



November 4, 2025

Via electronic submission

U.S. Department of the Treasury
Attention: Office of the General Counsel
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: GENIUS Act Implementation (RIN 1505-ZA10)

To whom it may concern:

The undersigned trade associations¹ (the “Associations”) appreciate the opportunity to respond to the advance notice of proposed rulemaking (“ANPR”) issued by the U.S. Department of the Treasury regarding the implementation of the recently enacted Guiding and Establishing National Innovation for U.S. Stablecoins Act or GENIUS Act.² The Associations appreciate the Treasury Department’s careful consideration of the numerous significant policy questions that the GENIUS Act raises and their impact on the regulations that it and other federal and state agencies must issue to implement the statute. Given the complexity of the numerous questions posed in the ANPR, the Associations look forward to continued engagement and anticipate providing additional input with respect to these important topics as the process of implementing the GENIUS Act continues.

The Associations believe that it will be critical that the Treasury Department and applicable regulators craft regulations under the GENIUS Act that preserve the benefits of payment stablecoins for their intended use in payments and settlements, without causing undue and unnecessary risks for consumers, other stablecoin holders or users, competition, credit availability, illicit finance or financial stability. The Associations and their members accordingly urge the Treasury Department to do the following in the rules that it will issue under the GENIUS Act and, where appropriate, to coordinate with other agencies to do so in the regulations that they will issue:

1. Implement the GENIUS Act’s prohibition on the payment of interest or yield on payment stablecoins in a manner that is consistent with Congress’s intent that such payments will

¹ Please see Annex A for a description of the Associations.

² Department of the Treasury, GENIUS Act Implementation, Advance Notice of Proposed Rulemaking, 90 Fed. Reg. 45,159 (Sept. 19, 2025).

be broadly prohibited, whether paid directly by an issuer or indirectly by an issuer's affiliates or partners.

2. Limit the risk of harmful regulatory arbitrage by precluding the possibility that material differences will arise among federal, state and foreign payment stablecoin regulatory regimes and by requiring that large permitted payment stablecoin issuers ("PPSIs") be subject to federal regulation.
3. Establish appropriate requirements and oversight to combat illicit finance and national security risks posed by PPSIs, payment stablecoins and digital asset service providers ("DASPs") and ensure relevant obligations are consistent between PPSIs, DASPs and banks.
4. Interpret the GENIUS Act's prohibition on payment stablecoin issuance by public or foreign companies not predominantly engaged in financial activities in a fashion that respects the longstanding U.S. policy of separating banking and commercial activities and prevents the emergence of associated risks, including undue concentration of economic power.
5. Ensure that PPSIs hold reserves that back their payment stablecoins in custody and that all custodians for those reserves and payment stablecoins satisfy the highest standards for custody and safekeeping to protect customers, maintain market integrity, foster confidence and minimize conflicts of interest.
6. Confirm that PPSIs and payment stablecoins are subject to the same robust consumer protections applicable to other institutions and products that similarly facilitate payments and settlement.
7. Interpret the definition of "payment stablecoin" in the GENIUS Act to prevent loopholes and clarify the statute's application to tokenized products issued by insured banks.
8. Interpret the obligations applicable to DASPs to uphold, and prevent evasion of, the requirement that the only payment stablecoins that DASPs may offer or sell in the United States are those issued by a PPSI or by a qualifying foreign payment stablecoin issuer (an "FPSI").

These recommendations, including their specific implications for the regulations that will be issued to implement the GENIUS Act, are described further in the following sections.

I. Prohibition on Payments of Interest or Yield

A. Statutory Language and Analysis

The GENIUS Act prohibits any payment stablecoin issuer from paying interest or yield on the payment stablecoins it issues. Under the statute, no PPSI or FPSI may "pay[] the holder of any payment stablecoin *any form of interest or yield (whether in cash, tokens, or other*

consideration) solely in connection with the holding, use, or retention of such payment stablecoin.”³

The broad scope that Congress intended for this prohibition is evident in the terms that Congress used. *Interest*, for example, has long been interpreted as referring to a wide range of compensation. The Supreme Court has considered whether the term “interest” (in that context, amounts that a bank charged its customers) includes late fees.⁴ The Court rejected an “asserted requirement” that interest be “time- and rate-based” (*e.g.*, an annual interest rate that is a specified percentage of balances) and instead concluded that the term “interest” can include late fees and other types of compensation.⁵ The GENIUS Act’s prohibition on payments to holders is also not limited to the payment of *interest*, but also the payment of “*yield*,” which similarly has a broad meaning, including “the amount obtained from some financial transaction.”⁶ Congress intended for these terms to be read expansively, as the GENIUS Act expressly prohibits the payment of interest or yield *in any form*.

Moreover, the breadth of the prohibition is clear in that the prohibited payments include those that may be made in cash, tokens *or other consideration*. Consideration is generally defined as effectively anything—whether an act, a forbearance or a return promise—that a person may bargain for and receive.⁷ The applicability of the prohibition to something *paid* also does not limit its scope. The term payment is often interpreted, for example under the tax code, to include not only an actual transfer of value from payor to payee, but any transaction in which a beneficiary receives value.⁸ For these reasons, the payments of interest or yield that the GENIUS Act prohibits should be viewed as effectively including any economic benefit that may be provided by an issuer, directly or indirectly (such as through an affiliate or partner), with respect to the payment stablecoins it issues.⁹

That Congress intended a broad scope for the GENIUS Act’s prohibition on payments of interest or yield is clear not only in the statutory language, but also in at least the following three important objectives served by the prohibition.

First, the prohibition reflects the intended use of payment stablecoins and, importantly, the uses for which they are not intended. The GENIUS Act defines payment stablecoins as

³ GENIUS Act, § 4(a)(11) (emphasis added).

⁴ *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 738 (1996).

⁵ *Id.* at 745-46; *see also Brown v. Hiatts*, 82 U.S. (15 Wall.) 177, 185 (1873) (describing “interest” broadly as “the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention”).

⁶ Oxford English Dictionary, *Yield* (June 2025).

⁷ Black’s Law Dictionary, *Consideration* (12th ed. 2024).

⁸ *See, e.g.*, Treas. Regs. § 1.1441-2(e)(1) (“A payment is considered made to a person if that person realizes income *whether or not such income results from an actual transfer of cash or other property.*”) (emphasis added).

⁹ Economic benefits may include direct payments to a stablecoin holder or user, as well as other benefits or incentives, such as rewards, bonuses or services, provided directly or indirectly by an issuer that are conditioned on the holding, use or retention of a payment stablecoin.

digital assets that are, or are designed to be, “used as a means of payment or settlement.”¹⁰ If payment stablecoins provide holders or users with an economic return, they would cease to be primarily means of payment or settlement, and would become means of investment. That is not a function that the GENIUS Act intends for payment stablecoins to have, which is made clear within the GENIUS Act’s statutory framework as payment stablecoins are expressly defined to exclude deposits and securities,¹¹ two types of assets that generally *do* provide economic returns to their holders.

Second, the prohibition is meant to guard against significant risks that would otherwise be posed to the fundamental role of banks in credit intermediation; that is, the process through which banks use deposits to make loans to their customers. Banks have a long history of facilitating credit creation in the United States, channeling deposit funds into productive investment for society by extending loans that support a wide range of activities. Payment stablecoin issuers provide no similar economic function. Unlike banks, PPSIs must, under the GENIUS Act, use funds they receive in connection with the issuance of stablecoins to purchase only short-dated, high-quality assets, such as short-dated U.S. Treasury securities.¹²

As discussed above, permitting payment stablecoin issuers to provide holders or users of their payment stablecoins with benefits economically tantamount to interest or yield would make these digital assets effectively investment products. That could cause a shift in perception of businesses, consumers and other market participants that would cause them to view payment stablecoins as not merely intended for the specific use case contemplated by the GENIUS Act (*i.e.*, facilitating payments or settlements), but instead as a longer-term store of value. As a result, businesses, consumers and other market participants that today store funds in bank deposit accounts may change their behavior, switching to storing funds by holding payment stablecoins. The possibility that increased uptake of payment stablecoins may cause “deposit flight” from banks has already been recognized, including by the current Comptroller of the Currency.¹³ This sort of deposit flight would reduce the amount of funds available to banks to support lending into the real economy and make loans less available and more expensive for a wide swath of borrowers. The availability of credit across the economy would presumably then face a significant decrease, with the harmful impact likely greatest for small and medium-sized businesses and individuals.¹⁴

¹⁰ GENIUS Act, § 2(22)(A)(i).

¹¹ *Id.* § 2(22)(B)(ii)-(iii).

¹² *Id.* § 4(a)(1)(A).

¹³ *Gould Touts OCC Debanking Moves, Reassures on Stablecoin*, ABA BANKING J. (Sept. 10, 2025), available at <https://bankingjournal.aba.com/2025/09/gould-touts-occ-debanking-moves-reassures-on-stablecoin> (quoting the Comptroller of the Currency that “[w]e’re sensitive to concerns that some have raised about deposit flight from the banking system” and that “[i]f it looks like deposits are dramatically fleeing the federal banking system, that would be a source of concern at the OCC and I’m sure across other federal banking agencies too . . .”).

¹⁴ For further discussion regarding potential effects on credit intermediation, please refer to The Bank Policy Institute, *The Risks of Allowing Stablecoins to Pay Interest* (Sept. 25, 2025), available at <https://bpi.com/the-risks-from-allowing-stablecoins-to-pay-interest/>; see also Andrew Nigrinis, *The*

As contemplated by the GENIUS Act, PPSIs must use funds they receive in connection with payment stablecoin issuance to purchase the reserve assets that will back their payment stablecoins. Although these reserve assets may themselves be deposits that the issuer holds at a bank,¹⁵ they may also be U.S. Treasury securities, reverse repurchase agreements collateralized by U.S. Treasury securities, securities issued by a money market fund or other high-quality, short-duration assets that an issuer will generally obtain from a wholesale dealer.¹⁶ These non-deposit assets in fact form the overwhelming majority of reserve assets held today by the largest payment stablecoin issuers.

Even in the circumstance in which bank deposits of businesses, consumers or others are used to purchase payment stablecoins and then replaced by bank deposits of payment stablecoin issuers or dealers from whom they obtain non-cash assets, the nature and characteristics of bank deposits could fundamentally change. These new deposits of payment stablecoin issuers could be subject to more rapid withdrawals and could otherwise “behave” differently from other types of deposits that banks use to fund loans. Deposits of dealers representing the proceeds of their sales of non-cash reserve assets to payment stablecoin issuers will almost certainly be subject to more rapid withdrawals. Banks therefore may need to treat these deposits differently and less favorably for risk-management purposes.¹⁷ Doing so could potentially cause a substantial decrease in funds available to support longer-term lending to the real economy, even if there is not a decrease in the aggregate amount of deposits held at banks.¹⁸ Such an essential change to the economic function performed by the U.S. banking system should not be permitted without careful, detailed consideration, including input from all relevant stakeholders to examine potential macroeconomic and financial stability consequences and to mitigate adverse effects that may arise from those consequences.¹⁹

Coming Stablecoin Shock to America’s Credit Markets, OPEN BANKER (Oct. 16, 2025), available at <https://openbanker.beehiiv.com/p/stablecoinsshock> (describing, in an article written by the first Enforcement Economist of the Consumer Financial Protection Bureau (“CFPB”), that providing interest or other economic benefits on payment stablecoins “has profound implications for credit creation” because bank “deposits are not the end of the story; they are the raw material that fuels loans to households, small businesses, and farms, and those loans are what power economic growth” (emphasis omitted)).

¹⁵ GENIUS Act, § 4(a)(1)(A)(ii).

¹⁶ *Id.* § 4(a)(1)(A)(iii), (v)-(vi).

¹⁷ This possibility is heightened because the behavior of deposits relating to payment stablecoin reserves is largely unknown today.

¹⁸ See Andrew Nigrinis, *The Lending Impact of Stablecoin-Induced Deposit Outflows*, SSRN (Oct. 10, 2025), available at <https://ssrn.com/abstract=5586850> (describing that “core deposits [(i.e., stable deposits from consumer and business customers of banks)] cannot be substituted with wholesale funding [(e.g., from payment stablecoin issuers or securities dealers)] without eroding margins, weakening profitability, and constraining lending [by banks]” and that “small banks, which provide disproportionate support to small businesses, farms, and rural households, are more vulnerable than large banks, meaning deposit outflows will not be evenly distributed and credit contractions will be most severe in communities with few alternatives”).

¹⁹ The prospect that broad uptake of payment stablecoins may bring about fundamental changes to the nature of the U.S. banking system would be heightened if payment stablecoin issuers were permitted to establish accounts at a Federal Reserve Bank in which they could hold reserves for the payment stablecoins that they

Third, the GENIUS Act’s prohibition on the payment of interest or yield prevents significant risks to payment stablecoin issuers and financial stability. If payment stablecoin issuers may directly or indirectly provide economic benefits to holders or users of their payment stablecoins, there is a risk of an “interest rate war.” That is, issuers that have the greatest resources (on their own or together with affiliates or third-party partners) could seek to outcompete other issuers by offering more aggressive benefits to holders or users. Doing so could be effective in the short term not only in attracting more customers for the issuer’s stablecoins, but also as a means of driving smaller or less-capitalized payment stablecoin issuers from the market. The issuers that have the greatest resources to spend in these efforts may frequently not be “standalone” payment stablecoin issuers, but those that are issuing payment stablecoins to benefit other businesses, potentially in an anticompetitive way that seeks to concentrate economic power.²⁰

Furthermore, permitting issuers to directly or indirectly provide economic benefits to holders or users of the payment stablecoins they issue makes those issuers less stable, because they would need to be able to fund the benefits they provide. They could do so by choosing relatively more risky or less liquid reserve assets to back their payment stablecoins in order to earn higher returns and fund the economic benefits provided. Less stable issuers may be more likely to fail and issuer failures may cause numerous harmful effects, especially if they occur in a rapid, disorderly manner. The GENIUS Act does not preclude a “run” on a payment stablecoin issuer. Such a run could occur if holders or users of an issuer’s payment stablecoins come to question the issuer’s stability and the ability of the issuer to satisfy redemption requests on a timely basis. Doubts about an issuer’s stability may arise because, under the GENIUS Act, issuers may hold reserves in non-cash assets that, even if they are of short duration and generally highly liquid, may lose value or otherwise are not capable of being sold immediately without loss.²¹ A run on a payment stablecoin issuer could have devastating effects, not only for the customers and others who hold or use that issuer’s payment stablecoins, but also for the overall payment stablecoin ecosystem and conceivably for financial stability more generally.²²

These negative consequences from excessive competition to pay higher interest rates are not theoretical and have been seen before. For example, the savings and loan crisis of the 1980s

issue. In that case, the funds held as reserves in a Federal Reserve Bank account would leave the banking system altogether, potentially causing significant and highly disruptive reductions in the aggregate amount of funds that banks have available to lend to support the real economy.

²⁰ For example, as discussed further in Section IV below, a large technology or retail business could seek to issue a payment stablecoin to establish a dominant market position in their primary business. Doing so would be contrary to the longstanding separation in the United States between banking and commercial activities. It would also provide a payment stablecoin issuer a means to achieve a competitive advantage by virtue of market share in another business unrelated to payment stablecoins, and *not* through the benefits that their payment stablecoins provide to customers.

²¹ The possibility of a run on a payment stablecoin issuer may be heightened because, unlike bank deposits, payment stablecoins are expressly prohibited from benefitting from Federal Deposit Insurance Corporation (“FDIC”) insurance. GENIUS Act, § 4(e)(1).

²² See Denise Garcia Ocampo, *Stablecoin-related Yields: Some Regulatory Approaches*, FSI Brief No. 27, Fin. Stability Inst. of the Bank for Int’l Settlements, at 12 (Oct. 2025), available at <https://www.bis.org/fsi/fsibriefs27.pdf> (describing the consumer protection, financial stability and conflict of interest risks associated with payment stablecoins that provide economic benefits to holders).

was driven in part by similar dynamics. Several weaker institutions sought to compete and grow by offering often unsustainable interest rates to attract deposits. When markets shifted, this strategy became unsustainable and deposits fled weaker institutions, which then failed in large numbers. Taxpayers eventually lost billions and Congress took action to act to limit interest rate competition by weaker institutions.²³ The regulations under the GENIUS Act should not enable these adverse effects to recur by permitting issuers to compete by directly or indirectly providing holders or users of their payment stablecoins with economic benefits.

B. Implications for GENIUS Act Regulations

The primary federal payment stablecoin regulators are directed to issue regulations to implement the GENIUS Act’s prohibition on payment of interest or yield.²⁴ State payment stablecoin regulators may also issue regulations to implement the prohibition.²⁵ Additionally, the GENIUS Act expressly directs regulators to “establish conditions . . . and to prevent evasion thereof” under the regulations that they will issue to implement this prohibition.²⁶ These provisions clearly empower the primary federal payment stablecoin regulators to issue regulations that ensure that this prohibition in the GENIUS Act is applied effectively in a manner that reflects Congress’s intent and also precludes circumvention.

The Treasury Department therefore should coordinate with federal and state payment stablecoin regulators to ensure that this prohibition has the broad scope that Congress intended and to prohibit evasion of the prohibition. To do so, regulations under the GENIUS Act should provide the following:

1. *The “pay[ments] of any form of interest or yield” within scope of the prohibition should be read broadly to include any economic benefit provided to a payment stablecoin holder or user.* As discussed above, the terms used by the GENIUS Act do not limit the prohibited payments to time- or rate-based payments or to actual transfers of value from an issuer to a holder or user. Instead, to reflect the meaning of the terms that Congress used, regulations under the GENIUS Act should provide that these terms prohibit the provision of *any* economic benefit by a payment stablecoin issuer to a holder or user of those payment stablecoins.²⁷

2. *Payments by a person that acts on behalf of, in coordination with or using funds derived from a payment stablecoin issuer, including an issuer’s affiliate or partner, should be treated as payments by the issuer.* As described above, the GENIUS Act provides that regulations issued under the statute should “prevent evasion” of their requirements.²⁸ If an issuer is prohibited from itself paying any form of interest or yield on its payment stablecoins, it would

²³ See 12 U.S.C. § 1831f (restrictions on acceptance of brokered deposits by less than well capitalized institutions, initially enacted in 1989).

²⁴ GENIUS Act, § 4(h)(1).

²⁵ *Id.*

²⁶ *Id.*

²⁷ For this purpose, a prohibited economic benefit would not include the economic benefit that results directly from the intended use of a payment stablecoin for payments or settlements.

²⁸ GENIUS Act, § 4(h)(1).

necessarily be evasion of the GENIUS Act’s prohibition for an issuer to enter into an arrangement under which an affiliate, partner or any other party makes a payment of otherwise prohibited interest or yield. A member of the Senate Banking Committee recently made this exact point, describing that arrangements in which a person other than a payment stablecoin issuer pays interest or yield on a payment stablecoin “look[] to me like . . . an end-run on” the GENIUS Act.²⁹

The possibility of evasion of this sort is not merely hypothetical. As just one example, payment stablecoin issuers have entered into “white label” arrangements, in which a person (a “sponsor”) enters into a partnership with the issuer. The sponsor then brands, markets, distributes and/or embeds a payment stablecoin issued by the issuer in the sponsor’s platform or otherwise promotes its use among the sponsor’s customers. The sponsor may also retain the right to make key decisions about the relevant payment stablecoin, including regarding pricing, target “use cases,” customer relationships and liquidity and redemption policies. These arrangements can blur the line between the issuer and the sponsor, especially as the sponsor may obtain significant economic benefits, including payments from the issuer, tied to uptake and use of the relevant payment stablecoin.

Accordingly, to prevent evasion of the GENIUS Act’s prohibition on the payment or interest or yield, it is not sufficient to prohibit only economic benefits from being provided directly by a payment stablecoin issuer. It is instead necessary that the regulations implementing the prohibition apply broadly to both issuers and any other person that acts *on behalf of, in coordination with or using funds derived from* a payment stablecoin issuer, including an affiliate, sponsor, DASP or other partner of the issuer. Doing so would ensure that economic benefits provided to a stablecoin holder or user are treated as a payment of interest or yield by the issuer, whether provided *directly or indirectly*.

3. *The limitation that the GENIUS Act’s prohibition applies only to payments of interest or yield made “solely” in connection with certain activities should not be given an overly broad reading that negates congressional intent.* The prohibition on payment of interest or yield is limited to payments made “solely in connection with the holding, use, or retention of [a] payment stablecoin.” However, an issuer (or other person acting on the issuer’s behalf, in coordination with or using funds derived from it) should not be able to evade the broad scope of the GENIUS Act’s prohibition by arguing that an economic benefit is provided, not solely because of a person’s holding, use or retention of a payment stablecoin, but also because of some other insignificant or unrelated activity. To prevent circumvention of the statute’s substantive prohibition on the payment of interest or yield in this fashion, regulations issued under the statute should provide that an economic benefit provided to a holder or user of an issuer’s payment stablecoin is presumed to be provided solely in connection with the holding, use or retention of that payment stablecoin if holding, using or retaining the payment stablecoin is a necessary condition to receiving the benefit, or is the reason that the benefit was actually provided.

²⁹ Jasper Goodman, *Key Republican Sides With Banks in Wall Street’s Clash With Crypto Firms*, POLITICO PRO (Oct. 8, 2025), available at: <https://subscriber.politicopro.com/article/2025/10/key-republican-sides-with-banks-in-wall-streets-clash-with-crypto-firms-00598151> (quote of Sen. Mike Rounds (R-S.D.)).

II. State and Foreign Regulatory Regimes

A. Determinations of Whether State Regimes Are “Substantially Similar”

1. *Statutory Language and Analysis*

Under the federal regulatory framework established by the GENIUS Act, many PPSIs may be regulated almost exclusively at the state level.³⁰ However, under the statute, a state payment stablecoin regulatory regime can be available for PPSIs only if the regime is “substantially similar” to the federal regulatory regime.³¹ The GENIUS Act confirms that there should be no meaningful differences between state and federal payment stablecoin regulatory regimes, as the statute expressly requires PPSIs, whether subject to a state regime or the federal regime, to comply with the *same* principal requirements. In particular, the requirements of Section 4(a) of the GENIUS Act apply to any PPSI, regardless of whether regulated at the state or federal level. These requirements include, among others, those relating to reserve requirements; compliance with capital, liquidity and risk management requirements; compliance with the Bank Secrecy Act (the “BSA”) and sanctions requirements; restrictions on permissible activities; the prohibition on payment of interest or yield; and limitations on issuance of payment stablecoins by public or foreign companies that are not predominantly engaged in financial activities.³²

The need to minimize differences between the substantive standards that apply to a PPSI under a state regulatory regime and those that apply to a PPSI under the federal regulatory regime is important not only to implement the plain text of the GENIUS Act, but also to protect holders and users of payment stablecoins and to safeguard against the risk of a “race to the bottom” among regulatory regimes. If a state regime imposes fewer restrictions or requirements on PPSIs in any material way, as compared to the federal regime, PPSIs will have clear incentives to engage in regulatory arbitrage. That is, PPSIs would seek to compete not by offering a superior product, but by selecting whichever regime is least restrictive. This is an inappropriate basis for healthy competition and would undermine the regulatory framework established by the GENIUS Act.

Moreover, equivalence between state and federal payment stablecoin regulatory regimes does more than ensure competitive fairness. This equivalence protects customers, who may have limited information about the specific regulatory regime governing any particular payment stablecoin. This equivalence also reduces the risk of loss of confidence in, or an actual failure of, a PPSI. As discussed in Section I above, such a loss of confidence or a failure could have serious adverse consequences. Significantly, the United States has previously seen the negative effects that can result from material differences between state and federal regulatory frameworks. Prior to remedial legislation adopted in the wake of the banking and thrift crises of the 1980s and early 1990s, states could permit state-chartered banks to engage in a broader range of activities than those in which national banks could permissibly engage. Some states, especially during the

³⁰ See, e.g., GENIUS Act, §§ 4(c), 7.

³¹ *Id.* § 4(c)(1).

³² *Id.* § 4(a).

1980s and early 1990s, permitted banks they chartered to enter into securities, insurance and/or real estate activities not permitted for national banks. The resulting competitive disparities and regulatory arbitrage helped contribute to the banking and thrift crises, and Congress was forced to respond, passing legislation that now generally prevents this type of disparity from arising.³³

2. *Implications for GENIUS Act Regulations*

The GENIUS Act directs the Secretary of the Treasury to establish “broad-based principles” for determining whether a state payment stablecoin regulatory regime is “substantially similar” to the federal regime.³⁴ To prevent regulatory arbitrage and related adverse consequences, these principles should require the following in evaluating whether any state regime is in fact substantially similar to the federal regime:

1. *The scope and implementation of applicable requirements must be considered.* A state payment stablecoin regulatory regime should not be considered substantially similar to the federal regime unless it subjects a PPSI to the same (or at least substantially similar) requirements to which federally regulated PPSIs are subject. This should include *all* of the requirements applicable to every PPSI in Section 4(a), (e) and (f) of the GENIUS Act, and a state regime should not be permitted to modify the obligation of PPSIs subject to that regime to comply with these requirements or requirements implemented under the BSA (which are discussed further in Section III below)). Moreover, an evaluation of a state regime’s requirements should consider *how* those requirements are implemented in practice, including under relevant regulations, guidance or other interpretations, to ensure that they are interpreted and implemented in effectively the same (or at least a substantially similar) manner as the corresponding requirements are interpreted and implemented under the federal regime.

2. *The extent of supervision must be considered.* A state payment stablecoin regulatory regime should not be determined to be substantially similar to the federal regime unless examination and supervision of a PPSI subject to the state regime is at least as extensive—*both as a legal matter and in practice*—as the examination and supervision of a PPSI subject to the federal regime. An evaluation of examination and supervisory practices under a state regime should consider not only what authorities the applicable state payment stablecoin regulator has as a matter of law, but also how those authorities are exercised, including through enforcement and other actions.

3. *Public comments on initial and recertification must be considered.* Because of the importance of the equivalency between a state payment stablecoin regulatory regime and the federal regime, and the need to consider how regulation and supervision are exercised in practice, the Stablecoin Certification Review Committee (“SCRC”) should subject any review of

³³ Fed. Deposit Ins. Corp., Div. of Rsch. & Stat., *History of the Eighties: Lessons for the Future, Volume I: An Examination of the Banking Crises of the 1980s and Early 1990s*, at 90; 101 (1997), available at <https://fraser.stlouisfed.org/title/history-eighties-6140/volume-i-593027>. Under Section 24 of the Federal Deposit Insurance Act, added to that statute by the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, insured state-chartered banks generally may not engage as principal in any activity not permissible for national banks. See 12 U.S.C. § 1831a.

³⁴ GENIUS Act, § 4(c)(2).

whether a state regime is substantially similar to the federal regime to public notice and comment. A state is required to provide an initial certification that its payment stablecoin regulatory regime is substantially similar to the federal regime and then to submit a recertification every year thereafter.³⁵ The SCRC must then review each certification or recertification to determine whether to approve or deny it.³⁶ Considering comments from interested parties during these reviews will enable the SCRC to incorporate important information about a state's regime. This information may include how the regime is implemented, both as a matter of law and in practice, and, with respect to a recertification, any relevant changes in the regime.

B. Determinations of Whether Foreign Regimes Are “Comparable”

1. *Statutory Language and Analysis*

Under the GENIUS Act, an FPSI may offer or sell payment stablecoins in the United States, including through a DASP, only if, among other things, the regulatory and supervisory regime in its home jurisdiction is “comparable” to the regulatory and supervisory regime established under the GENIUS Act.³⁷ Any determination that a foreign country's regulatory and supervisory regime is comparable to the GENIUS Act's regime must be made by the Secretary of the Treasury upon a unanimous recommendation of the other members of the SCRC.³⁸ The GENIUS Act also empowers the Secretary of the Treasury to put in place reciprocal arrangements between the United States and jurisdictions with payment stablecoin regulatory regimes that are “comparable” to the requirements established under the statute.³⁹ To put in place such a reciprocal arrangement, the Secretary of the Treasury must evaluate whether the foreign jurisdiction's requirements for payment stablecoin issuers include requirements similar to those under Section 4(a) of the GENIUS Act,⁴⁰ adequate anti-money laundering and counter-financing of terrorism (“AML/CFT”) program and sanctions compliance standards, and adequate supervisory and enforcement capacity to facilitate international transactions and interoperability with U.S. dollar-denominated payment stablecoins issued overseas.⁴¹

Absent a clear standard to determine whether a foreign payment stablecoin regulatory regime is comparable to the regime established under the GENIUS Act, the risks of regulatory arbitrage and a corresponding “race to the bottom” that may arise in respect of state regimes may arise in respect of foreign regimes. That is, if a foreign regime is deemed “comparable” to the

³⁵ *Id.* § 4(c)(4).

³⁶ *Id.* § 4(c)(5).

³⁷ *Id.* § 18(a)(1).

³⁸ *Id.* § 18(b)(1).

³⁹ *Id.* § 18(d)(1).

⁴⁰ As discussed above, these requirements include, among others, those relating to reserve requirements; compliance with capital, liquidity and risk management requirements; compliance with the BSA and sanctions requirements; restrictions on permissible activities; the prohibition on payment of interest or yield; and limitations on issuance of payment stablecoins by public or foreign companies that are not predominantly engaged in financial activities.

⁴¹ *Id.* § 18(d)(1)(A)-(C).

GENIUS Act’s regime without the SCRC taking care to verify that the foreign regime imposes equivalent requirements, payment stablecoin issuers will have clear incentives to obtain a competitive advantage by operating under a less restrictive foreign regime. This possibility would undermine the GENIUS Act’s objectives of establishing a consistent and robust regulatory framework for all payment stablecoins available directly or indirectly through DASPs to U.S. customers.

2. *Implications for GENIUS Act Regulations*

The Secretary of the Treasury is required to issue rules to implement the authority to determine whether a foreign regulatory and supervisory regime for payment stablecoins is comparable to the regime established under the GENIUS Act.⁴² To mitigate the risk of the harmful effects that may arise from regulatory arbitrage, these rules should require the following:

1. *The Secretary of the Treasury and other members of the SCRC should adopt a similar approach to what is in place for foreign banks seeking to operate in the United States.* In the International Banking Act, originally enacted in 1978 and subsequently amended, Congress has provided that the Board of Governors of the Federal Reserve System (the “Federal Reserve”) may approve an application of a foreign bank to establish a branch in the United States only if the foreign bank “is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country.”⁴³ The Federal Reserve has implemented this requirement by establishing a number of factors that it considers in determining whether a foreign regulatory framework subjects a bank subject to that framework to “comprehensive consolidated supervision.” These factors include that the applicable foreign bank supervisor exercises comprehensive supervision, imposes minimum prudential and capital requirements and requires the bank to satisfy recordkeeping and reporting requirements.⁴⁴ The Office of the Comptroller of the Currency (the “OCC”) considers the same factors in evaluating certain applications by foreign banks with respect to branches in the United States that are subject to OCC supervision.⁴⁵

In evaluating whether a foreign bank is subject to comprehensive consolidated supervision, neither the Federal Reserve nor the OCC requires that a foreign bank be subject to identical requirements as those applicable to U.S. banks. Instead, the Federal Reserve and OCC evaluate whether the foreign bank is subject to requirements that ensure equivalent regulatory outcomes. The need for equivalent regulatory outcomes is important to provide sufficient protection to U.S. customers and the U.S. financial system if the foreign bank is to be permitted to establish operations in the United States through a branch.

Whether and to what extent a foreign bank may operate in the United States through a branch is analogous to whether an FPSI may offer or sell payment stablecoins in the United States. In both cases, Congress requires that the applicable foreign regulatory framework satisfy

⁴² *Id.* § 18(b)(6).

⁴³ 12 U.S.C. § 3105(d)(2)(A).

⁴⁴ *See* 12 C.F.R. § 211.24(c)(ii).

⁴⁵ 12 C.F.R. § 28.12(b)(5), (c).

a minimum baseline to protect U.S. customers and the U.S. financial system. The Secretary of the Treasury therefore should adopt regulations that follow the same approach that the Federal Reserve and OCC have implemented to evaluate the regulatory regimes under which foreign banks operate. That is, a foreign payment stablecoin regulatory regime should not need to be identical to the regulatory regime established under the GENIUS Act to be comparable to the GENIUS Act's regime, but the foreign regime must ensure equivalent regulatory outcomes.

Specific factors that should be considered in assessing whether a foreign regime ensures equivalent regulatory outcomes are the following:

- any FPSI subject to the foreign regime should be authorized to issue payment stablecoins and subject to effective supervision and monitoring by a competent regulatory authority with respect to the FPSI's worldwide activities;
- because of the numerous risks that can arise from the provision of economic benefits on payment stablecoins (as discussed in Section I above) and because the GENIUS Act's prohibition on payment of interest or yield expressly applies to FPSIs,⁴⁶ the foreign regime should prohibit FPSIs subject to it from directly or indirectly paying interest or yield in any form, to the same extent as provided in the regulations to be issued under the GENIUS Act;
- because of the importance of preventing a loss of confidence in, or an actual failure of, a payment stablecoin issuer (as discussed in Section I above), the foreign regime should require FPSIs subject to it to comply with minimum capital, liquidity and risk management standards;
- because of the important national security interests associated with mitigating illicit finance risks associated with payment stablecoins (as discussed further in Section III below), the foreign regime should require FPSIs subject to it to establish an effective AML/CFT compliance program that satisfies global expectations for those programs, including by requiring FPSIs to perform adequate customer due diligence ("CDD"), obtain information about transactions they process, report suspicious activity and retain appropriate records;⁴⁷ and
- because any FPSI that operates in the United States must consent to U.S. jurisdiction in connection with its payment stablecoin activities,⁴⁸ the foreign regime should ensure that an FPSI subject to it can and does comply in full with U.S. economic sanctions that apply to persons subject to U.S. jurisdiction.

⁴⁶ GENIUS Act, § 4(a)(11).

⁴⁷ For a full list of global expectations for AML/CFT compliance programs, please refer to the Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, (last updated Oct. 2025), available at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

⁴⁸ GENIUS Act, § 18(c)(2)(B).

2. *The Secretary of the Treasury and other members of the SCRC should encourage reciprocity agreements by requiring foreign payment stablecoin regimes to permit PPSIs to operate in the applicable foreign jurisdiction.* As described above, the GENIUS Act contemplates that the Secretary of the Treasury will enter into reciprocity agreements with foreign jurisdictions. The objective of implementing reciprocity with respect to payment stablecoins should extend to determinations that a foreign payment stablecoin regulatory regime is comparable to the regime established under the GENIUS Act. That is, a foreign regime should be deemed to be comparable to the GENIUS Act’s regime, such that foreign issuers subject to the foreign regime may offer and sell the payment stablecoins they issue in the United States, only if the foreign regime also permits PPSIs subject to the GENIUS Act to offer and sell the payment stablecoins they issue in the foreign jurisdiction.⁴⁹ This requirement is important primarily because it will encourage the United States to enter into reciprocity agreements. These agreements are necessary to ensure U.S. payment stablecoin regulators have adequate visibility into cross-border payments and other activity involving payment stablecoins and are able to establish mutual enforcement and information-sharing frameworks.

C. Waivers of “Transition” to Federal Regulation for State-Regulated PPSIs

1. *Statutory Language and Analysis*

The GENIUS Act imposes limits on the extent to which a PPSI initially approved to issue payment stablecoins by a state payment stablecoin regulator may remain subject to state-only regulation. Importantly, the GENIUS Act generally requires that a state-regulated PPSI (*i.e.*, a state-qualified payment stablecoin issuer) “transition” to federal regulation if the PPSI exceeds \$10 billion in outstanding payment stablecoins.⁵⁰ However, this requirement may be waived by the applicable federal regulator.⁵¹ Additionally, the required transition to federal oversight will be presumptively waived for PPSIs regulated under the payment stablecoin regulatory regime of a state that, as of shortly before the GENIUS Act was enacted, had an existing prudential regulatory regime for the supervision of digital assets or payment stablecoins.⁵²

Notwithstanding the possibility of a waiver of the required transition to federal oversight, this transition requirement is a critical aspect of the GENIUS Act regulatory framework. It is reflected in other parts of the statute, for example, in the provision that mandates that any PPSI with at least \$10 billion in outstanding payment stablecoins “shall” be subject to supervision by a

⁴⁹ For a foreign regulatory regime established prior to the enactment of the GENIUS Act, the Treasury Department should be able to determine that the regime is comparable to the regime established by the GENIUS Act even if it does not permit PPSIs subject to the GENIUS Act to offer and sell their payment stablecoins in the foreign jurisdiction, as long as that foreign jurisdiction provides, or commits to provide, a reasonable transition period after which PPSIs subject to the GENIUS Act will be permitted to offer or sell their payment stablecoins in the foreign jurisdiction.

⁵⁰ *Id.* § 4(d)(1)-(2).

⁵¹ *Id.* § 4(d)(3). The factors upon which a waiver may be issued are: (1) the capital maintained by the issuer; (2) the past operations and examination history of the issuer; (3) the experience of the applicable state regulator in supervising payment stablecoin and digital asset activities; and (4) the state’s supervisory framework. *Id.* § 4(d)(3)(B).

⁵² *Id.* § 4(d)(3)(C)(ii).

federal regulator.⁵³ It also serves the important objective of ensuring that, subject to limited exceptions, larger PPSIs are subject to consistent federal prudential standards for capital, liquidity and risk management, among other things. The importance of consistent standards for larger PPSIs is heightened because, due to their larger size, any failure, distress or loss of confidence in a large PPSI has a greater risk of adversely affecting financial stability and the real economy. For larger PPSIs, the risks associated with regulatory arbitrage among payment stablecoin regimes (discussed above) are correspondingly greater, and the required transition is an important mechanism to ensure consistency in the regulation and supervision of these issuers.

2. *Implications for GENIUS Act Regulations*

The primary federal payment stablecoin regulators are directed to issue regulations to implement the GENIUS Act's requirement that PPSIs with over \$10 billion of payment stablecoins outstanding transition to federal regulation, as well as to implement the provisions authorizing waivers of this requirement.⁵⁴ The Treasury Department should coordinate with these regulators to ensure that these regulations reflect Congress's intent to make the \$10 billion threshold a clear "cut-off," above which state-regulated PPSIs generally must transition to federal oversight. To effectuate this intent, these regulations should create a clear standard for how federal regulators must exercise their authority to waive the required transition. These standards should include the following:

1. *Specific findings should be required to support any waiver of the required transition.* The standard for granting a waiver should ensure that waivers do not undermine the underlying purposes discussed above for the required transition from state to federal oversight. In particular, before granting a waiver, the applicable federal regulator should be required to find, at a minimum, that (1) the requirements and supervision to which a PPSI will be subject, if it remains regulated principally at the state level, will be *substantially similar* to those that would apply if it transitions to federal oversight;⁵⁵ and (2) granting the waiver to the PPSI will not increase risks to the PPSI, the holders or users of its payment stablecoins, competition, illicit finance or financial stability.

2. *Any waiver granted should be subject to regular review.* Permitting a PPSI to remain regulated at the state level based on a "one-time" waiver would undermine the purposes of the statutory requirement that large state-regulated PPSIs transition to federal oversight. A "permanent" waiver would permit a PPSI to remain regulated principally at the state level indefinitely, even though the PPSI's risk profile and operations and/or the applicable state regulatory regime could change significantly over time, including in ways that could make maintenance of the original waiver entirely unjustifiable.⁵⁶ Regular review and confirmation (e.g., at least every three years) of any waiver that is granted will ensure that the conditions that justified a waiver in the first place (e.g., robust governance, sound reserves and satisfactory

⁵³ *Id.* § 6(a)(1).

⁵⁴ *Id.* § 4(h)(1).

⁵⁵ This assessment should be similar to the assessment of a state regulatory framework under Section 4(c)(1) of the GENIUS Act, as discussed below in Section II.B of this letter.

⁵⁶ For example, a PPSI's satisfactory operational and examination history may change quickly.

supervisory history) continue to exist. Additionally, to the extent there are material changes in a PPSI's risk profile or state regulatory regime, the applicable federal regulator should be required to conduct a review promptly (e.g., within 90 days) to reevaluate whether the conditions previously justifying a waiver previously granted to the PPSI (for material changes to a PPSI) or to any PPSI subject to that regime (for material changes to a state regulatory regime) remain applicable.

3. *A state-regulated PPSI's "consolidated total outstanding issuance" should include payment stablecoins issued by its affiliates.* As discussed above, Congress's purpose in imposing a required transition to federal oversight for state-regulated PPSIs that exceed \$10 billion in outstanding payment stablecoins was generally to ensure that larger PPSIs would be subject to consistent *federal* oversight. A state-regulated PPSI should not be able to evade the transition requirement by splitting its payment stablecoin issuance business into multiple affiliated PPSIs that are each state-regulated, but that together exceed (potentially substantially) the \$10 billion threshold. To ensure this sort of evasion cannot occur, consolidated total outstanding issuance should be calculated based on the issuance of a PPSI, *together with that of its affiliates*, to determine if the PPSI may remain state-regulated or must transition to federal oversight (absent a waiver).

4. *There should be heightened scrutiny of larger PPSIs in connection with any request for a waiver of the required transition.* The risks associated with a state-regulated PPSI not transitioning to federal oversight increase both as the aggregate outstanding amount of payment stablecoins it has issued increases and as the number of active users of those payment stablecoins increases. The GENIUS Act recognizes these risks by providing that, even for a PPSI that may benefit from a presumptive waiver from the required transition to federal oversight, a waiver must be unavailable if the PPSI poses "significant safety and soundness risks to the financial system of the United States."⁵⁷ These risks will be most significant for PPSIs that significantly exceed the otherwise applicable \$10 billion transition threshold and/or that issue payment stablecoins that are widely held and actively transferred. To mitigate these risks, regulations under the GENIUS Act should provide that any request for a waiver from a PPSI with outstanding payment stablecoins or active payment stablecoin use above defined thresholds (e.g., \$50 billion in outstanding payment stablecoins or a set number of distinct users that engage in transactions involving the issuer's payment stablecoins in a month) will be subject to heightened scrutiny, and will be denied unless the PPSI can demonstrate by clear and convincing evidence that granting the waiver will not cause any significant increase in risks to the PPSI, the holders or users of its payment stablecoins, competition, illicit finance or financial stability.

III. Obligations to Combat Illicit Finance Risks

A. AML/CFT Obligations of Payment Stablecoin Issuers

1. Statutory Language and Analysis

The GENIUS Act provides that each PPSI must be treated as a financial institution for purposes of the BSA and, as such, must be subject to all federal laws applicable to a U.S.

⁵⁷ *Id.* § 4(d)(3)(C)(ii).

financial institution relating to prevention of money laundering, customer identification and due diligence.⁵⁸ Each PPSI is also subject to all U.S. economic sanctions laws.⁵⁹ Furthermore, any payment stablecoin issuer, whether a PPSI or an FPSI, must have the technological capability to comply with any lawful order, including to block property in accordance with a sanctions designation.⁶⁰

These provisions reflect a clear recognition by Congress of the potential illicit finance risks that payment stablecoins may pose. The illicit finance risks associated with payment stablecoins arise because these assets can be transferred across the world almost instantaneously, limited only by a transferee's possession of a digital asset wallet. These illicit finance risks will increase to the extent that use is permitted of "unhosted" wallets (*i.e.*, wallets that are held directly by a stablecoin holder, rather than through a DASP or other financial institution). Because these wallets are not opened or maintained through an intermediary, they are not subject to "know your customer" procedures, sanctions screening or other illicit finance controls, effectively making them akin to anonymous bank accounts. Finally, the origin and movement of payment stablecoins may be obscured through the use of various smart contracts and other technologies on distributed ledgers.⁶¹

2. *Implications for GENIUS Act Regulations*

The Secretary of the Treasury is directed in the GENIUS Act to adopt rules, "tailored to the size and complexity" of PPSIs, to implement the AML/CFT and sanctions compliance obligations applicable to PPSIs.⁶² To ensure that these obligations follow the established benchmark principle underlying all sound financial regulation of "same activity, same risk, same rules," the obligations to be imposed by regulation should ensure that all PPSIs—regardless of whether they are owned by or affiliated with a bank or other regulated financial institution—are subject to the same illicit finance obligations and standards that the Financial Crimes Enforcement Network ("FinCEN") and other regulators apply to banks, with these obligations and standards consistently applied. Because of their crucial role in facilitating payments, banks are subject to stringent AML/CFT requirements. Because PPSIs will issue payment stablecoins to facilitate similar economic activity, the only way to ensure a level playing field and to provide similar mitigation of illicit finance risks is to ensure PPSIs and banks are subject to equivalent AML/CFT obligations.

In particular, every PPSI—regardless of size, ownership or affiliation and regardless of whether subject to a federal or state payment stablecoin regulatory regime—should be required

⁵⁸ *Id.* § 4(a)(5)(A).

⁵⁹ *Id.*

⁶⁰ *Id.* §§ 4(a)(6)(B), 8(a)(1).

⁶¹ These technologies, which the Secretary of the Treasury should consider in the regulations to be issued under the GENIUS Act, include token "wrapping" (*i.e.*, issuing a new token on one blockchain that represents an existing digital asset, including a payment stablecoin, issued on another blockchain) and "mixers" or "tumblers" (*i.e.*, services that pool and redistribute digital assets, including payment stablecoins, to mask the source and ownership trail of digital assets involved in transactions).

⁶² GENIUS Act, § 4(a)(5)(B).

to comply with *all* of the AML/CFT and sanctions-related compliance requirements that the GENIUS Act expressly specifies will be applicable to PPSIs. These requirements include: (1) maintaining an effective AML program; (2) retaining appropriate records; (3) monitoring and reporting suspicious transactions; (4) implementing technical capabilities, policies and procedures to block, freeze and reject specific or impermissible transactions; (5) maintaining an effective customer identification program, as well as CDD and appropriate enhanced due diligence; and (6) maintaining an effective economic sanctions compliance program.⁶³ Banks and other federally regulated institutions are currently subject to rigorous AML/CFT and sanctions-related compliance requirements and expectations, and PPSIs should in turn be subject to them to an equivalent extent. Similarly, to the extent that AML/CFT or sanctions compliance requirements or expectations are altered for PPSIs, they should be altered for banks, and vice-versa.⁶⁴ The key is to impose equivalent obligations. Doing so in this context is not merely a question of competitive equity but, more importantly, a necessity to assure market integrity and that U.S. national security and foreign policy objectives are not compromised.

In addition to the AML/CFT and sanctions obligations that the GENIUS Act expressly specifies as applicable to PPSIs, every PPSI should also be required to comply with the “Travel Rule.” This rule generally requires financial institutions, including banks, engaged in transmittals of funds involving \$3,000 or more, to transmit certain transaction and customer details to the next institution in the chain of payment.⁶⁵ The Treasury Department, through FinCEN, previously clarified in 2019 that the Travel Rule applies to transfers of certain digital assets—including payment stablecoins—processed by financial institutions subject to AML/CFT obligations under FinCEN regulations.⁶⁶ A PPSI that issues payment stablecoins and therefore facilitates customer transfers of those payment stablecoins should similarly be required to comply with the Travel Rule, to an equivalent extent as a bank.

⁶³ *Id.* § 4(a)(5)(A).

⁶⁴ As described in a recent letter submitted in response to the Treasury Department’s request for information on illicit finance issues relating to digital assets, The Bank Policy Institute and The Clearing House Association L.L.C recognize that digital assets and distributed ledger technology may raise different illicit finance risks, may present new innovative opportunities to mitigate these risks and may lead to changes in applicable AML/CFT and sanctions compliance requirements that are necessary to address these risks. See The Bank Policy Institute & The Clearing House Association L.L.C, Letter re: *Request for Comment on Innovative Methods To Detect Illicit Activity Involving Digital Assets* (Oct. 17, 2025), available at <https://bpi.com/wp-content/uploads/2025/10/BPI-TCH-response-to-UST-RFC-digital-assets-illicit-finance-10-17-2025.pdf>. Nonetheless, the AML/CFT and sanctions obligations imposed on PPSIs should remain equivalent in all respects to those imposed on banks, and it will be important to consider how this principle is implemented across both PPSI and bank activities.

⁶⁵ 31 C.F.R. § 1010.410(f).

⁶⁶ FinCEN, *Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019), available at <https://www.fincen.gov/system/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf> (describing the applicability of FinCEN’s regulations to certain activities involving “convertible virtual currencies,” which are defined as “a type of virtual currency that either has an equivalent value of currency, or acts as a substitute for currency,” and therefore includes payment stablecoins); see also Fin. Action. Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, *supra* note 47, at 79 (recommending that FinCEN’s version of the Travel Rule be applied to “virtual asset service providers”).

Imposing equivalent AML/CFT and sanctions obligations and expectations on PPSIs as apply to banks is consistent with the requirement in the GENIUS Act that the AML/CFT and sanctions obligations applicable to PPSIs be “tailored to the[ir] size and complexity.” AML/CFT program compliance obligations for all financial institutions must, under the BSA, be reasonable and risk-based, based on, for example, the customers and activities of an institution.⁶⁷ That is, the obligations that apply to an institution are necessarily tailored, on the basis of risk, to the specific activities of that institution. Accordingly, imposing equivalent AML/CFT and sanctions obligations and expectations on PPSIs as apply to banks that engage in similar economic activity that presents similar illicit finance risks (*e.g.*, facilitating payments and settlements among a potentially global set of customers and users) will necessarily ensure that the obligations and expectations imposed on PPSIs will be tailored to a PPSI’s size and complexity.

B. Agency Responsible for Examinations

The GENIUS Act specifies which regulator will examine a PPSI with respect to safety and soundness: the applicable primary federal payment stablecoin regulator for a federally regulated PPSI and the applicable state payment stablecoin regulator for a state-regulated PPSI.⁶⁸ The statute, however, does not specify which regulator will examine PPSIs with respect to BSA compliance. Under generally applicable background law, all institutions subject to the BSA are examined for BSA compliance by a *federal* regulator.⁶⁹

Under existing FinCEN rules, federally regulated PPSIs would be examined for BSA compliance by their primary federal payment stablecoin regulator.⁷⁰ However, because state-regulated PPSIs would not be subject to safety and soundness examinations by a federal payment stablecoin regulator, they would, under existing law, instead be subject to examination by the Internal Revenue Service (the “IRS”) for compliance with the BSA.⁷¹

This result makes little sense. Introducing an additional federal examiner, such as the IRS, for some, but not all, PPSIs increases the risk that those PPSIs will be subject to inconsistent examination, which may be less stringent, less frequent or otherwise different, than applies to other PPSIs. This inconsistency may jeopardize the national interest if it results in some PPSIs having less robust processes to combat illicit finance risks. The IRS is also not well-positioned to examine PPSIs for BSA compliance because it will not be expected to have significant experience with payment stablecoins or their issuers and may have less resources to devote to examination activities, as compared with regulators that are expressly directed to examine PPSIs. For these reasons, FinCEN should provide that every PPSI, whether regulated

⁶⁷ See 31 U.S.C. § 5318(h)(2)(B)(iv). Sanctions compliance expectations are similarly risk-based. See U.S. Dep’t of the Treasury, Office of Foreign Assets Control, *A Framework for OFAC Compliance Commitments*, available at <https://ofac.treasury.gov/media/16331/download?inline> (last visited Nov. 3, 2025).

⁶⁸ GENIUS Act, §§ 5(a)(1)(B), 6(a), 7(a).

⁶⁹ See 31 U.S.C. § 5318(a).

⁷⁰ 31 C.F.R. § 1010.810(b)(1)-(3), (5).

⁷¹ *Id.* § 1010.810(b)(8).

primarily at the federal or state level, will be subject to examination with respect to BSA compliance by a federal *payment stablecoin* regulator.

C. AML/CFT Obligations of Digital Asset Service Providers

As discussed further in Section VIII below, the GENIUS Act recognizes digital asset service providers (DASPs) as sitting at the core of the regulatory framework established by the statute. DASPs will be prohibited from offering or selling any payment stablecoin in the United States unless it is issued by a PPSI or qualifying FPSI.⁷² DASPs also serve a critical role in the market for payment stablecoins and other digital assets because they, by definition, provide important exchange, transfer, custody and other services with respect to payment stablecoins and other digital assets.⁷³

The services that DASPs provide serve the same economic function with respect to payment stablecoins and other digital assets as the services that banks and other federally regulated financial institutions (e.g., broker-dealers) have historically provided with respect to deposits, securities and other assets. The activities of DASPs will therefore pose similar illicit finance risks and, like banks and other financially regulated financial institutions, DASPs should be subject to an express requirement that they maintain effective AML/CFT and sanctions compliance programs. FinCEN has already recognized that many DASPs pose illicit finance risks, are “money services businesses” under FinCEN regulations and therefore are required to maintain an AML/CFT compliance program.⁷⁴

As discussed above, the established benchmark principle underlying all sound financial regulation is “same activity, same risk, same rules.” This principle aligns with the Secretary of the Treasury’s existing authority under the BSA to designate, as a type of “financial institution” subject to the BSA, “any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any” financial institution expressly subject to the BSA “is authorized to engage.”⁷⁵ Banks and other federally regulated financial institutions are expressly subject to the BSA and, under the GENIUS Act, DASPs will engage in activities that are similar to, related to, and substitutes for activities performed by banks and other federally regulated financial institutions. Therefore, even in the absence of action by Congress to define DASPs as financial institutions subject to the BSA, the Secretary of the Treasury should exercise its authority to expressly define DASPs as a new type of financial institution under the BSA.

⁷² GENIUS Act, § 3(b), 18(c)(1)(A). DASPs also must ensure that, if they offer, sell or otherwise make available for trading in the United States a payment stablecoin issued by an FPSI, the FPSI has the technological capability to comply, and does comply, with the terms of any lawful order. *Id.* § 8(a)(1). DASPs must also prohibit secondary trading of a payment stablecoin issued by an FPSI if the FPSI is designated as noncompliant with this requirement. *Id.* § 8(b).

⁷³ *Id.* § 2(7).

⁷⁴ See FinCEN, *Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies*, *supra* note 66; FinCEN, *Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies*, FIN-2013-G001 (Mar. 18, 2013), available at <https://www.fincen.gov/system/files/shared/FIN-2013-G001.pdf>.

⁷⁵ 31 U.S.C. § 5312(a)(2)(Y).

Furthermore, for the same reasons discussed above with respect to PPSIs, to effectively combat the illicit finance risks posed by DASPs, the Secretary of the Treasury should, by regulation, impose equivalent AML/CFT and sanctions obligations and expectations on DASPs as apply to banks.

D. Sanctions Compliance with Respect to Validation

In addition to addressing sanctions compliance obligations applicable to PPSIs, the Treasury Department's Office of Foreign Assets Control ("OFAC") should clarify the sanctions obligations that apply to persons that validate transactions on, or otherwise interact with, distributed ledgers. Validation is a fundamental function of most distributed ledgers. For those distributed ledgers, only when a new block is validated can a transaction included in the block be added to the ledger. The transactions that may be included in a block may include issuance, redemption or transfer of a payment stablecoin or another digital asset. If a block cannot be validated, the transactions within it cannot be processed.

However, due to the pseudonymous nature of many distributed ledgers, a validator may not be able to know the identity of the persons engaging in any particular transaction included in a block subject to validation. Accordingly, even if a validator performs sanctions screening of data and transactions in a block—as some validators do—it may be impossible based on the limited available data to identify all potential sanctions-related concerns when validating the block. As a result, a validator may unknowingly validate a block containing a prohibited transaction. Similarly, issuers of payment stablecoins or other digital assets and other users of distributed ledgers may be unable to know who the validator of any transaction will be. Users of a ledger may also be required to pay "gas fees" or "tips" to a validator in order to ensure or expedite validation of a transaction. An issuer or user, however, will generally be unable to know, or control, if the validator will be, or if a payment will go to, a sanctioned person. It may also be impossible to perform checks to ensure that a validator does not process transactions prohibited under applicable sanctions.

These risks, and the strict liability nature of the U.S. sanctions regime, may preclude regulated institutions from acting as distributed ledger validators or otherwise using distributed ledger systems, including with respect to transactions involving payment stablecoins regulated under the GENIUS Act. As a result, core functions for distributed ledgers may be, as has often been the case to date, shifted to entities that are less regulated or to entities outside the United States. Given the transformative potential of distributed ledgers, including their use with respect to payment stablecoins, OFAC should clarify sanctions obligations that apply to U.S. persons when engaged in validation, issuance on or use of a distributed ledger. This clarification should address all activities related to a digital ledger, including continuing obligations of U.S. persons related to any previous activities that they have conducted. This clarification will be helpful to encourage all U.S. institutions to be able to engage with and use this innovative technology and to do so in a manner that complies with applicable sanctions compliance requirements.

IV. Issuance of Payment Stablecoins by Non-Financial Companies

A. Statutory Language and Analysis

The GENIUS Act prohibits any public company that is not predominantly engaged in one or more financial activities (*i.e.*, a non-financial public company) from issuing—directly or indirectly through “wholly or majority owned subsidiaries or affiliates”—a payment stablecoin *unless* approved to do so by a unanimous vote of the SCRC.⁷⁶ The GENIUS Act also “extend[s]” this prohibition to prohibit any company not domiciled in the United States that is not predominantly engaged in one or more financial activities (*i.e.*, a non-financial foreign company) from issuing a payment stablecoin unless approved to do so by a unanimous vote of the SCRC.⁷⁷

This limitation implements the longstanding U.S. policy of maintaining a strict separation between banking activities and commercial activities. This public policy concern underlies, for example, the Bank Holding Company Act (the “BHC Act”), originally enacted in 1956. The BHC Act expressly limits affiliations between banking and non-financial businesses by prohibiting banking organizations from owning or controlling voting shares in non-financial companies, subject to narrow exceptions.⁷⁸ The “original focus” of the BHC Act, according to one court, was, among other things, “to ensure a separation of economic power between banking and commerce.”⁷⁹

This separation prevents a number of significant, negative consequences that may arise if one firm is permitted to engage in both banking and commercial activities, including conflicts of interest, excessive risk-taking and unsound financial practices that may destabilize financial institutions and broadly harm financial stability. Combining banking and commercial activities in one firm also increases the risk that the firm will use market power in one economic sphere to concentrate economic power in the other. This risk is clearly apparent in the case of payment stablecoins. A large technology, retail or other commercial firm, if permitted to issue a payment stablecoin, could require its non-financial customers to use that payment stablecoin or provide significant economic incentives for using that payment stablecoin, either of which could create an unlevel playing field among payment stablecoin issuers. In so doing, the firm could use its market power in its primary business—technology, retail or otherwise—to concentrate economic power not only in payment stablecoins, but in the payments industry broadly.⁸⁰

⁷⁶ GENIUS Act, § 4(a)(12)(B)(i).

⁷⁷ *Id.* § 4(a)(12)(C)(i).

⁷⁸ 12 U.S.C. § 1843.

⁷⁹ *Parsons Steel, Inc. v. First Ala. Bank of Montgomery, N.A.*, 679 F.2d 242, 244 (11th Cir. 1982).

⁸⁰ The risk that a commercial firm could use its market power in its non-financial business to concentrate economic power in respect of payment stablecoins, and payments more broadly, would be heightened if a commercial firm that controls a PPSI could use profits from its commercial business to directly or indirectly provide economic benefits to holders of payment stablecoins issued by the PPSI. For the reasons discussed in Section I above, the GENIUS Act’s prohibition on payments of interest or yield should be interpreted to prohibit the provision of any economic benefit to holders or users of payment stablecoins, whether provided directly by an issuer or indirectly on behalf of, in coordination with or using funds derived from, an issuer.

This is the exact risk that the GENIUS Act’s prohibition on payment stablecoin issuance by non-financial public and foreign companies was intended to prevent. Notably, the GENIUS Act recognizes that payment stablecoin issuance is an activity similar in nature to banking. The statute expressly permits insured depository institutions (“IDIs”) to “issue payment stablecoins through a subsidiary,”⁸¹ and bank subsidiaries are in turn generally permitted under existing law to engage in banking activities.⁸² Additionally, a separate provision of the GENIUS Act confirms that Congress was concerned with how PPSIs could potentially use the payment stablecoins they issue to force holders or users to obtain other products. Under the GENIUS Act’s “anti-tying” prohibition, a PPSI may not provide services to a customer “on the condition that the customer obtain an additional paid product or service from the [PPSI], or any of its subsidiaries, or agree to not obtain an additional product or service from a competitor.”⁸³

Through these provisions—the prohibitions on payment stablecoin issuance by a non-financial public or foreign company and the anti-tying prohibition—Congress sought to ensure that payment stablecoin issuers, whether PPSIs or FPSIs, compete based on the benefits their payment stablecoins provide to customers and the broader market, not based on anti-competitive practices that pose significant risks of harming customers and the economy at large.⁸⁴

B. Implications for GENIUS Act Regulations

The GENIUS Act directs the SCRC to issue an interpretive rule clarifying the application of the prohibitions on payment stablecoin issuance by non-financial public or foreign companies.⁸⁵ This rule should interpret these prohibitions in the following ways to prevent the harmful consequences described above that could arise from a single firm being permitted to engage in both payment stablecoin and commercial activities:

1. *Clarify the broad scope of the term “wholly or majority owned subsidiaries or affiliates.”* The GENIUS Act prohibits a non-financial public company, “and its wholly or majority owned subsidiaries or affiliates,” from issuing a payment stablecoin. However, the statute does not specify which entities are included as “wholly or majority owned subsidiaries or affiliates” for this purpose.

The SCRC should clarify that the prohibition applies to payment stablecoin issuance by any “wholly or majority owned subsidiary” or any “affiliate” of a non-financial public company.

⁸¹ GENIUS Act, § 5(a)(1)(A).

⁸² See 12 U.S.C. § 1831a(d)(1) (permitted activities of subsidiaries of state-chartered IDIs); 12 C.F.R. § 5.34(e)(1)(i) (“A national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority . . .”).

⁸³ GENIUS Act, § 4(a)(8)(A).

⁸⁴ As discussed in Section I above, the GENIUS Act’s prohibition on the payment of interest or yield also prevents anticompetitive practices that may occur if issuers can directly or indirectly provide economic benefits to holders or users of their payment stablecoins. Permitting a PPSI or FPSI or its commercial firm partner to pay economic benefits to holders or users of payment stablecoins would enable the PPSI or FPSI to gain a competitive advantage not based on the benefits of its payment stablecoins.

⁸⁵ GENIUS Act, § 4(a)(12)(D).

Importantly, it would make little sense if the prohibition applied only to “wholly or majority owned” subsidiaries and “wholly or majority owned” affiliates of a public company. Doing so would render the word “affiliates” effectively superfluous, as there are likely no wholly or majority owned affiliates of a public company that are not wholly or majority owned subsidiaries of that company.⁸⁶ Moreover, if a non-financial public company is prohibited from issuing a payment stablecoin only through a “wholly or majority owned” subsidiary or a “wholly or majority owned” affiliate, it would be straightforward for the company to evade the prohibition and, as a result, create risks to customers, the financial system and the economy at large that Congress sought through this prohibition to prevent. For example, two large non-financial public technology or retail companies could form a joint venture to issue payment stablecoins, in which each owns exactly 50% of the payment stablecoin issuer. In that case, if the prohibition only applies to “wholly or majority owned subsidiaries” or “wholly or majority owned affiliates,” neither public company would require SCRC approval, despite both issuing payment stablecoins through the joint venture entity. Alternatively, a non-financial public company could obtain control and the economic benefit of a payment stablecoin issuer through contractual or other arrangements other than majority ownership. These were not results intended by Congress.

In addition to making clear in its interpretive rule that a non-financial public company is prohibited, absent SCRC approval, from issuing a payment stablecoin, including through wholly or majority owned subsidiaries or through *any affiliates*, the SCRC also should provide a definition of affiliate for this purpose. We believe that the definition of “affiliate” in the BHC Act, as interpreted by the Federal Reserve in its Regulation Y,⁸⁷ is the appropriate definition. That definition relates to the same concern regarding the separation of banking and commercial activities that this prohibition in the GENIUS Act implements.

2. *Confirm that the meaning of “predominantly engaged” is consistent with how Congress has previously defined that term.* The GENIUS Act does not define the circumstances in which a company will be considered to be “predominantly engaged” in one or more financial activities. In using this term in the GENIUS Act, however, Congress did not write on a blank slate. In the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress used the same term, providing that a company would be considered to be “predominantly engaged in financial activities” only if at least 85% of the consolidated annual gross revenues of the company, together with its subsidiaries, were derived from financial activities, and over 85% of the consolidated assets of the company, together with its subsidiaries, were related to financial activities.⁸⁸ In the Gramm-Leach-Bliley Act of 1999, Congress used the same percentage in the BHC Act to provide that a company would be considered to be “predominantly engaged in

⁸⁶ See, e.g., *Bailey v. United States*, 516 U.S. 137, 145-46 (1995) (disfavoring any interpretation of a statute that renders a term superfluous).

⁸⁷ See 12 U.S.C. § 1841(k) (BHC Act definition of “affiliate”); 12 C.F.R. § 225.2(a) (Regulation Y definition of “affiliate”).

⁸⁸ 12 U.S.C. § 5311(a)(6).

financial activities” only if at least 85% of its consolidated gross revenues, including those of its subsidiaries, was derived from financial activities.⁸⁹

When Congress uses the same term in multiple statutes, that term is generally presumed to mean the same thing in both statutes.⁹⁰ That presumption applies here. The SCRC should therefore, in its interpretive rule, interpret “predominantly engaged” in the GENIUS Act consistent with other definitions that Congress has provided of the same term. Doing so will also ensure that there is an appropriately high bar before a public or foreign company may be considered to be predominantly engaged in financial activities, and thus not subject to the GENIUS Act’s prohibition on issuing a payment stablecoin absent unanimous SCRC approval.

3. *Clarify that the prohibition on non-financial foreign company issuance of a payment stablecoin includes issuance by the foreign company through a wholly or majority owned subsidiary or affiliate.* As described above, the GENIUS Act prohibits a non-financial foreign company from issuing a payment stablecoin without unanimous SCRC approval.⁹¹ This prohibition would have almost no effect if it applied to prohibit only a foreign company that *itself* is not predominantly engaged in financial activities from issuing a payment stablecoin. The GENIUS Act expressly defines payment stablecoin issuance and related activities as financial activities.⁹² A foreign company that issues a payment stablecoin is likely to be, by virtue of engaging in that activity, predominantly engaged in financial activities and therefore not, standing by itself, subject to the GENIUS Act prohibition. Moreover, even if a foreign company that issues a payment stablecoin also engages in non-financial activities, it could easily separate its non-financial activities into a sister company. Doing so would limit the activities of the payment stablecoin issuer entity to financial activities, with limited to no effect on the foreign company, but evading the GENIUS Act prohibition.

Congress could not have intended that a prohibition it described as an “extension” of the prohibition on payment stablecoin issuance by non-financial public companies would have such limited or nonexistent effect. Congress also could not have intended that this “extension” of a prohibition applicable to many domestic companies would be implemented in a fashion that would make the joint set of prohibitions apply more restrictively to U.S. public companies than to foreign companies. The SCRC should therefore interpret the prohibition to apply—*like the prohibition applicable to non-financial public companies*—to payment stablecoin issuance by a non-financial foreign company, including through its wholly or majority owned subsidiaries or *any* of its affiliates. This interpretation would promote the important policy objectives that Congress intended the prohibition to promote—that is, the objectives underlying the

⁸⁹ *Id.* § 1843(n)(2) (for purposes of this calculation, revenues derived from subsidiary depository institutions are excluded).

⁹⁰ *See, e.g., Northcross v. Bd. of Educ.*, 412 U.S. 427, 428 (1973) (per curiam) (“The similarity of language in [two different statutes] is, of course, a strong indication that the two statutes should be interpreted *pari passu*.”).

⁹¹ GENIUS Act, § 4(a)(12)(C)(i).

⁹² *Id.* § 4(a)(12)(A)(i)(II).

longstanding separation in the United States of banking activities from commercial activities—in the context of foreign companies engaging in stablecoin activities in the United States.

4. *Impose an appropriately high bar for SCRC approval of payment stablecoin issuance by a non-financial public or foreign company.* The GENIUS Act provides that, in considering a request from a non-financial public or foreign company to issue payment stablecoins, the SCRC must find unanimously, among other things, that the company “will not pose a material risk to the safety and soundness of the United States banking system, the financial stability of the United States, or the Deposit Insurance Fund.”⁹³ On the merits in purely substantive terms, it will not be straightforward for a non-financial public or foreign company to make this showing. As discussed above, payment stablecoin issuance by a non-financial company presents numerous material risks—including to consumers and other customers, the banking system generally and financial stability—as a result of a combination of banking and commercial activities. Given these potential material risks, the SCRC should provide in its interpretive rule that the SCRC will grant an approval to issue payment stablecoins only if the relevant non-financial public or foreign company provides *clear and convincing evidence* that its payment stablecoin activities will not result in a material risk to the U.S. banking or financial system or the Deposit Insurance Fund. This requirement should include a demonstration by the applicant—including through binding commitments (*e.g.*, to manage its payment stablecoin reserves and other stablecoin activities in a manner clearly designed to prevent these material risks) and through a living will (*e.g.*, an effective plan to mitigate risks in the event of the applicable payment stablecoin issuer’s failure)—that the relevant company’s activities will not pose a risk of concentrating economic power or otherwise harming consumers, other payment stablecoin holders, competition or financial stability.

5. *Require periodic SCRC review and reconfirmation of any approval of payment stablecoin issuance by a non-financial public or foreign company.* In addition to establishing a high procedural and substantive standard for any approval by the SCRC of payment stablecoin issuance by a non-financial public or foreign company, any such approval should have a limited duration. Requiring that any approval be reconfirmed on a periodic basis (*e.g.*, at least every three years) would provide a mechanism to ensure that any initially granted approval remains appropriate over time. The potential risks that payment stablecoin issuance by a non-financial public or foreign company may pose may also change over time, including as market dynamics and “use cases” for specific payment stablecoins change. For example, these risks depend on the specific activities in which the company engages, including in both its non-financial and payment stablecoin-related activities. The SCRC may also have better insights into these potential risks due to findings from ongoing regulatory oversight of the applicable payment stablecoin issuer or other new information or developments. Periodic review and reconfirmation will also ensure that the risk-related findings that justified the approval in the first place continue to apply.

6. *Require public notice and comment before any SCRC approval.* In evaluating whether a non-financial public or foreign company will pose a material risk to the U.S. banking system, financial stability or the Deposit Insurance Fund if it issues a payment stablecoin, the SCRC will require significant amounts of information. That information will need to address not

⁹³ *Id.* § 4(a)(12)(B)(i)(I).

only what the company expects to do with its payment stablecoin, but also how those activities affect the U.S. banking system, financial stability and the Deposit Insurance Fund. Although the company requesting approval will be the source of some of this information, other interested parties will likely have information that bears on the SCRC's consideration. Especially given the material risks that may arise in this context if an approval is granted, the SCRC should consider all of the relevant information that may be supplied by different public stakeholders. To enable the SCRC to take such information into account, the SCRC should provide that any request from a non-financial public or foreign company to issue a payment stablecoin will be subject to public notice and comment. For the same reason, periodic SCRC review and reconfirmation of any approval of payment stablecoin issuance by a non-financial public or foreign company should similarly be subject to public notice or comment.

V. Custodians of Payment Stablecoins and Reserves

Under the GENIUS Act, only a person subject to supervision or regulation by a primary federal payment stablecoin regulator, the Securities and Exchange Commission, the Commodities Future Trading Commission, a state bank supervisor or a state credit union supervisor may act as a custodian or provide safekeeping services for payment stablecoin reserves or payment stablecoins.⁹⁴ Additionally, any such custodian must comply with specific requirements intended to protect the customers that hold these assets in custody.

The Treasury Department, working with applicable federal and state regulators, should implement the requirements of the GENIUS Act in a way that ensures the custody and safekeeping of payment stablecoin reserves and payment stablecoins satisfies the highest standards. This should include, as the Treasury Department proposed in the ANPRM, that *payment stablecoin reserves are required in all cases to be held in custody*.⁹⁵

Implementing appropriate rules for custody and safekeeping of payment stablecoin reserves and payment stablecoins will provide consistent customer protections and mitigate conflicts of interest. The standards for custody and safekeeping of payment stablecoin reserves and payment stablecoins should adopt the highest standards for these activities, which include the following:

- *UCC Article 8 and asset segregation.* All custodians should segregate customer payment stablecoin reserves and payment stablecoins from their own assets in a manner that protects these customer assets from the claims of the custodian's creditors.⁹⁶ To do so, custodians should act as "securities intermediaries" and hold custodial assets in "securities accounts" subject to Article 8 of the Uniform Commercial Code (the "UCC") and should agree to treat the assets as "financial

⁹⁴ *Id.* § 10(a).

⁹⁵ See ANPRM, 90 Fed. Reg. at 45,161 (question 12).

⁹⁶ Importantly, however, this statement does not apply to IDIs that provide custodial or safekeeping services for payment stablecoin reserves in the form of cash, which, under the express provisions of the GENIUS Act, may be held on deposit.

assets.”⁹⁷ Article 8 of the UCC not only requires a custodian to carry out the instructions of its customers with respect to financial assets, but provides that custodied assets are property of the custodian’s customers and not of the custodian.⁹⁸ This critical legal framework will ensure that customer payment stablecoin reserves and payment stablecoins are segregated from a custodian’s own assets and protected from claims of the custodian’s creditors in the event of insolvency. Without this protection, customers face a significant risk of losing their assets if the custodian experiences financial distress.

- *Separation of functions.* The safekeeping function of custodians must be separately maintained and operated apart from any trading, lending, asset management or other market-facing activities. In particular, personnel responsible for custody or safekeeping operations should be organizationally and functionally separate from those engaged in trading or investment activities, and personnel with trading responsibility should not have a role in the custody or safekeeping of payment stablecoin reserves or payment stablecoins for persons with whom they are trading. This separation creates critical internal controls that reduce conflicts of interest between a custodian and its custodial customers, and protect customer assets from being commingled with or exposed to the custodian’s other business risks.
- *Proper control.* Custodians must maintain control over customer payment stablecoin reserves and payment stablecoins and have the exclusive ability to transfer these assets held for its customers based on the receipt of proper instructions from, or as authorized by, their customers. Custodians must implement robust systems for authenticating customer instructions and maintaining strict protocols for asset transfers.
- *Capital, liquidity and loss-absorbing resources.* Custodians must hold operational capital and liquid asset reserves sufficient to cover losses arising from operational deficiencies and expected outflows during a stress period. Even when asset segregation and separation of duties are properly implemented, events such as fraud, cyberattacks, or operational failures can result in financial losses by the custodian and losses of customer assets. Holding high-quality liquid assets enables custodians to remain solvent during a crisis by providing a readily accessible source of liquidity to cover related obligations, and adequate loss-absorbing resources enable custodians to make customers whole, when such events occur. Maintaining the ability to make customers whole is essential not only for customer protection but also for financial stability generally.

⁹⁷ This does not mean that custodians will be required to have any particular regulatory status. Article 8 “securities intermediaries” are simply entities that hold custodied assets in accounts in accordance with the indirect holding system framework of Article 8. Article 8, like the other Articles of the UCC, is a “uniform” state law enacted in each state with such variations as that state considered sufficiently important to merit varying from the uniformity that the UCC seeks to establish.

⁹⁸ U.C.C. § 8-503(a).

- *Business continuity.* Custodians must implement comprehensive business continuity management (“BCM”) programs to ensure resilience, continuity and response capabilities. A robust BCM program should include proactive measures to mitigate disruptive events and regular testing of recovery capabilities. BCM processes enable safeguarding customers and critical services during disruptions such as cyber events, natural disasters and other emergencies, ensuring that customers can access their assets even during crisis situations.
- *Resolution and recovery planning.* Custodians must develop and maintain recovery plans to allow them to rebound from major adverse developments, and plans for rapid and orderly resolution in the event of material financial distress or failure. These plans must include planning to address the process for protecting and returning or transferring customer assets if a custodian is unable to continue operating, taking into account the resolution regime to which the custodian is subject. Recovery planning supports preparedness of custodians for severe internal or external stresses and resolution planning helps to ensure that a custodian’s failure would not have serious adverse effects on the interests of its customers and financial stability more broadly.
- *Independent audits.* Custodians must be subject to regular external audits conducted by external experts in accordance with industry standards for custodians. Independent audits provide critical third-party validation of the effectiveness of a custodian’s internal controls and serve as an early warning system to identify potential deficiencies. Without independent verification, customers and regulators must rely solely on a custodian’s own representations regarding the safety of customer assets. These audits must examine the controls of custodians over customer assets, including verification of asset segregation and compliance with operational standards. Audit results should include attestations by custodians regarding the existence and control of custodied assets.
- *Cybersecurity.* All financial entities are subject to cyberattacks by criminals seeking to steal or appropriate customer funds or customer assets. Payment stablecoin reserves and payment stablecoins may be subjects of cyberattacks, from direct thefts to more sophisticated scams and laundering operations. In light of growing cybersecurity risks in financial markets, custodians must implement comprehensive cybersecurity programs that include threat detection and monitoring systems; multi-layered security controls for private key management; incident response protocols; regular penetration testing and vulnerability assessments; and employee training on security best practices.
- *Information technology.* Custodians must maintain secure and resilient information technology infrastructure. This includes secure systems for private key generation, storage and usage; comprehensive access controls and authentication mechanisms; redundant systems to ensure continuous operations; process and controls over updates and changes to software; and detailed audit trails for all system activities. Moreover, the technical complexity of custody of payment stablecoins and other digital assets demands sophisticated information

technology capabilities that can prevent unauthorized access while ensuring legitimate customer transactions are processed reliably.

- *AML/CFT and sanctions compliance.* All custodians must be subject to comprehensive AML/CFT and sanctions compliance requirements and expectations under the BSA, applicable FinCEN regulations and applicable OFAC guidance. This includes implementation of customer identification programs; ongoing CDD and enhanced due diligence for higher-risk relationships; transaction monitoring and suspicious activity reporting; compliance with sanctions screening and other compliance requirements; and maintenance of adequate records. Consistent AML/CFT and sanctions requirements and expectations across custodians will prevent regulatory arbitrage and reduce the risk that bad actors gravitate toward entities where criminal and terrorist activity is less likely to be identified and prevented.

VI. Consumer Protection

A. Statutory Language and Analysis

The GENIUS Act includes provisions addressing various consumer protection requirements for payment stablecoins. These provisions include the following: A PPSI must “publicly disclose [its] redemption policy,” which must “establish clear and conspicuous provisions for timely redemption of outstanding payment stablecoins,” with any discretionary limitations on timely redemptions permitted to be imposed only by an applicable payment stablecoin regulator.⁹⁹ A PPSI’s redemption policy also must “publicly, clearly, and conspicuously disclose in plain language all fees associated with purchasing or redeeming the payment stablecoins,” with fees permitted to be changed only upon not less than seven days’ prior notice to consumers.¹⁰⁰ A PPSI must publicly disclose the monthly composition of the reserves for its outstanding payment stablecoins.¹⁰¹ A PPSI may not “use any combination of terms relating to the United States Government, including ‘United States’, ‘United States Government’, and ‘USG’ in the name of a payment stablecoin.”¹⁰² A PPSI may not market a payment stablecoin in “such a way that a reasonable person would perceive the payment stablecoin to be” legal tender, issued by the United States or guaranteed or approved by the U.S. government.¹⁰³ Payment stablecoins will not be backed by the full faith and credit of the United States, guaranteed by the U.S. government or subject to federal deposit or share insurance, and the GENIUS imposes potential criminal penalties on any misrepresentation with respect to these topics.¹⁰⁴ Furthermore, a person may be subject to civil liability if it knowingly and willfully

⁹⁹ GENIUS Act, § 4(a)(1)(B)(i).

¹⁰⁰ *Id.* § 4(a)(1)(B)(ii).

¹⁰¹ *Id.* § 4(a)(1)(C).

¹⁰² *Id.* § 4(a)(9)(A)(i).

¹⁰³ *Id.* § 4(a)(9)(A)(ii).

¹⁰⁴ *Id.* § 4(e)(1)-(2).

participates in marketing a product in the United States as a payment stablecoin if it is not issued pursuant to the GENIUS Act.¹⁰⁵

Notwithstanding the important consumer protection requirements in the GENIUS Act, the statute does not address various other critical consumer protections. For example, the GENIUS Act does not address any of the following:

- what disclosures are required related to payment stablecoin issuers (including PPSIs and FPSIs) and payment stablecoins, other than those related to redemption policies and reserve composition;
- how existing federal prohibitions against unfair, deceptive or abusive acts and practices apply to payment stablecoin issuers and payment stablecoins;¹⁰⁶
- how the Electronic Fund Transfer Act (“EFTA”),¹⁰⁷ including its limitation of consumer liability for unauthorized electronic fund transfers, applies to payment stablecoin issuers and transfers of payment stablecoins; and
- what data security requirements are applicable to payment stablecoin issuers.

Extensive and robust protections related to each of these topics apply to other institutions and products that, like payment stablecoin issuers and payment stablecoins, facilitate payments and settlement.

B. Implications for GENIUS Act Regulations

To ensure that consumers are similarly protected with respect to their holding or use of payment stablecoins, the Treasury Department should coordinate with the federal payment stablecoin regulators and other relevant agencies, including the CFPB and the Federal Trade Commission (the “FTC”) to address how the consumer protection requirements discussed above and other important consumer protections apply to payment stablecoin issuers and payment stablecoins. Doing so will be important, not only to protect consumers, but also to provide needed clarity to all market participants.

Actions that should be taken to implement key consumer protections in this area include the following.

1. *Establish a uniform model for disclosures related to payment stablecoins.* As consumer use of payment stablecoins grows, it will be critical that consumers understand what a

¹⁰⁵ Id. § 4(e)(3).

¹⁰⁶ See 12 U.S.C. § 5531(a) (Consumer Financial Protection Act (“CFPA”) prohibition of any “unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service”); 15 U.S.C. § 45 (Federal Trade Commission Act (“FTC Act”) prohibition of “unfair or deceptive acts or practices in or affecting commerce”).

¹⁰⁷ 15 U.S.C. § 1693 *et seq.*

payment stablecoin is—and what it is not. To promote consumer understanding, the Treasury Department should work with other applicable regulators to develop a consumer-tested model disclosure that PPSIs should be required to provide consumers prior to any consumer purchase of, or transaction involving, payment stablecoins. This disclosure should include both (1) specific information about the applicable payment stablecoins issuer and its payment stablecoins (including, *but not limited to*, the issuer’s redemption policy) and (2) standardized information produced by regulators that provides straightforward answers to basic questions. This basic information should address what a payment stablecoin is, how a payment stablecoin functions, how a payment stablecoin can be used, how a payment stablecoins differs from other digital assets and other financial products and risks that are or may be associated with a payment stablecoins. Making these standardized disclosure available to PPSIs to give to consumers will enhance consumer understanding.

Ultimately, however, the effectiveness of consumer disclosures, whether of information specific to a payment stablecoin issuer or of standardized information, will be determined based on whether consumers understand the meaning of that disclosure in the appropriate context. Monitoring consumer complaints is an effective way of determining whether consumers are, or are not, understanding the features of products they are purchasing and using. Accordingly, we recommend that the Treasury Department coordinate with other applicable regulators to establish a consumer complaint portal specific to payment stablecoins, so that consumer complaint trends may be monitored and regulators can ensure that payment stablecoin issuers are appropriately responding to consumer concerns.

2. *Publish guidance regarding the application of prohibitions of unfair, deceptive or abusive acts or practices in respect of payment stablecoins.* As discussed above, the GENIUS Act does not address how existing federal prohibitions against unfair, deceptive or abusive acts and practices apply to payment stablecoin issuers and payment stablecoins. Clarity in this area is important to protect consumers and protect the payment stablecoin market generally. It will also assist payment stablecoin issuers by providing increased regulatory certainty as they develop new products.

Accordingly, the Treasury Department should coordinate with other applicable regulators to propose interagency guidance that, when finalized after public notice and comment, will assist payment stablecoin issuers and others in providing payment stablecoins and related services, and associated marketing, in a manner that is fair and in compliance with applicable legal requirements.¹⁰⁸ An appropriate model for this guidance may be the guidance originally issued by the FTC in May 2000 to guide advertising in the then-nascent internet marketplace. That guidance, which was updated in March 2013, reminded digital advertisers that the FTC Act’s prohibition on unfair or deceptive acts or practices encompasses online advertising, marketing and sales. It also provided practical and flexible recommendations (and examples) for ensuring

¹⁰⁸ These legal requirements include both specific requirements under the GENIUS Act (*e.g.*, the prohibition on misrepresentations of federal backing or insured status) as well as the more general prohibitions on unfair, deceptive or abusive acts or practices in the CFPA and on unfair or deceptive acts or practices in the FTC Act.

that disclosures are “clear and conspicuous.”¹⁰⁹ Similar guidance could provide clarity regarding appropriate disclosures and advertising by payment stablecoin issuers and others (e.g., sponsors and DASPs¹¹⁰), with respect to payment stablecoins. Over time, specific regulations relating to unfair, deceptive or abusive acts or practices may be appropriate. However, guidance will be more important initially to ensure appropriate protection of consumers, without unduly restricting practices of market participants in this rapidly evolving area.

3. *Address whether the consumer protections of EFTA apply to payment stablecoins.* The GENIUS Act does not address the application of EFTA and its implementing regulation, Regulation E,¹¹¹ to payment stablecoin transfers. This resulting uncertainty poses risk of confusion for consumers, financial institutions and courts. For example, consumers may believe that they are entitled to EFTA’s error resolution rights and liability apportionment for their payment stablecoin transfers, having become accustomed to these protections for electronic fund transfers such as direct deposits, certain withdrawals of funds and debit card transactions.¹¹²

Given the variety of persons involved in payment stablecoin transfers (e.g., consumers, banks, PPSIs, digital wallet providers, digital asset custodians, payment providers and crypto exchanges), it is unclear who may bear liability and responsibility for resolving errors and unwinding transactions. The same possibility holds true for consumers engaging in remittance transfer services, who may expect specific disclosures, procedures for resolving errors, cancellation rights and refunds of transfers under Regulation E.

Without action by federal policymakers private litigants and courts may fill the gap regarding how EFTA and Regulation E applies in this context. Although the application of federal consumer financial protection laws, such as EFTA, to new methods of payment is often developed through judicial decisions, this approach harms consumers and market participants, which must navigate confusing and often conflicting guidance from judicial decisions.¹¹³

¹⁰⁹ Fed. Trade Comm’n, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*, FTC.gov (Mar. 2013), available at <https://www.ftc.gov/business-guidance/resources/com-disclosures-how-make-effective-disclosures-digital-advertising> (updated version); see also Fed. Trade Comm’n, *Dot Com Disclosures: Information About Online Advertising* (May 2000), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-issues-guidelines-internet-advertising/0005dotcomstaffreport.pdf>.

¹¹⁰ As discussed in Section I above, payment stablecoin issuers may issue “white labeled” payment stablecoins, for which a sponsor brands and markets a payment stablecoin issued by a third-party issuer. Especially as consumers may be largely unaware of the distinction between the sponsor and the issuer, responsible disclosures will be especially important for these types of payment stablecoins.

¹¹¹ 12 C.F.R. pt. 1005.

¹¹² See *id.* § 1005.3(b)(1)(iii).

¹¹³ Two different judges in the Southern District of New York have already come to different conclusions on EFTA’s applicability to digital assets. Compare *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498-99 (S.D.N.Y. 2023) (interpreting EFTA to apply to digital assets transactions), with *Yuille v. Uphold HQ Inc.*, 686 F. Supp. 3d 323, 340-43 (S.D.N.Y. 2023) (concluding that digital asset transactions were not subject to EFTA).

Similarly, some state legislatures have begun to fill this regulatory gap, enacting statutes that establish liability frameworks analogous to EFTA and Regulation E.¹¹⁴ State-by-state regulation is likely to result in disparate, conflicting requirements and approaches to the regulation of payment stablecoin transactions, exposing industry participants to the burden of state-by-state compliance frameworks that are difficult to operationalize and hinder innovation.

Thus, the Treasury Department, in coordination with applicable federal regulators, should provide certainty regarding the potential application of EFTA and Regulation E to payment stablecoins. Doing so would provide clarity to consumers and market participants, permitting them to make informed choices based on their rights and responsibilities.

4. *Address data security and privacy requirements applicable to PPSIs, FPSIs and DASPs.* Federally-regulated financial institutions are subject to requirements relating to data security and consumer privacy.¹¹⁵ The GENIUS Act, however, does not expressly address what data security or consumer privacy requirements should apply to PPSIs, FPSIs or DASPs. These institutions should be required to implement robust data handling and data privacy protections, comparable to those required of banks and other federally regulated financial institutions. The Treasury Department should coordinate with other applicable regulators, including the CFPB and FTC, to implement these protections. Establishing a consistent regulatory framework with respect to these topics will help ensure that innovation in payment stablecoins does not come at the expense of consumers' security or privacy.

VII. Definition of “Payment Stablecoin”

The GENIUS Act's regulatory framework applies specifically to payment stablecoins. The definition of “payment stablecoin” is at the heart of the statute, because the GENIUS Act makes it unlawful for a person other than a PPSI to issue a payment stablecoin in the United States and generally prohibits DASPs from offering or selling any payment stablecoin in the United States unless it is issued by a PPSI or qualifying FPSI (as discussed further in Section VIII below).¹¹⁶

The GENIUS Act's definition is that a payment stablecoin is a type of digital asset, and a digital asset is “any digital representation of value that is recorded on a cryptographically secured

¹¹⁴ Massachusetts, for example, has implemented a statute analogous to EFTA that, among other things, limits consumer liability for unauthorized electronic fund transfers. *See* Mass. Gen. Laws ch. 167B.

¹¹⁵ *See, e.g.*, 12 C.F.R. pt. 1016 (CFPB Regulation P, which addresses privacy of consumer financial information); 16 C.F.R. pt. 314 (FTC Standards for Safeguarding Customer Information, commonly referred to as the Safeguards Rule); Consumer Fin. Protection Bureau, *Circular 2022-04: Insufficient Data Protection or Security for Sensitive Consumer Information* (Nov. 15, 2022), available at <https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information> (determining that “[i]nadequate data security can be an unfair practice in the absence of a breach or intrusion” for purposes of the CFPA's prohibition on unfair, deceptive or abusive acts or practices).

¹¹⁶ GENIUS Act, § 3(a)-(b).

distributed ledger.”¹¹⁷ A payment stablecoin, in turn, is any digital asset that is, or is designed to be, used as a means of payment or settlement and the issuer of which (1) is obligated to convert, redeem or repurchase for a fixed amount of monetary value (not including a digital asset denominated in a fixed amount of monetary value) and (2) represents that such issuer will maintain, or creates the reasonable expectation it will maintain, a stable value relative to the value of a fixed amount of monetary value.¹¹⁸ Certain digital assets are expressly carved out of the definition of payment stablecoin, including any “national currency,” “deposit” (including a deposit in tokenized form) or any “security” (with limited exceptions).¹¹⁹

The application of this definition of payment stablecoin could be unclear in multiple ways. The Secretary of the Treasury is directed to issue regulations implementing the general prohibition on the issuance of payment stablecoins by a person other than a PPSI and the restrictions on offers or sales of payment stablecoins by DASPs.¹²⁰ Under these regulations, the Secretary of the Treasury should clarify the application of the payment stablecoin definition in the following ways:

1. *Close potential definitional loopholes.* Innovation with respect to payment stablecoins, as well as other digital assets and related technologies, is occurring and will continue to occur. It will be important that regulations under the GENIUS Act do not consider the technology only as it existed at the time the statute was enacted, but instead recognize that the definitions in the statute are flexible enough to include future, currently unknown developments. For this reason, the Treasury Department should interpret the definition of payment stablecoin under the GENIUS Act as well as related definitions (such as of digital asset and distributed ledger) broadly to include products and technologies that rely on similar technologies to provide the same functionality. Not only would a broad definition provide clarity to customers and market participants, but it would also encourage innovation by providing regulatory certainty.

Additionally, the regulations that the Treasury Department will issue under the GENIUS Act should expressly address how the exclusion from the definition of payment stablecoin for a digital asset that the issuer is obligated to convert, redeem or repurchase only for a digital asset denominated in a fixed amount of monetary value applies. This exclusion should not permit a person to create a payment stablecoin that is, for example, redeemable at the option of the issuer either for USD or for another payment stablecoin which itself is redeemable for USD.¹²¹ The Treasury Department should instead ensure that the definition is interpreted to prevent evasion of the statute’s requirements and covers any digital asset (other than the national currency, deposits or securities expressly excluded) that is issued or offered directly or indirectly by an issuer as a

¹¹⁷ *Id.* § 2(6). The GENIUS Act defines a distributed ledger as “technology in which data is shared across a network that creates a public digital ledger of verified transactions or information among network participants and cryptography is used to link the data to maintain the integrity of the public ledger and execute other functions.” *Id.* § 2(8).

¹¹⁸ *Id.* § 2(22)(A).

¹¹⁹ *Id.* § 2(22)(B).

¹²⁰ *Id.* § 3(d).

¹²¹ In such a case, it could be argued that the issuer is obligated to redeem the payment stablecoin only for another digital asset denominated in a fixed amount of monetary value (*i.e.*, the other payment stablecoin).

stable-value digital asset that provides substantially the same functions as the payment stablecoins contemplated by the GENIUS Act.

2. *Exclude any digital assets issued by insured depository institutions.* As discussed above, the GENIUS Act’s definition of “payment stablecoin” expressly excludes a “deposit,” as defined in Section 3 of the Federal Deposit Insurance Act (the “FDIA”), including a deposit recorded using distributed ledger technology.¹²² This exclusion may raise interpretive challenges for IDIs. For example, if an IDI seeks to issue a tokenized deposit, the tokenized deposit will likely qualify as a payment stablecoin *unless* the IDI can determine that it constitutes a “deposit” within the meaning of the FDIA. However, the application of the complex definition of “deposit” in the FDIA may be unclear, especially until the FDIC expressly addresses how the definition applies in the context of deposits recorded using distributed ledger technology or of distributed ledger technology itself (the FDIC has not to date provided guidance on these topics).

To avoid regulatory uncertainty, the Treasury Department should consult with the FDIC and other federal banking regulators. Following that consultation, the Treasury Department should clarify in the regulations that it will issue under the GENIUS Act how the definition of “payment stablecoin” and the related prohibition applies to tokenized products issued by IDIs. In particular, the Treasury Department should interpret this definition and the related prohibition to exclude any such product issued by an IDI. Such an exclusion is appropriate because any tokenized product issued by an IDI would be subject to comprehensive regulation and oversight (including with respect to associated deposits or other assets) pursuant to the federal banking laws. There would be no clear regulatory purpose in requiring these products also be subject to the GENIUS Act’s regulatory framework, and the Treasury Department and federal banking regulators should accordingly provide certainty that this will not occur.¹²³

VIII. Digital Asset Service Providers

The GENIUS Act defines a new type of financial institution: a digital asset service provider (DASP). DASPs are key intermediaries, exchanges and custodians for payment stablecoins and other digital assets and are defined as any person that, “for compensation or profit, engages in the business in the United States (including on behalf of customers or users in the United States),” of any of five activities, subject to specified exclusions.¹²⁴ DASPs are a core part of the regulatory framework established by the GENIUS Act. In addition to creating a framework for regulating *issuers* of payment stablecoins, the GENIUS Act will prohibit *DASPs* from offering or selling any payment stablecoin in the United States unless it is issued by a PPSI

¹²² GENIUS Act, § 2(22)(B)(ii).

¹²³ Moreover, whether a payment stablecoin, especially if issued by a bank or trust company other than an IDI (including a state depository institution or national trust bank), can be a “deposit” for purposes of the FDIA raises complex and highly consequential legal and policy questions. These questions can and should be resolved carefully only after extensive public and notice and comment and consultation among the Treasury Department and the federal banking agencies.

¹²⁴ GENIUS Act, § 2(7). The activities that may cause a person to be a DASP are (1) exchanging digital assets for monetary value; (2) exchanging digital assets for other digital assets; (3) transferring digital assets to a third party; (4) acting as a digital asset custodian; and (5) participating in financial services relating to digital asset issuance. *Id.* § 2(7)(A).

or qualifying FPSI.¹²⁵ To ensure this prohibition has the intended effect of keeping payment stablecoins issued by other issuers out of DASPs, the statute expressly provides that the prohibition applies extraterritorially to conduct involving the offer or sale of a payment stablecoin to a person in the United States.¹²⁶ DASPs also must ensure that, if they offer, sell or otherwise make available for trading in the United States a payment stablecoin issued by an FPSI, the FPSI has the technological capability to comply, and does comply, with the terms of any lawful order.¹²⁷ Additionally, DASPs must prohibit secondary trading of a payment stablecoin issued by an FPSI if the FPSI is designated as noncompliant with this requirement.¹²⁸

The GENIUS Act directs the Secretary of the Treasury to issue regulations to implement the core prohibitions applicable to DASPs.¹²⁹ The regulations should do the following to ensure the prohibitions are given an appropriate scope, including so that market participants may not evade the regulatory framework established by the GENIUS Act:¹³⁰

1. *Clarify the scope of the definition of “digital asset service provider.”* As discussed above, the GENIUS Act defines a DASP as a person that engages in activities “for compensation or profit.” This language reflects a distinction between intermediaries and other service providers that engage in a business and provide services to customers, as opposed to persons that hold payment stablecoins for themselves for their own use. This distinction is recognized in other regulatory frameworks as well, for example the definition of “broker” under the Securities Exchange Act of 1934. That definition similarly distinguishes between a person “engaged in the *business* of effecting transactions in securities for the account of *others*,” as distinct from, for example, a person acting for itself.¹³¹

To implement this distinction in the context of DASPs, regulations under the GENIUS Act should avoid an unduly narrow interpretation of the circumstances in which a DASP may be considered to engage in activities “for compensation or profit.” A person should be deemed to engage in these activities so long as it does so as part of a business. That is, the definitional precondition that a DASP be engaged in activities for compensation or profit should *not* depend on whether a DASP itself is the person that receives the compensation or profit or is “giving away” some services. For example, an intermediary could potentially, on its own or together with one or more third parties, exchange digital assets for monetary value, or engage in equivalent activities, as part of a customer business. However, the intermediary might ultimately

¹²⁵ Id. § 3(b), 18(c)(1)(A).

¹²⁶ Id. § 3(e). In contrast, the GENIUS Act does not have extraterritorial application to restrict offers or sales by DASPs outside the United States that do not involve persons in the United States. *See Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) (describing a presumption against extraterritoriality “[w]hen a statute gives no clear indication of an extraterritorial application”).

¹²⁷ GENIUS Act, § 8(a)(1).

¹²⁸ Id. § 8(b).

¹²⁹ Id. § 3(d); *see also id.* § 8(b)(3)(B).

¹³⁰ *Cf. id.* § 4(h)(1) (directing the primary federal payment stablecoin regulators and the state payment stablecoins regulators, in their regulations implementing the GENIUS Act, to establish conditions and “prevent evasion”).

¹³¹ 15 U.S.C. § 78c(a)(4)(A) (emphasis added).

direct customers to make payment only to another person (e.g., an affiliate). As an additional example, a DASP may have multiple offerings, some of which are paid and others of which are “free.” Where these or similar arrangements occur, it is clear that the intermediary is providing services as a business and is doing so for compensation or profit, even if that compensation or profit is received by another person or is not provided by every customer. The regulations under the GENIUS Act should provide that such an intermediary is engaging in digital asset-related activities for compensation or profit, and is therefore a DASP. Any other interpretation would permit a service provider to engage in a customer business and provide services that Congress intended to be subject to the requirements applicable to DASPs, but to do so through arrangements or structures that evade those requirements.

Additionally, under the GENIUS Act, one of the activities that, if engaged in for compensation or profit, may cause a person to be a DASP is “participating in financial services relating to digital asset issuance.”¹³² These financial services will necessarily include services that directly enable digital asset issuance (e.g., underwriting a distribution of digital assets). However, many financial services could conceivably be viewed as “relating” to digital asset issuance, but only indirectly. For example, providing a mortgage or a corporate credit card to a company that issues digital assets may relate to digital asset issuance (because that is what the company does), but the services may have no direct relation to issuance activities. A person should not be a DASP, and subject to associated requirements, solely by providing services that relate only indirectly to digital asset issuance. To prevent this result, regulations under the GENIUS Act should clarify that, for purposes of the definition of DASP, participating in financial services relating to digital asset issuance requires that the financial services be related *directly* to that issuance. Moreover, these regulations should provide that the provision of core banking activities—in particular, taking deposits or making loans—can never be considered to be participating in financial services relating to digital asset issuance. This clarification is necessary because PPSIs may, with authorization from their primary payment stablecoin regulator, engage in the activities of a DASP,¹³³ providing a means for a PPSI to take deposits or make loans (which could conceivably be possible if these are activities available to DASPs) would be fundamentally inconsistent with the GENIUS Act’s text and overall structure.

2. *Implement broad definitions of the terms “offer” and “sell.”* As described above, the GENIUS Act will generally prohibit a DASP from *offering* or *selling* a payment stablecoin in the United States unless it is issued by a PPSI or qualifying FPSI.¹³⁴ The GENIUS Act broadly defines “offer” as “to make available for purchase, sale, or exchange.”¹³⁵ The statute does not define “sale.”

We believe that Congress intended the terms “offer” and “sale” to be interpreted broadly. Importantly, DASPs should not be permitted to facilitate transactions or holding of payment stablecoins issued by unregulated issuers (*i.e.*, issuers other than PPSIs or qualifying FPSIs) solely by taking a cramped view of what qualifies as an offer or sale. To ensure that the terms

¹³² GENIUS Act, § 2(7)(A)(v).

¹³³ *Id.* § 4(a)(7)(B).

¹³⁴ *Id.* § 3(b), 18(c)(1)(A).

¹³⁵ *Id.* § 2(21).

“offer” and “sell” under the GENIUS Act are given the broad effect that Congress intended, and therefore impose appropriate restrictions on the scope of payment stablecoins that DASPs may support, the Secretary of the Treasury should interpret these terms in a manner that is consistent with how the similar terms under the Securities Act of 1933 are interpreted. That statute, like the GENIUS Act with respect to offers or sales of payment stablecoins, protects customers with respect to offers or sales of securities. Under the Securities Act, the term “sell” includes every contract of sale or disposition of a security or interest in a security, for value; and the term “offer” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.¹³⁶ Courts have previously determined that these definitions must be read broadly, beyond their common law meanings, to give effect to the statute’s provisions.¹³⁷ The same rationale applies to the GENIUS Act, and therefore to the breadth with which these terms should be interpreted.

3. *Interpret the exemptions from the GENIUS Act’s prohibitions on offers and sales of payment stablecoins narrowly.* As discussed above, DASPs generally may only offer or sell payment stablecoins in the United States if they are issued by a PPSI or qualifying FPSI. However, the GENIUS Act provides that the following three types of transactions are not subject to this prohibition: (1) any “direct transfer of digital assets between two individuals acting on their own behalf and for their own lawful purposes, without the involvement of an intermediary”; (2) “any transaction involving the receipt of digital assets by an individual between an account owned by the individual in the United States and an account owned by the individual abroad that are offered by the same parent company” and (3) “any transaction by means of a software or hardware wallet that facilitates an individual’s own custody of digital assets.”¹³⁸

These exclusions should be interpreted narrowly to ensure they do not permit DASPs or others to circumvent the requirements of the GENIUS Act. By excluding specific transactions from otherwise applicable requirements, Congress acted to facilitate personal use and legitimate self-custody of digital assets. Congress could not have intended these narrowly drawn exclusions to provide a broader means for parties to evade the core protections provided by the GENIUS Act’s regulatory framework, including through any interpretation that would enable DASPs to facilitate transactions involving payment stablecoins issued by unregulated issuers. To ensure an appropriate regulatory implementation of these exclusions that promotes the overall objectives of the GENIUS Act, we believe two clarifications should be made regarding their scope:

- The exclusion for transactions involving the receipt of digital assets by an individual between an account owned by the individual in the United States and an account owned by the individual abroad offered by the same parent company should not be available in a circumstance where it would permit a transaction to occur indirectly that could not occur directly. That is, a company should not be permitted to sell a payment stablecoin issued by a payment stablecoin issuer not regulated under the GENIUS Act to an individual outside the United States, with the *intent or reasonable expectation* that the individual will transfer that payment

¹³⁶ 15 U.S.C. § 77b(a)(3).

¹³⁷ *SEC v. Cavanagh*, 1 F. Supp. 2d 337, 368 (S.D.N.Y. 1998).

¹³⁸ GENIUS Act, § 3(h)(1).

stablecoin to an account offered by the same parent company in the United States. For example, if a DASP cannot sell a payment stablecoin to a customer in the United States, the DASP should not be able to circumvent this requirement by splitting the transaction into two steps: (1) the DASP or an affiliated service provider sells the payment stablecoin to the customer abroad and (2) the customer transfers the payment stablecoin to an account at the DASP in the United States.

- The statutory exclusion for any transaction by means of a software or hardware wallet that facilitates an individual's own custody of digital assets should be clarified in regulation to apply only to transactions involving payment stablecoins in an individual's own custody. It should not apply to transactions through a DASP, regardless of whether the technology that the DASP uses could, *in other contexts*, be used to facilitate an individual's own custody of digital assets. The focus of this statutory exemption is self-custody of digital assets and regulation should accordingly clarify that this is the only activity covered.

* * * * *

The Associations and their members appreciate your attention to the issues and recommendations discussed in this letter. If you have any questions, please contact Paige Paridon at paige.paridon@bpi.com, Rodney Abele at rodney.abele@theclearinghouse.org, Brooke Ybarra at bybarra@aba.com, David Pommerehn at dpommerehn@consumerbankers.com or Sean Campbell at scampbell@fsforum.com.

/s/ Paige Pidano Paridon

Paige Pidano Paridon
Executive Vice President &
Co-Head of Regulatory Affairs
The Bank Policy Institute

/s/ Rodney Abele

Rodney Abele
Director of Regulatory & Legislative Affairs
The Clearing House Association

/s/ Brooke Ybarra

Brooke Ybarra
Senior Vice President
American Bankers Association

/s/ David Pommerehn

David Pommerehn
SVP, General Counsel, Head of Regulatory
Affairs
Consumer Bankers Association

/s/ Sean D. Campbell

Sean D. Campbell
Chief Economist, Head of Policy Research
Financial Services Forum

Annex A

The Bank Policy Institute: The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

The Clearing House Association L.L.C.: The Clearing House Association L.L.C., the country's oldest banking trade association, is a nonpartisan organization that provides informed advocacy and thought leadership on critical payments-related issues. Its sister company, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States, clearing and settling more than \$2 trillion each day.

American Bankers Association: The American Bankers Association is the voice of the nation's \$25 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$19.7 trillion in deposits and extend \$13.1 trillion in loans.

Consumer Bankers Association: The Consumer Bankers Association is a member-driven trade association, and the only national financial trade group focused exclusively on retail banking—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members operate in all 50 states. They include the nation's largest bank holding companies as well as regional and super-community banks. Eighty-three percent of CBA's members are financial institutions holding more than \$10 billion in assets.

Financial Services Forum: The Financial Services Forum is an economic policy and advocacy organization whose members are the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace and a sound financial system.