would otherwise have authority to enforce them with respect to a foreign financial company.

Section 17(c)(2)(a) of the GENIUS Act requires a foreign issuer to consent to United States jurisdiction relating to the enforcement of the GENIUS Act and its implementing regulations. The OCC implements this provision in proposed Section 15.32(d)(4), but only requires consent to federal jurisdiction. It should amend that paragraph to include consent to the jurisdiction of state agencies for purposes of enforcing state consumer protection laws, where appropriate. This requirement could also improve efficiency by reducing the need for states to litigate jurisdictional questions when enforcing clearly applicable laws.

- b. The OCC should provide clear and predictable guidelines for when it will grant a waiver of the transition to federal oversight.*

In the interests of greater certainty and efficiency for issuers, the OCC should create a regulatory pathway with clear standards for seeking a waiver and make it available to state qualified issuers from all states. Section 4(d) of the GENIUS Act requires a state qualified issuer that is not a depository institution to transition to oversight by the Comptroller within 360 days of reaching \$10 billion in consolidated total outstanding issuance. It also permits the Comptroller to waive this transition requirement subject to four exclusive criteria and creates a presumptive waiver for issuers regulated by state stablecoin regimes in place before enactment of the GENIUS Act.

The OCC's proposal restates in modified form the statutory criteria, without providing additional detail on how the OCC will assess the statutory factors. This approach will create regulatory uncertainty for issuers approaching the \$10 billion threshold that may wish to seek waivers. In addition, as the OCC notes in the proposal, there may be limited economies of scale to dual supervision by both the OCC and a state stablecoin regulator.⁵² To reduce burden on regulated entities, a single supervisor would be best where the entity and supervisor meet the statutory waiver criteria.

⁵² OCC, *supra* note 2, at 10267 (Question 197).

The single supervisor for a state-chartered entity should be the state regulator, where possible. The transitioning entity remains state chartered, and the applicable state regulator retains supervisory authority even in the event of a transition to federal oversight. If the statutory criteria for waiver are met, the GENIUS Act creates a path for the OCC to exclude itself from supervising these entities. If the entity wishes to have sole oversight from the OCC instead, it can instead seek federal approval.

The OCC should lay out clear criteria for how an entity seeking a waiver can demonstrate the statutory factors are met. In particular, to give the factors meaning, it should:

- Find that the capital factor is met if an issuer's state regulatory capital requirements meet or exceed the OCC's expectations under proposed Section 15.15(b). This will ensure that an issuer has sufficient capital.
- Find that the past operations and examination history factor is met where it cannot identify any material findings or risks to holders or the institution, or any such findings and risks were remediated within a similar timeframe to what the OCC would expect.
- The other two factors should respect the GENIUS Act's reservation of regulatory authority and discretion to states and be met where a state has a regulatory framework substantially similar to the federal regulatory framework. This should include cases where the state framework exceeds the federal regulatory framework.

The OCC should grant a presumptive waiver on the experience and regulatory framework criteria where a state enters into an MOU for joint supervision with the Federal Reserve under Section 7(b) of the GENIUS Act. The involvement of another federal regulator, invited by the primary state regulator, should be sufficient to demonstrate adequate experience and an adequate regulatory framework. Under those circumstances, the OCC should prefer waiver to inserting itself as a third unnecessary and redundant regulator.

The OCC should also provide additional guidance on how it will implement the statutory presumption of waiver for states that have a stablecoin regulatory framework in place 90 days in advance of the GENIUS Act. It should list the states that qualify for this presumption and clarify that a state on this list can make updates to align its framework with Treasury's principles for substantial similarity without losing the presumption. Permitting updates to state regimes that are in place will preserve the Congressional intent of respecting existing state stablecoin regimes. Identifying clear factors will also help with assessing whether the OCC has rebutted the statutory presumption via clear and convincing evidence.

- i. The OCC should adopt the shared supervisory approach that states use with the Federal Reserve System ("FRS") and FDIC for coordinated supervision of issuers.

Nonbank issuers with issuance of more than \$10 billion must transition to a federal regulatory framework administered by the relevant state regulator and the OCC, acting in coordination. The proposal is silent on how the OCC intends to coordinate with state regulators. In the banking context, states have long worked with the FDIC and FRS to coordinate supervision of state-chartered banks. The

OCC should learn from this effective model and work with state regulators to adopt a supervisory approach that works for both regulators.

- ii. The OCC should affirm that its role in the transition to federal oversight is exclusively with respect to nonbank issuers.

Proposed Section 15.15 applies to state qualified issuers that are nonbank entities, consistent with GENIUS Act Section 4(d)(2). But the preamble twice cites the possibility that state-chartered depository institutions that exceed \$10 billion in consolidated issuance may also transition to OCC oversight.⁵³ The OCC is not the primary federal regulator for any state-chartered depository institution stablecoin issuer.

- iii. The OCC should discount assessments for state supervised issuers that transition to federal oversight under the GENIUS Act if they would qualify for waiver.

The proposal asks in Question 197 if the OCC should discount assessments for state qualified payment stablecoin issuers that transition to its oversight. If the OCC is interested in pursuing cooperative federalism, as envisioned in the GENIUS Act, it should coordinate with state regulators and not penalize well-regulated state issuers that transition to federal oversight with effectively higher assessments. It should implement a discount in cases where a state qualified issuer would qualify for a waiver, regardless of whether the issuer seeks a waiver.

Qualifying for a waiver means that an issuer is adequately capitalized, has an acceptable operational and examination history, and is subject to oversight by an experienced regulator implementing a regulatory framework that is substantially similar to the federal regulatory framework. Taken together, these factors demonstrate that the state regulator is adequately supervising the issuer. The OCC should not need to recreate the work of the state regulator or impose significant additional examination requirements, as doing so would be unnecessarily costly and disruptive. If the OCC intends to appropriately coordinate with state regulators, as required by the statute, then it should reduce assessments for an issuer that qualifies for waiver to reflect the reduction in supervisory work required by the OCC.

- c. *The OCC should include in the final rule its statutory obligation to notify states of its intent to act in unusual and exigent circumstances.*

CSBS and MTRA appreciate the OCC's addition of specific considerations for determining when unusual and exigent circumstances exist. Considerations (1)-(3) are appropriate and, where appropriately weighed, would constitute the sorts of unusual and exigent circumstances that could justify exercise of the authority. The OCC should limit any factors considered under (4) to similarly narrow and exigent considerations and should issue guidance for notice and comment on how it will assess these factors.

In implementing this statutory requirement, the proposal does not include the requirement that the Comptroller provide no less than 48 hours' prior written notice to the state payment stablecoin

⁵³ OCC, *supra* note 2, at 10248 n.122 and 10267 n. 131.

regulator. We expect that the OCC will communicate with the appropriate state regulator the moment it identifies an issue. However, for avoidance of any doubt and to maintain compliance with the statute, the OCC should add this notice requirement to the regulation.

IV. The OCC appropriately recognizes that affiliate and third-party arrangements can be used to pay yield and should ensure that its framework captures all similar arrangements to prevent circumvention.

The OCC appropriately recognizes that affiliate and third-party arrangements that pay yield to holders may be attributable to the issuer and thus violate the GENIUS Act prohibition on payment of yield in certain circumstances. The GENIUS Act's prohibition on paying interest or yield 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.⁵⁴ Among other negative consequences, meaningful deposit flight could heighten bank liquidity and broader financial stability risks, limit credit availability to consumers and businesses (particularly for small businesses and farmers), increase the cost of bank deposits and funding, and increase the risk of consumer harm for holders of uninsured stablecoins and other digital assets.⁵⁵

The OCC should broaden the definition of "related third party" in proposed Section 15.10(c)(4) to include other arrangements where a third party passes value from the issuer to the holder in a way that mimics deposits. The definition should cover profit-sharing arrangements between the issuer and the holder, in addition to arrangements in which a third party contractually agrees to redeem an issuer's stablecoins for holders, effectively serving as the issuer's agent. These structures can transfer value from the issuer to holders in a manner functionally equivalent to yield and present the same risks that Section 4(a)(11) is intended to address.

In addition, proposed sections 15.10(c)(4)(ii)(A) and 15.31(c)(3)(i) define a "related third party" to include any person who "offer[s] to pay interest or yield to payment stablecoin holders as a service." However, the phrase "as a service" is not defined. The proposal states that paying yield or interest "as a service" means paying yield or interest "on behalf of the permitted payment stablecoin issuer."⁵⁶ This formulation could be interpreted narrowly to only prohibit yield or interest payments when the payments are made pursuant to a contract between the issuer and the third party. To better capture the substantive goals of the GENIUS Act, the OCC should remove all references to "as a service" from the proposed rules and replace it with "who also receives or received a benefit from the permitted payment stablecoin issuer." Where such a benefit is unrelated to the payment of yield, the issuer can use the rebuttable presumption to demonstrate to the OCC that a benefit it may provide to a retail exchange, for example, does not constitute the payment of yield on the holding of the issuer's stablecoins.

⁵⁴ Treasury Borrowing Advisory Committee, Presentation, [Digital Money](#), April 30, 2025 at 2 ("The potential impact on bank deposits may depend on whether stablecoins are yield-bearing.").

⁵⁵ See, e.g. Andrew Nigrinis, "[The Coming Stablecoin Shock to America's Credit Markets](#)," Open Banker (Oct. 16, 2025).

⁵⁶ OCC, *supra* note 2, at 10212.



Conclusion

CSBS and MTRA encourage the OCC to make the recommended changes to remain aligned with the GENIUS Act, its fellow federal agencies, and nearly a decade of state experience in regulating stablecoin issuers.

Sincerely,

Brandon Milhorn
President and CEO
CSBS

Board of Directors
MTRA