June 9, 2026

Via Electronic Submission

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments–RIN 3064-AG19
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions (RIN 3064-AG19)

Ladies and Gentlemen:

The undersigned trade associations (the "Associations")[1] appreciate the opportunity to comment on the notice of proposed rulemaking (the "NPR") issued by the Federal Deposit Insurance Corporation (the "FDIC") regarding the implementation of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act").[2]

We appreciate the FDIC's careful consideration of the regulations that it is required to issue under the GENIUS Act, particularly given the numerous significant policy questions that implementation of the GENIUS Act raises. The way in which the GENIUS Act is implemented, and the prudential requirements that will apply to payment stablecoin issuers, could have significant effects on financial stability, credit creation, consumer protection and the broader economy. Changes and clarifications to the proposed rule are important to help to ensure the GENIUS Act is implemented in a manner that, as Congress envisioned, appropriately balances the benefits and innovative potential of payment stablecoins with the broader economic and consumer protection risks that these instruments may pose.

In this letter, the Associations address the FDIC's proposed rules under the GENIUS Act and the FDIC's proposed clarification that deposits held at an insured depository institution (an "IDI") as reserves for a payment stablecoin are deposits of the payment stablecoin issuer that are insured as corporate deposits and are not insured to payment stablecoin holders on a pass-through basis. We do not address the aspects of the NPR related to the treatment of tokenized deposits under the Federal Deposit Insurance Act (the "FDIA") and regulations of the FDIC.

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

2 FDIC, GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions, Notice of Proposed Rulemaking, 91 Fed. Reg. 18,534 (Apr. 10, 2026).

The Bank Policy Institute and The Clearing House Association are submitting a separate comment letter on these aspects of the NPR.

The Associations, along with other trade associations, submitted a response to the FDIC's separate notice of proposed rulemaking regarding the FDIC's implementation of approval requirements under the GENIUS Act for prospective permitted payment stablecoin issuers ("PPSIs")[3] that are subsidiaries of FDIC-supervised institutions.[4]

A. Principles for GENIUS Act Implementation

The FDIC should make the changes and clarifications recommended in this letter in a manner that is consistent with the following principles:

1. The FDIC's implementation of the GENIUS Act should balance promoting innovation with safety and soundness and financial stability. The Associations have a long history of supporting financial innovation and appreciate ongoing regulatory efforts to facilitate participation by banking organizations in payment stablecoin-related activities. Nonetheless, the FDIC's regulatory framework under the GENIUS Act must be designed to ensure that PPSIs operate in a safe and sound manner and are not able to avoid statutory requirements through evasive arrangements.

2. The FDIC should ensure the regulations it issues under the GENIUS Act do not unduly harm lending to the real economy and the broader financial system. In implementing the GENIUS Act, the FDIC should consider the impact of its regulations on credit creation and the broader economy. Given the critical role that banks play in financial intermediation and lending to the real economy, the FDIC should take into consideration how its regulations could affect deposit-taking, lending and the competitive playing field between banks and PPSIs.

3. Payment stablecoins should be recognized as debt obligations of the issuer and should be subject to commensurate requirements under the principle of "same risk, same regulation." As discussed below, the statutory framework established by Congress in the GENIUS Act contemplates that payment stablecoins are debt obligations of the issuer, similar to a bank's deposit liabilities. Under the principle of "same risk, same regulation," PPSIs should thus be subject to commensurate supervision and regulation, including with respect to capital, liquidity, risk management and reporting requirements, tailored appropriately to reflect relevant differences.

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[3] Throughout this letter, unless otherwise noted, a "PPSI" refers to a person formed in the United States that is a subsidiary of an insured state nonmember bank or state savings association that has been approved by the FDIC to issue payment stablecoins.

[4] *See* American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Independent Community Bankers of America and The Clearing House Association, Joint Letter Regarding Notice of Proposed Rulemaking on Approval Requirements for Issuance of Payment Stablecoins by Subsidiaries of FDIC-Supervised Insured Depository Institutions (RIN 3064-AG20) (May 18, 2026), *available at*: https://www.fdic.gov/federal-register-publications/aba-bpi-clearing-house-cba-icba-drew-ruben-rin-3064-ag202.pdf.

4. Given the novelty of payment stablecoins and the associated prudential framework, the market for these instruments is rapidly evolving and will continue to do so. The FDIC should commit to undertake timely re-evaluation of its regulations and supervisory practices as the market evolves and greater clarity emerges regarding the impact of payment stablecoins on the broader financial system. In the final rule, the FDIC should commit, within three years of the effective date of the GENIUS Act, to reviewing and modifying its regulatory framework for PPSIs on the basis of market and supervisory experience during that period. This approach would extend the application of the same "de novo" approach that the FDIC has proposed with respect to PPSI capital requirements to the totality of the PPSI regulatory framework and would ensure that the framework is modified as appropriate to support responsible innovation while protecting consumers, financial stability, credit creation and the broader economy.

Payment stablecoins also present significant illicit finance risks: they can be used to launder illicit proceeds, perpetrate scams and other fraud schemes, facilitate terrorist financing and illegal narcotics production and trafficking, and evade sanctions.[5] The GENIUS Act directs the FDIC and the other federal payment stablecoin regulators[6] to issue regulations implementing Bank Secrecy Act and sanctions compliance standards. The Bank Policy Institute and The Clearing House Association are submitting a separate comment letter on the notice of proposed rulemaking issued by the Department of the Treasury's Financial Crimes Enforcement Network and Office of Foreign Assets Control to implement provisions of the GENIUS Act,[7] and the Associations intend to comment on the FDIC's notice of proposed rulemaking to implement appropriate Bank Secrecy Act and sanctions compliance standards pursuant to the GENIUS Act.[8] The Associations therefore do not specifically address in this letter illicit finance or any regulations related to Bank Secrecy Act and sanctions compliance that may be issued by the FDIC.

B. Comment Period and Interagency Coordination

We have requested an extension of the comment period for this proposal and for other proposals to implement the GENIUS Act, which have compressed 60-day comment periods and varying comment deadlines.[9] The rulemakings to implement the GENIUS Act represent an

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5 *See* Office of Foreign Assets Control and Financial Crimes Enforcement Network, Permitted Payment Stablecoin Issuer Anti-Money Laundering/Countering the Financing of Terrorism Program and Sanctions Compliance Program Requirements, Notice of Proposed Rulemaking, 91 Fed. Reg. 18,582, 18,585–88 (Apr. 10, 2026).

6 The federal payment stablecoin regulators are the FDIC, the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and the National Credit Union Administration (the "NCUA").

7 *See* 12 U.S.C. § 5903(a)(4)(A)(iv).

8 *See* FDIC, Bank Secrecy Act and Sanctions Compliance Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers, Notice of Proposed Rulemaking, 91 Fed. Reg. 34,171 (June 5, 2026).

9 *See* American Bankers Association, Bank Policy Institute, Consumer Bankers Association and Independent Community Bankers of America, Joint Letter Regarding Request for Extension of Comment Period (Apr. 21, 2026), *available at* https://www.fdic.gov/federal-register-publications/american-bankers-association-aba-and-3-other-trade-associations-kaye.

interrelated body of regulatory work of extraordinary scope and complexity, implementing a wholly new statute that is the first federal legislation governing payment stablecoins. A fragmented comment process with staggered deadlines across (at least) six interdependent proposals issued by (at least) four different agencies undermines the agencies' own stated goal of ensuring regulatory consistency across the GENIUS Act implementation framework. It also raises questions about whether the agencies have adequately coordinated in promulgating these rules, as required by section 4(h)(2), and encouraged by section 13(b), of the GENIUS Act.[10] Further, three of the six interrelated proposals were released within a week of each other, each with compressed 60-day comment periods, which prevents the public from adequately evaluating the proposals individually or holistically.

Therefore, we note that our comment reflects the best analysis of the proposal we have been able to conduct during an inappropriately short and fragmented comment period. We reserve the right to amend our comments on the proposal as other agencies propose and finalize regulations that have direct bearing on this one, and vice versa, and we reiterate our call for the federal payment stablecoin regulators and other relevant agencies to coordinate their rulemakings, not only in terms of substance, but also in terms of process, before finalizing any rules to avoid unintended policy consequences, unworkable or incongruous requirements, and regulatory arbitrage opportunities. The agencies should repropose for comment any aspects of their respective proposals that are inconsistent or in conflict with one another to ensure that the comprehensive regulatory framework implementing the GENIUS Act is appropriately robust, transparent and consistent across the various agencies with rule-writing authority under the statute.

C. Structure of this Letter

We appreciate the FDIC's effort to align the substance of its proposed rule, where relevant, with the proposed rule that the OCC issued to implement the GENIUS Act (the "OCC NPR").[11] Due to the general similarity between the proposals issued by the FDIC and OCC, we refer in many places, and incorporate by reference, our comments on similar provisions in the OCC NPR. The comment letter that the Associations, together with the Financial Services Forum, submitted in response to the OCC NPR (the "OCC Comment Letter") is attached as Annex B to, and should be considered part of, this letter.

I. Prohibition on Payment of Interest or Yield on Payment Stablecoins

The Associations appreciate the thoughtful approach that the FDIC has taken to implementing the GENIUS Act's prohibition on the payment of interest or yield on payment stablecoins. The FDIC proposal, like the OCC's proposal, would prohibit payment of any form of interest or yield solely in connection with the holding, use or retention of payment stablecoins, and would presume that a PPSI violates this prohibition in certain circumstances involving

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[10] 12 U.S.C. §§ 5903(h)(2); 5913(b).

[11] NPR, 91 Fed. Reg. at 18,535. *See* OCC, Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, Notice of Proposed Rulemaking, 91 Fed. Reg. 10,202 (Mar. 2, 2026).

payments to third parties.[12] The proposed presumption recognizes the importance of applying the prohibition in a way that addresses the numerous methods by which PPSIs may coordinate with affiliates and other third parties to pay interest or yield in a manner that is expressly prohibited by the GENIUS Act. However, to more effectively prevent PPSIs from evading the statutory prohibition on the payment of interest or yield, especially in the context of indirect payments, the FDIC's implementation of this provision should be broadened.

Ensuring that PPSIs cannot evade the prohibition on the payment of interest or yield is critical to preventing undue harm to lending to the real economy and the financial system and threats to the safety and soundness of PPSIs. Yield-bearing payment stablecoins could trigger deposit outflows that suppress the ability of banks to engage in credit intermediation and increase the cost of borrowing for businesses and consumers, harming the real economy. A narrow or ineffective implementation of the prohibition could also compress the net interest margins of PPSIs, undermining their safety and soundness, as well as that of the broader payment stablecoin market.

Given the similarity between the FDIC's proposed implementation of the GENIUS Act prohibition on the payment of interest or yield and that of the OCC,[13] we recommend that the FDIC adopt the same changes to its proposed approach that we recommended to the OCC. In particular, the FDIC should make the following changes to the proposed rule to better align the FDIC's implementation of the provision with Congress's intent:

- replace the proposed presumption with an express prohibition on any PPSI providing an economic benefit to a payment stablecoin holder, whether directly or indirectly, including through a person that acts on behalf of, in coordination with, or using funds derived directly or indirectly from, the PPSI;[14]

- affirm that the FDIC intends to use its anti-evasion authority to prohibit arrangements intended to evade the prohibition under section 4(a)(11) of the GENIUS Act;[15] and

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12 NPR, 91 Fed. Reg. at 18,538–39; Proposed § 350.3(b)(4).

13 *Compare* Proposed § 350.3(b)(4), *with* OCC NPR, Proposed § 15.10(c)(4).

14 In the alternative, if the FDIC retains the proposed presumption framework, the FDIC should (i) broaden and clarify the definition of a "related third party," (ii) confirm that the presumption applies to arrangements involving more than one affiliate of a PPSI and (iii) clarify how the FDIC would review requests to rebut the presumption, including by requiring, at a minimum, that a person seeking to rebut the presumption submit materials that demonstrate, by clear and convincing evidence, that a proposed arrangement within the scope of the presumption does not violate the GENIUS Act prohibition, evade that prohibition, or have the economic effect of paying prohibited interest or yield (including any economically comparable equivalent) to a payment stablecoin holder. The FDIC should permit the public to submit evidence about arrangements to which the presumption could apply, and should also publish details regarding successful and unsuccessful rebuttal requests (on an anonymous basis, as appropriate).

15 In particular, the FDIC should expressly affirm that Proposed § 350.3(b)(6) would apply to any arrangement that is intended to evade the prohibition in section 4(a)(11) of the GENIUS Act and the regulations promulgated thereunder. *See* NPR, 91 Fed. Reg. at 18,539.

- define broadly the terms "pay," "interest," "yield" and "holder" for purposes of the GENIUS Act prohibition and clarify the meaning of other terms used in the prohibition.

For further details regarding the changes that we recommend, please refer to Recommendations 1, 2 and 3 on pages 9 to 19 of the OCC Comment Letter.

II. Scope of Payment Stablecoins Subject to Regulation and Scope of Deposit Insurance Coverage for Reserve Deposits

A. Scope of Payment Stablecoins Subject to Regulation

The definition of "payment stablecoin" is at the heart of the GENIUS Act. The statute, for example, imposes criminal penalties on any person other than a PPSI that issues a "payment stablecoin" in the United States, subject to limited exceptions. Digital asset service providers are prohibited from offering or selling any "payment stablecoin" in the United States unless it is issued by a PPSI or a qualifying foreign payment stablecoin issuer ("FPSI").[16]

The NPR, like the OCC NPR, proposes to adopt the statutory definition of "payment stablecoin" with only minor, technical changes.[17] However, the application of this definition could be unclear in multiple ways. Notably, the definition of payment stablecoin excludes "deposits," as defined in section 3 of the FDIA. Section 3 of the FDIA defines deposits expansively to include many liabilities of a "bank."[18] The FDIA defines a "bank" in turn to include "any national bank and State bank, and any Federal branch and insured branch."[19] Certain types of entities that are expressly contemplated in the GENIUS Act as eligible to become PPSIs, including uninsured national banks, federal branches of foreign banks and some state-chartered depository institutions, are therefore "banks" under the FDIA's definition. As a result, the definition of payment stablecoin leaves unclear how to differentiate liabilities that have all the characteristics of a payment stablecoin and are issued by a "bank" under the FDIA definition (*e.g.*, an uninsured national bank or federal branch) from a "deposit" at the same institution.

Given the importance of the GENIUS Act's definition of payment stablecoin to the GENIUS Act's regulatory framework and the importance of the FDIA's definition of "deposit," including to the FDIC's role as deposit insurer, the FDIC should ensure that the definition of payment stablecoin is clear, precludes evasion of the statutory framework and clearly distinguishes payment stablecoins from deposits. The FDIC recognizes in the NPR that this

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16 12 U.S.C. § 5902(b). *See also* 12 U.S.C. § 5901(7) (defining "digital asset service provider").

17 Proposed § 350.1(b)(17); *see* NPR, 91 Fed. Reg. at 18,536.

18 12 U.S.C. § 1813(*l*).

19 *Id.* § 1813(a)(1). A "State bank" is defined for purposes of the FDIA to include "any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and (B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia . . . ." *Id.* § 1813(a)(2).

should be the case, describing that payment stablecoins and tokenized deposits are "economically and legally distinct."[20] To ensure that this is the case, the FDIC should coordinate with the Treasury Department and the other federal payment stablecoin regulators to affirm that liabilities that have the characteristics of payment stablecoins are subject to regulation under the GENIUS Act and that liabilities that have the characteristics of deposits—including those issued by IDIs and other deposit-taking institutions—are not.

In addition, the FDIC should close potential loopholes with respect to the scope of the definition of payment stablecoin by interpreting the definition of payment stablecoin, as well as related definitions (such as of "digital asset" and "distributed ledger"), broadly, to include products and technologies that provide comparable functionality, unless those products are specifically excluded (*e.g.*, as deposits, as discussed above).[21] Such an interpretation would provide regulatory clarity to payment stablecoin holders and market participants, encouraging responsible innovation.

For further details regarding these recommendations, please refer to Recommendations 4 and 5 on pages 19 to 24 of the OCC Comment Letter.

B. Deposit Insurance Coverage for Reserve Deposits

The Associations support the FDIC's proposal to clarify that deposits held at an IDI as reserves for a payment stablecoin are deposits of the applicable PPSI and are insured as corporate deposits; they are not insured to payment stablecoin holders on a pass-through basis.[22] As the FDIC notes in the NPR, the statutory scheme created by the GENIUS Act is inconsistent with providing pass-through deposit insurance to payment stablecoin holders.[23] The GENIUS Act expressly prohibits payment stablecoins from being "subject to Federal deposit insurance" and prohibits representing that payment stablecoins are subject to federal deposit insurance.[24] Payment stablecoins being ineligible for deposit insurance means they cannot be insured on any basis, including on a pass-through basis.

Moreover, the legal nature of a payment stablecoin is inconsistent with pass-through insurance under applicable FDIC regulations. Under those regulations, pass-through insurance may be available only where deposits are held by one party for the benefit of one or more other parties, such as funds held by a custodian or conservator.[25] As discussed in Section VI.A below, PPSIs are not holding reserve assets, including deposits, for the benefit of payment stablecoin holders; rather, PPSIs are holding these assets as principal to support the liabilities that they owe as principal to payment stablecoin holders. Accordingly, we agree with the FDIC's proposal that

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20 NPR, 91 Fed. Reg. at 18,560.

21 The FDIC should also use its anti-evasion authority as necessary to prevent evasive arrangements.

22 NPR, 91 Fed. Reg. at 18,558–59; Proposed § 330.11(a)(3).

23 NPR, 91 Fed. Reg. at 18,559.

24 12 U.S.C. § 5903(e).

25 *See* 12 C.F.R. §§ 330.5, 330.7.

deposits held by a PPSI at an IDI as reserves for the payment stablecoins the PPSI has issued should be insured to the PPSI, not to payment stablecoin holders on a pass-through basis.

III. Custody Requirements

The Associations support the FDIC's objective of requiring custodial activities related to payment stablecoins and payment stablecoin reserves to be sufficiently robust. The FDIC's proposed custody requirements would be applicable to any person subject to supervision and regulation by the FDIC, including insured state nonmember banks, insured state-licensed branches of foreign banks, insured state savings associations and PPSIs for which the FDIC is the primary federal payment stablecoin regulator, to the extent any such institution is engaged in the business of providing custodial or safekeeping services for payment stablecoin reserves, payment stablecoins used as collateral or private keys used to issue payment stablecoins. The requirements would also apply to the custody and safekeeping of any other digital asset by a PPSI authorized by the FDIC.[26]

Clear and effective custody requirements are critical to protecting assets held in custody, and consequently to making payment stablecoins stable and safe. To further strengthen the proposed custodial requirements, the FDIC should align these requirements with three clear principles of custodial activities: (1) segregation of customer assets from a custodian's own assets in a manner that protects the customer assets from the claims of the custodian's creditors; (2) separation of the custody function from the custodian's other financial activities; and (3) maintenance of proper control over assets held in custody. For further discussion of these core principles, please refer to pages 24 to 25 of the OCC Comment Letter.

To align the custody requirements applicable with respect to custodial or safekeeping services for payment stablecoin reserves, payment stablecoins used as collateral, private keys used to issue payment stablecoins and other relevant assets with the core principles applicable to all custodial activities, the FDIC should:

- Clarify the operation of the segregation requirements and the related exceptions, including with respect to omnibus accounts. The FDIC proposes to permit a custodian to, for convenience, hold in an omnibus account the payment stablecoin reserves, payment stablecoins, cash and other property of more than one customer so long as the payment stablecoin reserves remain identifiable. The FDIC should define "omnibus account"; clarify that an "omnibus account" refers to how covered securities or other assets are held by the covered custodian; expressly provide that a custodian must establish a separate account (or accounts) in its own books and records for each PPSI or other covered customer; and confirm that a custodian is *not* responsible for ensuring that a PPSI has directed reserve assets to the correct account (*i.e.*, that the PPSI has placed reserves in a reserve account and not in the proprietary account of the PPSI).[27]

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[26] NPR, 91 Fed. Reg. at 18,556–59; Proposed § 350.100.

[27] NPR, 91 Fed. Reg. at 18,557; Proposed § 350.104(b)(1).

- Clarify how proper control over assets operates in a payment stablecoin context. The FDIC proposes that a custodian maintains "control" of a payment stablecoin or payment stablecoin reserve asset held in tokenized form if "it can reasonably demonstrate . . . that no other party, including the customer or any affiliate of the custodian, can control or transfer the payment stablecoin" or tokenized reserve asset "without the affirmative consent of the custodian or sub-custodian."[28] The FDIC should clarify how custodians can demonstrate "control" of payment stablecoins and other tokenized assets, for example, in the context of multi-signature wallets, smart contract-based custody structures and other arrangements.

- Clarify expectations for a PPSI that custodies its own assets. The FDIC does not provide detail regarding how the proposed custody requirements apply to a PPSI's holding of its own reserve assets, where no use is made of a third-party custodian.[29] Such "self-custody" of reserve assets may give rise to significant risks that warrant careful attention. Accordingly, the FDIC should clarify that a PPSI that custodies its own reserve assets is required to segregate the reserve assets from the PPSI's proprietary and any other assets, separate its custody function from its other financial activities, including payment stablecoin issuance and reserve management, and hold additional capital to support its self-custody activity.

For further details regarding these recommendations, please refer to Recommendations 6, 7 and 8 on pages 25 to 27 of the OCC Comment Letter.

Additionally, in respect of its custody requirements, the FDIC should (1) clarify the scope of the term "payment stablecoins used as collateral," limiting it to payment stablecoins used in collateral arrangements in which the custodian is a party (whether as the secured party or under a control agreement); (2) clarify the applicability of the custody requirements in connection with foreign custodians (*e.g.*, when using foreign custodians as sub-custodians) and FPSIs; (3) confirm that a custodian has no obligation to verify the sufficiency of reserve assets held by a PPSI; (4) not impose specific timeframes or other requirements on custodians with respect to transaction services they provide to custodial customers; (5) affirm that a PPSI may grant a custodian a first-priority lien and security interest in, and set-off rights against, the PPSI's reserve assets; (6) confirm that a PPSI, not a custodian, is obligated to perform any necessary and appropriate valuation of reserve assets; (7) not impose additional reporting obligations on custodians with respect to payment stablecoin-related activities; and (8) clarify that a custodian providing custody or safekeeping of payment stablecoins or related assets is not deemed to be exercising trust powers, including for purposes of sections 303.242 or 333.3 of the FDIC's regulations,[30] solely because the custodian is providing services that may be considered fiduciary

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28 NPR, 91 Fed. Reg. at 18,557; Proposed § 350.103(c)(2).

29 A PPSI should not be treated as engaged in "self-custody" if it places reserve assets at an affiliate that is eligible to provide custody of covered assets (*i.e.*, an "eligible financial institution").

30 12 C.F.R. §§ 303.242, 333.3.

in nature (unless required by applicable law or the custodian agrees to provide services in a fiduciary capacity).

For further details regarding these recommendations, please refer to Recommendations 9 through 16 on pages 27 to 32 of the OCC Comment Letter.

IV. Redemption of Payment Stablecoins

Redemption requirements are critical to ensuring that payment stablecoins function as reliable, stable instruments that holders are able to redeem at par and on demand. Moreover, redemption dynamics may transmit stress to the broader financial system—a run on a payment stablecoin may trigger fire sales of reserve assets (including U.S. Treasury securities) or large withdrawals of deposits held by PPSIs at banks. Due to the importance of timely redemption to the GENIUS Act regulatory framework and potential risks associated with redemption, the FDIC should revise certain of its proposed redemption requirements.

A. Timely Redemption

The GENIUS Act requires that a PPSI's redemption policy provide for "timely redemption" of outstanding payment stablecoins.[31] The FDIC proposes to implement this requirement by requiring that a PPSI's redemption policy provide that timely redemption may not exceed "two business days following the date of the requested redemption."[32] To accommodate necessary compliance checks, the FDIC should clarify that the obligation of a PPSI to make "timely redemption" may be extended beyond two business days to the extent that the requestor has not satisfied reasonable and appropriate compliance checks. In addition, the FDIC should require a PPSI to submit a monthly report of any instances in which it extended the redemption period beyond two business days due to the need to complete compliance checks. The FDIC should also clarify exactly when the "timely redemption" period begins (*e.g.*, when a request is submitted or received). For further details regarding these recommendations, please refer to Recommendation 17 on page 33 of the OCC Comment Letter.

B. Redemption in Stress

The FDIC proposes that if a PPSI faces redemption requests in excess of 10 percent of its outstanding issuance value in a single 24-hour period (*i.e.*, a "significant redemption request"), the PPSI must notify the FDIC and may request that the FDIC grant the PPSI approval to extend the two-business-day timely redemption period.[33] The Associations believe that this proposal, under which the FDIC would have discretionary authority to extend the required redemption period, may be less likely to result in run dynamics (*e.g.*, by incentivizing payment stablecoin holders to redeem preemptively) than the OCC's proposal, which contemplates a required "gate"

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31 12 U.S.C. § 5903(a)(1)(B)(i).

32 Proposed § 350.5(b)(1).

33 Proposed §§ 350.1(b)(24) ("Significant redemption request"); 350.5(b)-(c).

on redemptions, under which the period for timely redemption would automatically extend to seven calendar days if a PPSI faces a significant redemption request.[34]

Nonetheless, as discussed under Recommendation 18 on pages 33 to 34 of the OCC Comment Letter, instead of contemplating a potential extension of the period for timely redemption, the FDIC should require PPSIs to address redemption scenarios that would involve surges in redemption requests in their risk management frameworks and through mandatory stress tests. The FDIC should also require consistent liquidity management standards for all PPSIs, regardless of the timeline for redemption that is set out in their redemption policies. Less stringent standards for PPSIs that provide a longer period to satisfy redemption requests would encourage PPSIs to lengthen their redemption periods. Finally, the FDIC should specify a non-exhaustive list of consequences for failing to meet the two-business-day timely redemption period, including, but not limited to, limitations on new issuance, a temporary prohibition on redemption fees, and, as warranted, liquidation.

C. Direct Redemption and Disclosures

The NPR does not address whether a PPSI would be required to offer direct redemption to all payment stablecoin holders. Allowing PPSIs to restrict direct redemption to a limited set of entities would enable a discriminatory practice that is inconsistent with the financial stability objectives of the GENIUS Act. When holders lack direct access to the issuer, they become dependent on secondary markets to liquidate their positions, which can expose both institutional and retail holders to potential losses if market liquidity is insufficient or secondary market prices deviate from par. Given the financial stability risks of restricting direct redemption and to prevent consumer harm, the FDIC should require PPSIs to offer direct redemption to all payment stablecoin holders, with no minimums, subject to appropriate on-boarding and compliance checks. Additionally, the FDIC should ensure that redemption fees and any changes to those fees are clearly, prominently and consistently disclosed to all holders, not just direct purchasers. If a PPSI is unable to deliver required disclosures to all of the holders of its payment stablecoins through effective disclosure mechanisms (which may include the PPSI's website, information provided in connection with direct purchases or redemptions, smart contracts and other mechanisms), the FDIC should prohibit the PPSI from increasing its redemption fees or otherwise making changes that could adversely impact holders.

For further details regarding these recommendations, please refer to Recommendations 19 and 20 on pages 34 to 35 of the OCC Comment Letter.

V. Reserve Assets

A. Reserve Asset Diversification Requirements

The FDIC proposes to limit the exposure that a PPSI may have to any one eligible financial institution to 40 percent of the PPSI's reserve assets. In the NPR, the FDIC states that this limit would apply not only to exposure to a specific counterparty, but to "exposure across all

[34] OCC NPR, Proposed § 15.12(c)(1).

of an eligible financial institution's parents, subsidiaries, or affiliates."[35] Additionally, this limit would apply to assets held in custody.[36]

Although the Associations support robust reserve asset diversification requirements for PPSIs, as required by the GENIUS Act,[37] the FDIC should consider the advantages and disadvantages of specifying a single quantitative concentration limit, as compared to a principles-based approach. On the one hand, a single baseline requirement could provide greater certainty to payment stablecoin holders regarding the resilience of a PPSI's reserve assets and ability to redeem payment stablecoins, and would ensure that PPSIs maintain adequate diversification on an ongoing basis. On the other hand, a principles-based approach would allow for more flexibility and could be more precisely tailored to the business model and risk profile presented by an individual PPSI. For further details regarding considerations relevant to a quantitative requirement, as compared to a principles-based approach, please refer to Recommendation 21 on pages 36 to 37 of the OCC Comment Letter.

In finalizing the reserve asset diversification requirements for PPSIs, the FDIC should coordinate with the other federal payment stablecoin regulators to adopt a consistent reserve asset diversification framework that would promote a level playing field among PPSIs and reduce opportunities for regulatory arbitrage.

Regardless of how the FDIC and the other payment stablecoin regulators implement reserve asset diversification requirements, the FDIC should exclude assets held in custody from any proposed concentration limit. The custody function is designed to ensure protection of custodied assets, including so that customer assets are protected from the creditors of the custodian. With these protections, the client whose assets are being held in custody does not have "exposure" to the custodian that is in any sense similar to the exposure that a lender has to a borrower. Moreover, imposing a concentration limit on assets held in custody could introduce new, unnecessary risks. Forced spreading of reserve assets across multiple custodians would likely increase operational risk due to the heightened complexity of a PPSI maintaining multiple custodial relationships where it would not ordinarily choose to do so. Accordingly, the FDIC should not impose limits on the extent to which a PPSI may custody reserve assets at an eligible financial institution. For further details regarding this recommendation, please refer to Recommendation 22 on pages 37 to 38 of the OCC Comment Letter.

The FDIC's proposed concentration limit differs from the approach in the OCC's proposed rule, which would incorporate additional diversification and concentration standards (in some cases as either a safe harbor or requirement). The standards proposed by the OCC would address required minimum "daily liquidity" and the required holding of insured deposits for larger PPSIs.[38] The OCC also asks in the OCC NPR whether it should approve additional reserve assets, potentially including Treasury securities with a remaining maturity of two years or

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35 NPR, 91 Fed. Reg. at 18,542; Proposed § 350.4(f).

36 *Id.*

37 12 U.S.C. § 5903(a)(4)(A)(iii).

38 OCC NPR, Proposed § 15.11(c)–(d).

less.[39] Questions in the FDIC NPR relate to consideration by the FDIC of similar provisions.[40] We believe that a requirement that at least 20 percent of a PPSI's reserve assets be liquid assets is appropriate; a requirement that PPSIs maintain reserve assets in the form of fully insured deposits or insured shares is not appropriate; no additional types of reserve assets should be approved without appropriate consideration of the safety and soundness of PPSIs and coordination with the other payment stablecoin regulators; and U.S. Treasury securities with a remaining maturity of more than 93 days should not be approved as reserve assets. For further details regarding these recommendations, please refer to Recommendations 23, 24 and 25 on pages 38 to 39 of the OCC Comment Letter.

B. Reserve Asset Requirements for Issuance of Multiple Brands of Payment Stablecoins

If the FDIC finalizes the NPR's proposal to permit a PPSI to issue multiple brands of payment stablecoins, the Associations strongly support the FDIC's proposed conditions on a PPSI doing so, including that each brand must have separately identifiable reserve assets with "segregated pools of reserves" and must comply independently with proposed reserve requirements.[41]

Furthermore, the FDIC should ensure that the reserve assets backing each brand of payment stablecoin (if any PPSI issues more than one brand) are fully legally segregated. Legal segregation is critical to protecting payment stablecoin holders' claims to reserve assets in the event of insolvency and to mitigating potential contagion between brands.

C. Reserve Asset Sufficiency

The Associations support the FDIC's proposed approach to monitoring reserve asset sufficiency. The FDIC proposes that a PPSI must maintain sufficient reserve assets at all times and monitor reserves throughout the day, but would only be required to notify the FDIC if the aggregate value of reserve assets is less than par value of outstanding payment stablecoins at the PPSI's "close of business."[42] This approach appropriately recognizes that minor fluctuations may occur, and it may not be necessary to alert the FDIC in every instance where a small fluctuation may be quickly remedied by the PPSI. However, the FDIC should confirm how this notification requirement would apply if a reserve shortfall arises on a weekend or other non-business day, when a reserve shortfall could persist and prompt action may be necessary to address it. Furthermore, the FDIC should require that a PPSI must in all cases notify the FDIC immediately if it experiences a material decrease in reserve assets, such that the PPSI's ability to satisfy redemption requests is, or reasonably could be expected to become, impaired. The FDIC should adopt an appropriate test to define and quantify when a reserve shortfall causes such an impairment of the PPSI's ability to satisfy redemption requests.

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39 OCC NPR, 91 Fed. Reg. at 10,254.

40 *See, e.g.*, NPR, 91 Fed. Reg. at 18,543–44 (Questions 34, 48, 49, 52).

41 Proposed § 350.4(c).

42 NPR, 91 Fed. Reg. at 18,540; Proposed § 350.4(a)(1). *Compare with* OCC NPR, Proposed § 15.11(a)(1)(iii).

VI. Safety and Soundness

The GENIUS Act requires that the FDIC's regulation, examination and supervision of PPSIs "prioritize [their] safety and soundness,"[43] while simultaneously promoting the development and use of payment stablecoins. As payment stablecoins become more widely used, the more essential the safety and soundness of each PPSI becomes. If the regulatory framework does not develop commensurately with the development of the payment stablecoin market more generally, the very success of the market could threaten the broader financial system.

The statute also directs the FDIC to implement specific capital requirements, the liquidity standard under section 4(a)(1)(A) of the GENIUS Act, and reserve asset diversification and interest rate risk management standards, as well as other risk management requirements and standards, to promote the safe and sound operation of PPSIs.[44] As a foundational step in calibrating an appropriate regulatory framework for PPSIs, the FDIC should confirm the underlying nature of the legal rights and obligations of a payment stablecoin as a commercial law matter. The legal nature of an instrument has profound implications for designing the associated regulatory framework, and helps explain why, for example, the prudential and related requirements that apply to banks as issuers of deposits are very different from those that apply to money market funds. The different regulatory frameworks reflect, in part, the distinction between the legal nature of deposits (which are liabilities of a bank) and money market fund shares (which are generally considered equity of the money market fund). This section addresses why the legal characterization that best reflects the provisions of the GENIUS Act is that a payment stablecoin is an unsecured debt obligation of the PPSI, and how that characterization should inform the calibration of appropriate capital requirements, risk management expectations and restrictions on permissible activities.

A. Legal Nature of a Payment Stablecoin

As a foundational step in calibrating an appropriate regulatory framework for PPSIs and payment stablecoins, the FDIC should expressly affirm that a payment stablecoin is an unsecured debt obligation of the issuing PPSI. The FDIC has already suggested this should be the case in the preamble to the NPR: "[p]ayment stablecoins generally represent *a PPSI's liability* where the promise to redeem and to maintain a stable value is backed by highly liquid, short-term, and safe assets (including deposits) held in reserve to mitigate concerns of counterparty risk."[45] The text of, and protections provided by, the GENIUS Act also clearly contemplate that a payment stablecoin is a debt obligation of its issuer. Accordingly, the FDIC should confirm that a payment stablecoin is an unsecured debt obligation of the issuing PPSI. The FDIC should also expressly provide in its final rule that a PPSI holds reserves on behalf of, and subject to the interests of, the holders of its payment stablecoins, for the specific purpose of meeting their claims. For further details regarding these recommendations, please refer to Recommendations 28 and 29 on pages 41 to 42 of the OCC Comment Letter.

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43 12 U.S.C. § 5904(a)(1)(B).

44 *Id.* § 5903(a)(4).

45 NPR, 91 Fed. Reg. at 18,560 (emphasis added).

B. Capital Requirements

The FDIC, like the OCC, has proposed to implement *individualized*, non-public capital requirements for each PPSI.[46] This approach, however, would undermine market confidence in the capital sufficiency, and therefore the stability, of PPSIs. It would also undermine the values that are served by the requirement under the Administrative Procedure Act to undertake notice-and-comment rulemaking, in that the FDIC has not provided the public with a concrete set of proposed capital requirements that the public can evaluate and comment upon; rather, the FDIC is presenting the public with a "black box." The proposed bespoke approach to setting capital requirements also raises questions regarding fairness among FDIC-regulated PPSIs, because it will likely be difficult for market participants and the public to determine whether PPSIs that present similar risk profiles, business models and activities are subject to different regulatory requirements. If the firm-specific capital requirements applied to each PPSI are not publicly disclosed, this approach would also deprive consumers of the opportunity to choose among PPSIs based on their capital adequacy. Moreover, if a PPSI were to experience stress, there could be a widespread perception that the entire payment stablecoin market—not just the troubled PPSI—might be undercapitalized, making the market susceptible to contagion risk.

For the same reasons described in Recommendation 30 on pages 43 to 46 of the OCC Comment Letter, the FDIC should adopt a standardized framework for determining risk-based capital requirements. Establishing a standardized framework for determining risk-based capital requirements for PPSIs would promote comparability, reduce regulatory uncertainty and help ensure that all PPSIs maintain sufficient loss-absorbing capacity to support ongoing operations under both normal and stressed conditions.

The FDIC has also proposed, like the OCC, that a PPSI would be required to hold an "operational backstop" of highly liquid assets equal to 12 months of total expenses.[47] For the same reasons described in Recommendations 31 and 32 on pages 46 to 47 of the OCC Comment Letter, the FDIC should revise the calibration of its proposed operational backstop and expressly require a PPSI to fund its operational backstop with capital.[48]

We support the FDIC's proposal that it may direct a PPSI that has failed to satisfy minimum capital or operational backstop requirements, and that has not taken viable measures in response, to hold additional capital or increase the size of its operational backstop.[49] The FDIC should, in addition, align its requirements with those proposed by the OCC and require PPSIs that have failed to meet minimum capital or operational backstop requirements for two consecutive quarters to begin liquidation, not charge customers fees to redeem their payment

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46 NPR, 91 Fed. Reg. at 18,551–54; Proposed § 350.9(a)(2).

47 Proposed § 350.9(b).

48 Unlike the OCC, which proposes that deposits at an IDI may be included in a PPSI's operational backstop only if fully insured, the FDIC proposes that any deposits at any IDI may be included in a PPSI's operational backstop. *Compare* OCC NPR, Proposed § 15.41(b)(2)(ii), *with* Proposed § 350.9(b)(2)(iii). For the reasons described in Recommendation 33 on pages 47 to 48 of the OCC Comment Letter, we agree with the FDIC's proposal that uninsured deposits should be eligible to be held by a PPSI in satisfaction of the operational backstop requirement.

49 Proposed § 350.9(c)(3).

stablecoins and not issue new payment stablecoins.[50] This approach would provide the FDIC with sufficient discretion to intervene and prevent further deterioration where necessary.

The FDIC should also provide that an insured state nonmember bank or state savings association that is consolidated with a PPSI would deconsolidate the PPSI for purposes of applying the standardized liquidity rules (the Liquidity Coverage Ratio and Net Stable Funding Ratio requirements).[51] Finally, the FDIC should coordinate with the other federal banking agencies to amend the standardized bank capital and liquidity requirements to provide for appropriate treatment for payment stablecoins and reserve assets. For further details regarding the recommendations discussed in this section, please refer to Recommendations 36 and 37 on pages 50 to 51 of the OCC Comment Letter.

C. Risk Management

The collapse of a large, supposedly comprehensively regulated PPSI could have significant implications for financial stability and the broader economy. To further support financial stability and to help ensure consistent supervision, the FDIC should strengthen the risk management framework applicable to PPSIs and align it, where appropriate, with the risk management requirements and expectations applicable to banking organizations.

To do so, the FDIC should expressly prohibit PPSIs from engaging in unsafe or unsound practices. The FDIC should also require a PPSI to establish and maintain a comprehensive risk governance framework commensurate with its size, complexity, business model and risk profile; require a PPSI to appoint a chief risk officer and chief audit executive; require that a PPSI's policies and procedures address compliance with federal consumer protection laws; provide that the PPSI will be deemed to comply with the risk management requirements applicable to the PPSI if it complies with the risk management requirements applicable to its parent IDI; examine PPSIs and banks similarly if they face similar levels of risk; and provide that insider and affiliate transactions relating to PPSIs are subject to the full scope of the Federal Reserve Board's Regulation O and Regulation W.[52] For further details regarding these recommendations, please refer to Recommendations 38 through 44 on pages 51 to 56 of the OCC Comment Letter.

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50 OCC NPR, Proposed § 15.41(c)(2).

51 The NPR only proposes that an insured state nonmember bank or state savings association that is consolidated with a PPSI would deconsolidate any PPSI from its balance sheet and make certain other adjustments when calculating applicable capital ratios. Proposed § 324.22(i)(1).

52 A PPSI supervised by the FDIC likely will already be subject to the full scope of (1) the Federal Reserve Board's Regulation O to the same extent as the parent IDI and (2) the Federal Reserve Board's Regulation W as part of the parent IDI. An insured bank that is not a member of the Federal Reserve System must comply with Sections 23A and 23B of the Federal Reserve Act (imposing restrictions on transactions with affiliates) and Section 22(g) and (h) of the Federal Reserve Act (imposing restrictions on loans to insiders) "to the same extent as if the nonmember insured bank were a member bank." 12 U.S.C. § 1828(j)(1)–(2). A PPSI subsidiary of a member bank would be considered a "member bank" under Regulation O, which implements Section 22(g) and (h) of the Federal Reserve Act. 12 C.F.R. § 215.2(j) (defining a "member bank" subject to Regulation O to include "any subsidiary of a member bank"). Assuming that a PPSI subsidiary of a member bank is not a financial subsidiary of that member bank, the PPSI would generally be subject to Regulation W as part of the parent IDI. *See id.* § 223.3(w) (defining a "member bank" subject to Regulation W to include any "operating subsidiary of a member bank"). If the

D. Permissible Activities of PPSIs

As a matter of fundamental design, the GENIUS Act authorizes PPSIs to engage only in a narrow set of core payment stablecoin-related activities. The statute specifies that these activities are expressly limited to issuing and redeeming payment stablecoins, managing related reserves, providing custody or safekeeping services for payment stablecoin-related assets and undertaking directly supportive activities.[53] The statute's narrow specification of the scope of permissible activities that may be engaged in by a PPSI is consistent with the statutory objective to narrowly confine the set of risks to which the entity that is the issuer of payment stablecoins may be exposed. The more activities that a PPSI engages in, the more likely it could be to suffer losses from those activities or be subject to claims arising from those activities, potentially undermining the ability of the PPSI to honor its obligations to holders of the payment stablecoins it has issued.

In light of the clear statutory objective to minimize the potential for this type of disruptive outcome, the FDIC should construe the permissible activities of PPSIs narrowly, in accordance with the overall statutory scheme of the GENIUS Act. To do so, the FDIC should make the following changes and clarifications to the permissible activities of PPSIs to provide greater certainty to PPSIs, their customers, IDIs that hold their reserve assets and others. In particular, the FDIC should:

- Clarify that a PPSI may hold only a *de minimis* amount of non-payment stablecoin digital assets as necessary to test a distributed ledger or pay fees. The NPR does not address the extent to which PPSIs may hold non-payment stablecoin digital assets to support permitted activities, including paying fees to facilitate customer transactions. Consistent with the narrow set of core payment stablecoin-related activities enumerated by the GENIUS Act, the FDIC should limit a PPSI to holding only the amount of non-payment stablecoin crypto-assets for the purpose of testing a distributed ledger or paying transaction fees in an amount that is *de minimis* relative to the PPSI's regulatory capital and that is necessary for reasonably foreseeable transactions. The FDIC should also confirm, either in the final rule or in subsequent guidance, that a PPSI must have appropriate procedures in place to ensure it can operate in a safe and sound manner if it accepts the payment of fees in the form of non-payment stablecoin crypto-assets.

- Provide that a PPSI must submit an application before the PPSI engages in any "digital asset service provider activity" or "activity incidental thereto." In the NPR, the FDIC proposes that it must approve a PPSI engaging in digital asset service provider activities (*e.g.*, exchanging digital assets for monetary value or

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PPSI is a financial subsidiary of the IDI or otherwise not an "operating subsidiary" of the IDI for purposes of Regulation W, the parent IDI's transactions with the PPSI would be treated as, and subject to Regulation W restrictions on, transactions with an affiliate. For the reasons discussed in Recommendation 50 on pages 62 to 63 of the OCC Comment Letter, a national bank should be permitted to hold a PPSI subsidiary as an operating subsidiary, and not as a financial subsidiary. Accordingly, an insured state bank also should not be required to hold a PPSI subsidiary as a financial subsidiary. *See* 12 U.S.C. § 1831w(a).

[53] 12 U.S.C. § 5903(a)(7)(A).

other digital assets, transferring digital assets to a third party, acting as a digital asset custodian or participating in financial services relating to digital asset issuance) or activities incidental thereto.[54] However, the FDIC does not specify whether a PPSI may engage in these activities only if independently authorized under another source of applicable law or whether a PPSI must submit an application if the FDIC has already authorized an activity. The FDIC should permit a PPSI to engage in any of these activities only if the activity is independently authorized and should require an application for a PPSI to engage in any activity that has not previously been approved by the FDIC by regulation or in a public interpretation. Furthermore, the FDIC also should establish an appropriate set of criteria to guide its review and action upon any such application, which should include an evaluation of applicable safety and soundness and risk considerations, including whether the proposed activity could pose additional risks to a PPSI and therefore to holders of the payment stablecoins issued by the PPSI. The FDIC should also publish any approval for a PPSI to engage in these activities, as well as any other opinion or guidance on the permissibility of such activity.

- Confirm that the restriction on rehypothecation applies only to PPSIs. The FDIC should confirm that the restriction on pledging, rehypothecation or reusing reserve assets, except in specified circumstances, applies only to PPSIs and not to any other party, including an IDI at which a PPSI holds reserve assets in the form of deposits.[55] As both the GENIUS Act and the FDIC recognize, when reserve assets are placed on deposit at an IDI, the IDI incurs a liability to the PPSI and the funds become an asset of the IDI.[56] The IDI may then use the funds to support lending or other investments, in the same way and subject to the same requirements as any other deposited funds. Nothing in the GENIUS Act restricts how an IDI that receives a deposit from a PPSI may use the funds once they are deposited, and the FDIC should confirm that this is the case.

- Clarify how the FDIC will implement prohibitions on deceptive marketing practices. Consistent with the GENIUS Act,[57] the FDIC proposes to prohibit a PPSI from engaging in certain deceptive marketing practices.[58] The FDIC should provide greater clarity around permissible marketing practices and strengthen the customer protection objectives of these prohibitions by clarifying the factors it would consider relevant to finding that disclaimers, representations, marketing materials and disclosures are sufficiently clear and specific.

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54 Proposed § 350.3(a)(6).

55 Proposed § 350.3(b)(5).

56 12 U.S.C. § 5909(c)(2)(A), (D); Proposed § 350.104(b)(2).

57 12 U.S.C. § 5903(a)(9), (e).

58 Proposed § 350.3(b)(1)–(3).

For further details regarding these recommendations, please refer to Recommendations 45, 46, 48 and 49 on pages 57 to 58 and 60 to 61 of the OCC Comment Letter.

VII. Other Topics

A. Change in Control

The FDIC should impose a change in control framework to PPSIs similar to the framework proposed by the OCC. Under the OCC's proposed rule, a person seeking to acquire control of a PPSI must follow the requirements of 12 C.F.R. § 5.50 (the OCC's regulations under the Change in Bank Control Act of 1978 (the "CIBCA"[59])) as if the PPSI were a national bank.[60] Similarly, the FDIC should require persons seeking to acquire control of FDIC-regulated PPSIs to follow the requirements of 12 C.F.R. Part 303, Subpart E (the FDIC's regulations under the CIBCA), as if the PPSI were an insured state nonmember bank, including providing 60 days' prior written notice. Requiring prior notice of a prospective change in control over a PPSI would help to prevent inappropriate, unsafe or abusive practices resulting from a change in control of the PPSI, which would in turn promote the safety and soundness of PPSIs and confidence in the payment stablecoin market.

In addition, the FDIC should impose an application requirement for merger transactions involving PPSIs as part of the change in control framework. For further details regarding this recommendation, please refer to Recommendation 56 on page 67 of the OCC Comment Letter.

B. Definition of "Customer"

The FDIC proposes to define a customer as "a person that purchases (through any consideration) the products or services of a [PPSI] directly from the [PPSI]."[61] This definition would exclude all payment stablecoin holders that do not have a *direct* relationship with a PPSI.[62] As a result, several elements of the proposed rule would not apply to most payment stablecoin holders.[63] For example, the FDIC proposes that PPSIs must adjust their information technology and security program in light of "the sensitivity of [their] customer information" and that PPSIs must notify "[their] customers" of an incident of unauthorized access to "sensitive customer information."[64] In addition, the FDIC proposes that a PPSI must provide at least seven days' notice of an increase in purchase or redemption fees "by securely delivering the notice to

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59 12 U.S.C. § 1817(j).

60 OCC NPR, Proposed § 15.14(m).

61 Proposed § 350.1(3) ("Customer").

62 NPR, 91 Fed. Reg. at 18,535 ("The FDIC believes this definition would be appropriate to distinguish from situations where a person has no direct relationship with a PPSI, such as a payment stablecoin holder who receives a payment stablecoin in exchange for goods or services sold, or who purchases a payment stablecoin on the secondary market, and does not establish a relationship with the PPSI.").

63 The scope of customer protections applicable to payment stablecoin holders should not differ in this way based specifically on how a holder purchased its payment stablecoins.

64 Proposed § 350.6(b)(4)–(5).

current customers for whom the [PPSI] has contact information," and that the PPSI's required disclosures and updates must be included in any "customer agreements" that the PPSI provides.[65]

The scope of customer protections applicable to payment stablecoin holders should not differ in this way based specifically on how a holder purchased its payment stablecoins.[66] The definition of "customer" should be sufficiently broad to cover the variety of different contexts in which the FDIC proposes to use it. Accordingly, the FDIC should amend its definition of "customer" to encompass any person that purchases, through any consideration, directly or indirectly, the products or services of another person. This definition would be similar to the OCC's proposed definition.[67]

C. Insolvency

The insolvency-related provisions set forth in section 11 of the GENIUS Act are a crucial component of the customer protection framework of the GENIUS Act: they provide, among other things, that a payment stablecoin holder's claim has priority, on a ratable basis with claims of other payment stablecoin holders, with respect to required payment stablecoin reserves.[68] However, it is unclear how several of the provisions in section 11 of the GENIUS Act would operate in practice. For example, it is unclear how the priority applicable in a bankruptcy proceeding would interact with the statutory exclusion of reserve assets from the applicable bankruptcy estate. Similarly, it is unclear how it will be determined whether the reserve assets of a failed PPSI are sufficient to permit redemption of all of the PPSI's outstanding stablecoins, or the extent of any shortfall (and, therefore, the need to pursue other assets of the failed PPSI), if administrative expenses (such as the engagement of an auditor) cannot be paid. As another example, the GENIUS Act provides that a depository institution PPSI would be resolved by the FDIC, NCUA or state payment stablecoin regulator;[69] however, it is unclear whether the FDIC has statutory authority or the necessary funding to resolve a PPSI.

Significant risks arise when there is no clear and definitive mechanism for the resolution of a failed financial institution, particularly when there is little prior experience for the public to draw upon. A "messy" resolution of a small PPSI could result in disproportionate damage to other PPSIs, and to the broader financial system, if the inability of that PPSI's payment stablecoin holders to redeem their tokens leads to a run on other PPSIs and spillover effects on

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65 Proposed § 350.5(d)(2), (4).

66 Even if the FDIC requires, as we recommend above, that PPSIs offer direct redemption to all payment stablecoin holders, with no minimums, subject to appropriate on-boarding and compliance checks, the proposed definition of "customer" would still be insufficiently broad, because it would not cover those holders that decide to purchase their payment stablecoins from an intermediary.

67 OCC NPR, Proposed § 15.2 ("Customer"). We support the FDIC's clarification that this proposed definition of "customer" would not be intended to affect any requirements that implement the GENIUS Act's direction to treat PPSIs as financial institutions for purposes of the Bank Secrecy Act, including in respect of applicable customer identification program or customer due diligence requirements. NPR, 91 Fed. Reg. at 18,535 n.14.

68 12 U.S.C. § 5910(a)(1).

69 *Id.* § 5911.

interconnected financial institutions (including the financial institutions that hold PPSI reserve assets).

Section 11(h) of the GENIUS Act requires the FDIC and the other federal payment stablecoin regulators to conduct a study of potential insolvency proceedings involving PPSIs.[70] The regulators must publish a report containing all findings of this study, "including any legislative recommendations."[71] The FDIC should ensure that this study is both comprehensive and timely by publishing a preliminary draft, in coordination with the other federal payment stablecoin regulators, within one year of the effective date of the GENIUS Act. In addition, we urge the FDIC and other federal payment stablecoin regulators to consult with private sector and public sector bankruptcy and insolvency experts with expertise in each of the relevant resolution frameworks and ensure that the study includes recommendations for regulatory clarifications and, if necessary, statutory changes, that would be necessary to ensure that a clear and complete framework is established for each type of PPSI to permit the rapid resolution and repayment of payment stablecoin holders in the event of an issuer's failure.

For further details regarding this recommendation, please refer to Recommendation 57 and the discussion of the GENIUS Act's insolvency provisions on pages 67 to 69 of the OCC Comment Letter.

D. Coordination

Finally, it is critically important that the FDIC coordinate with the other federal payment stablecoin regulators, the Treasury Department, other federal regulators and state payment stablecoin regulators to create a robust regulatory framework that provides a level playing field for all types of payment stablecoin issuers, appropriately balances promoting innovation with preserving safety and soundness and financial stability, and explicitly discourages regulatory arbitrage. In addition to coordinating on the finalization of the rules implementing the GENIUS Act, the FDIC should also (i) cooperate with the appropriate federal regulators to clarify the application of federal consumer protection requirements to payment stablecoins, payment stablecoin transactions and PPSIs; (ii) examine PPSIs for compliance with federal consumer protection laws; (iii) coordinate with the other payment stablecoin regulators and the Treasury Department to clarify the effective date of the GENIUS Act; and (iv) coordinate with the other federal banking agencies to evaluate and, as appropriate, update existing guidance applicable to supervised banking organizations before the effective date of the GENIUS Act.

For further details regarding these recommendations, please refer to Recommendations 58 and 59 on pages 69 to 71 of the OCC Comment Letter.

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[70] Section 11(h)(1) of the GENIUS Act requires an "examination of[] (A) existing gaps in the bankruptcy laws and rules for [PPSIs]; (B) the ability of payment stablecoin holders to be paid out in full in the event a [PPSI] is insolvent; and (C) the utility of orderly insolvency administration regimes and whether any additional authorities are needed to implement such regimes." GENIUS Act, § 11(h)(1), 139 Stat. 459.

[71] *Id.* § 11(h)(2).

The Bank Policy Institute and the Consumer Bankers Association appreciate the opportunity to comment on the proposal. If you have any questions, please contact Paige Paridon at paige.paridon@bpi.com or David Pommerehn at dpommerehn@consumerbankers.com.

Respectfully Submitted,

/s/

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

/s/

David Pommerehn
Executive Vice President, General Counsel, Head of Regulatory Affairs
Consumer Bankers Association

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.

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.

Annex B

Letter of the Bank Policy Institute, the Consumer Bankers Association and the Financial Services Forum, dated May 1, 2026, to the OCC

May 1, 2026

Via Electronic Submission

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

Re: Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency (OCC Docket ID OCC-2025-0372)

Ladies and Gentlemen:

The undersigned trade associations (the "Associations")[1] appreciate the opportunity to comment on the notice of proposed rulemaking (the "NPR") issued by the Office of the Comptroller of the Currency (the "OCC") regarding the implementation of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act").[2]

We appreciate the OCC's careful consideration of the regulations that it is required to issue under the GENIUS Act. As the NPR correctly acknowledges, the implementation of the GENIUS Act raises numerous significant policy questions. In particular, the way in which the GENIUS Act is implemented, and the prudential requirements that will apply to payment stablecoin issuers, could have significant effects on financial stability, credit creation, consumer protection and the broader economy. Changes and clarifications to the proposed rule are important to ensure the GENIUS Act is implemented in a manner that, as Congress envisioned, appropriately balances the benefits and innovative potential of payment stablecoins with the broader economic and consumer protection risks that these instruments may pose.

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

2 OCC, Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, Notice of Proposed Rulemaking, 91 Fed. Reg. 10,202 (Mar. 2, 2026).

a. Principles for GENIUS Act Implementation

In this letter, we urge the OCC to make changes and clarifications in the final rulemaking that are consistent with the following principles:

1. The implementation of the GENIUS Act should balance promoting innovation with safety and soundness and financial stability. The Associations have a long history of supporting financial innovation and appreciate the OCC's ongoing efforts to enable equal participation in payment stablecoin-related activities by bank and nonbank entities. However, the OCC's regulatory framework must be designed to ensure that payment stablecoin issuers are operating in a safe and sound manner and are not able to avoid the requirements of the GENIUS Act through evasive arrangements.

2. The OCC should ensure the regulations it issues under the GENIUS Act do not unduly harm lending to the real economy and the broader financial system. In implementing the GENIUS Act, the OCC should consider the impact of its regulations on credit creation and the broader economy. Given the critical role that banks play in financial intermediation and lending to the real economy, the OCC should take into consideration how its regulations could affect deposit-taking, lending and the competitive playing field between banks and non-banks.

3. Payment stablecoins should be recognized as debt obligations of the issuer and should be subject to commensurate requirements under the principle of "same risk, same regulation." As discussed below, the statutory framework established by Congress in the GENIUS Act contemplates that payment stablecoins are debt obligations of the issuer, similar to a bank's deposit liabilities. Under the principle of "same risk, same regulation," payment stablecoin issuers should thus be subject to commensurate supervision and regulation, including with respect to capital, liquidity, risk management and reporting requirements, tailored appropriately to reflect differences in these instruments.

4. Given the novelty of payment stablecoins and the associated prudential framework, the market for these instruments is rapidly evolving and will continue to do so. The OCC should therefore commit to undertake timely re-evaluation of its regulations and supervisory practices as the market evolves and greater clarity emerges regarding the impact of payment stablecoins on the broader financial system. The Associations support the OCC's acknowledgment that the implementing regulations will need to be updated in the years following the effective date of the GENIUS Act.[3] In the final rule, the OCC should commit, within three years of the effective date of the GENIUS Act, to reviewing and modifying its regulatory framework for permitted payment stablecoin issuers

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[3] *See* NPR, 91 Fed. Reg. at 10,203 ("The OCC anticipates that these implementing regulations will be updated, as necessary, in the years following the effective date of the GENIUS Act as the business practices of permitted payment stablecoin issuers and foreign payment stablecoin issuers continue to evolve and develop.").

("PPSIs")[4] on the basis of market and supervisory experience during that period. This approach would extend the application of the same "*de novo*" approach that the OCC has proposed with respect to PPSI capital requirements to the totality of the PPSI regulatory framework and would ensure that the framework is modified as appropriate to support responsible innovation while protecting consumers, financial stability, credit creation and the broader economy.

Payment stablecoins also present significant illicit finance risks: they can be used to launder illicit proceeds, perpetrate scams and other fraud schemes, facilitate terrorist financing and illegal narcotics production and trafficking, and evade sanctions.[5] The GENIUS Act directs the OCC and the other federal payment stablecoin regulators to issue regulations implementing Bank Secrecy Act and sanctions compliance standards,[6] which the OCC has indicated it intends to address in a separate rulemaking in coordination with the Treasury Department.[7] The Associations intend to submit a separate comment letter on that forthcoming rulemaking and therefore do not specifically address illicit finance and the OCC's required regulations related to the Bank Secrecy Act and sanctions compliance in this letter.

b. Comment Period and Interagency Coordination

We have requested an extension of the comment period for this proposal and for other open proposals to implement the GENIUS Act, which have compressed 60-day comment periods and varying comment deadlines.[8] The rulemakings to implement the GENIUS Act represent an interrelated body of regulatory work of extraordinary scope and complexity, implementing a wholly new statute that is the first federal legislation governing payment stablecoins. A fragmented comment process with staggered deadlines across (at least) four interdependent proposals issued by (at least) four different agencies undermines the agencies' own stated goal of ensuring regulatory consistency across the GENIUS Act implementation framework. It also raises questions about whether the agencies have adequately coordinated in promulgating these rules, as required by section 4(h)(2), and encouraged by section 13(b), of the GENIUS Act.[9] Further, three of the four

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4 Throughout this letter, unless otherwise noted, a "PPSI" refers to a person formed in the United States that is a subsidiary of an insured national bank or federal savings association that has been approved to issue payment stablecoins by the OCC, a federal qualified payment stablecoin issuer or a state qualified payment stablecoin issuer subject to the OCC's regulatory or enforcement authority under section 4 of the GENIUS Act.

5 *See* Office of Foreign Assets Control and Financial Crimes Enforcement Network, Permitted Payment Stablecoin Issuer Anti-Money Laundering/Countering the Financing of Terrorism Program and Sanctions Compliance Program Requirements, Notice of Proposed Rulemaking, 91 Fed. Reg. 18,582, 18,585–89 (Apr. 10, 2026).

6 12 U.S.C. § 5903(a)(4)(A)(iv).

7 OCC, Press Release: OCC Requests Comments on Proposal to Implement GENIUS Act (Feb. 25, 2026), *available at* https://www.occ.treas.gov/news-issuances/news-releases/2026/nr-occ-2026-9.html.

8 *See* BPI, American Bankers Association, CBA and Independent Community Bankers of America, Joint Letter Requesting an Extension of Comment Period on the GENIUS Act Notice of Proposed Rulemakings (Apr. 21, 2026), *available at* https://www.aba.com/advocacy/policy-analysis/extension-request-genius-act-nprms.

9 12 U.S.C. §§ 5903(h)(2); 5913(b).

interrelated proposals were released within a week of each other, each with compressed 60-day comment periods, which prevents the public from adequately evaluating the proposals individually or holistically.

Therefore, we note that our comment reflects the best analysis of the proposal we have been able to conduct during an inappropriately short and fragmented comment period. We reserve the right to amend our comments on the proposal as other agencies propose and finalize regulations that have direct bearing on this one, and vice versa, and we reiterate our call for the federal payment stablecoin regulators and other relevant agencies to coordinate their rulemakings in terms of both substance and process before finalizing any rules to avoid unintended policy consequences, unworkable or incongruous requirements, and regulatory arbitrage opportunities. The agencies should repropose for comment any aspects of their respective proposals that are inconsistent or in conflict with one another to ensure that the comprehensive regulatory framework implementing the GENIUS Act is appropriately robust, transparent and consistent across the various agencies with rule-writing authority under the statute.

I. Summary of Recommendations

To support the issuance of robust regulations that will establish a durable foundation for implementation of the GENIUS Act, Sections II-VIII of this letter include specific recommendations to ensure the four principles described above are reflected in the final rule:

Prohibition on Payment of Interest or Yield on Payment Stablecoins (Section II)

- Recommendation 1 (Primary Recommendation). The OCC should replace the proposed presumption framework with an express prohibition.
- Recommendation 2 (Alternative Recommendation). The OCC should broaden the proposed presumption framework.
- Recommendation 3. The OCC should define terms applicable to the prohibition.

Scope of Payment Stablecoins Subject to Regulation (Section III)

- Recommendation 4. The OCC should clearly distinguish payment stablecoins from deposits of insured depository institutions and branches of foreign banking organizations.
- Recommendation 5. The OCC should close potential loopholes with respect to the scope of payment stablecoins subject to the GENIUS Act.

Custody Requirements (Section IV)

- Recommendation 6. The OCC should clarify the operation of the segregation requirements and the related exceptions, including with respect to omnibus accounts.
- Recommendation 7. The OCC should clarify how proper control over assets operates in the payment stablecoin context.
- Recommendation 8. The OCC should clarify the expectations for a PPSI that custodies its own reserve assets.

- Recommendation 9. The OCC should clarify that payment stablecoins "used as collateral" refers only to collateral arrangements to which the custodian is a party.
- Recommendation 10. The OCC should clarify the applicability of the custody requirements in connection with foreign custodians and foreign issuers.
- Recommendation 11. The OCC should not require a covered custodian to verify the sufficiency of reserve assets held by a PPSI at the covered custodian.
- Recommendation 12. The OCC should not impose requirements on covered custodians with respect to transaction services they provide.
- Recommendation 13. The OCC should expressly affirm that a PPSI is permitted to grant a covered custodian a first-priority lien and security interest in, and set-off rights against, the PPSI's reserve assets.
- Recommendation 14. The OCC should clarify covered custodians' obligations regarding the valuation of reserve assets.
- Recommendation 15. The OCC should not impose additional reporting obligations on covered custodians.
- Recommendation 16. The OCC should clarify that a covered custodian of covered assets will not be deemed to provide services in a "fiduciary capacity" within the meaning of 12 C.F.R. § 9.2(e) or § 15.30 solely because the covered custodian is providing services that may be considered "fiduciary" in nature under state law.

Redemption of Payment Stablecoins (Section V)

- Recommendation 17. The OCC should clarify that the obligation of a PPSI to make "timely redemptions" may be extended beyond two business days if the requestor has not satisfied reasonable and appropriate compliance checks.
- Recommendation 18. The OCC should eliminate the proposed provision that would impose an automatic extension of the timely redemption period to a minimum of seven calendar days in times of stress.
- Recommendation 19. The final rule should require PPSIs to offer direct redemption to any payment stablecoin holder, with no minimums, subject to appropriate on-boarding and compliance checks.
- Recommendation 20. The OCC should ensure that redemption fees and any changes to those fees are clearly, prominently and consistently disclosed to all holders, not just direct purchasers.

Reserve Assets (Section VI)

- Recommendation 21.The OCC should carefully consider the advantages and disadvantages of a principles-based versus a quantitative reserve asset diversification requirement.
- Recommendation 22. The OCC should exclude assets held in custody from the proposed concentration limit.

- Recommendation 23. The OCC should finalize a minimum liquid asset requirement of 20 percent.
- Recommendation 24. The OCC should eliminate the proposed requirement that larger PPSIs maintain a certain percentage of their reserve assets in the form of insured deposits or insured shares.
- Recommendation 25. The OCC should not approve any additional type of reserve asset without considering the safety and soundness of PPSIs, should coordinate with other payment stablecoin regulators on any such approval and should not approve U.S. Treasury securities with a remaining maturity of greater than 93 days as "similarly liquid Federal Government-issued" assets.
- Recommendation 26. The OCC should define the set of "United States financial institutions" at which an FPSI may hold reserve assets.
- Recommendation 27. If the final rule permits issuance of multiple brands of payment stablecoins, it should include appropriate safeguards for separation of reserve assets.

Safety and Soundness (Section VII)

Legal Nature of a Payment Stablecoin

- Recommendation 28. The OCC should affirm that a payment stablecoin is a debt obligation of its issuer.
- Recommendation 29. The OCC should finalize the proposed segregation requirements and affirm that a PPSI holds reserves on behalf of, or subject to the interests of, the holders of its payment stablecoins, for the specific purpose of meeting their claims.

Capital Requirements

- Recommendation 30. The OCC should establish, by regulation, a standardized framework for determining risk-based capital requirements for PPSIs that reflect the risks faced by PPSIs, including operational risk, liquidity risk, credit risk, interest rate and other market risk. The OCC should also establish a minimum leverage ratio for PPSIs.
- Recommendation 31. The OCC should modify the calibration of the operational backstop.
- Recommendation 32. The OCC should expressly require a PPSI to fund its operational backstop with capital.
- Recommendation 33. The OCC should include uninsured deposits as an asset eligible to be held in satisfaction of the operational backstop requirement.
- Recommendation 34. The OCC should require that FPSIs that seek to register with the OCC be subject to home-country capital requirements that are consistent with the requirements imposed on PPSIs.

- Recommendation 35. The OCC should not permit all uninsured national trust banks, including those that are not PPSIs, to elect to follow the capital requirements applicable to PPSIs.
- Recommendation 36. The OCC should provide that an insured national bank or federal savings association that is consolidated with a PPSI would deconsolidate that PPSI for purposes of applying the standardized liquidity rules.
- Recommendation 37. The OCC should coordinate with the other federal banking agencies to amend the standardized bank capital and liquidity requirements to provide for appropriate treatment for payment stablecoins and reserve assets.

Risk Management

- Recommendation 38. The OCC should expressly prohibit PPSIs from engaging in unsafe or unsound practices.
- Recommendation 39. The OCC should require a PPSI to establish and maintain a comprehensive risk governance framework.
- Recommendation 40. The OCC should require a PPSI to appoint a chief risk officer and chief audit executive.
- Recommendation 41. The OCC should require that a PPSI's policies and procedures address compliance with federal consumer protection laws.
- Recommendation 42. The OCC should provide that a PPSI that is a subsidiary of an IDI or controlled by a bank holding company will be deemed to comply with the risk management requirements applicable to a PPSI if the PPSI complies with the risk management requirements applicable to its parent IDI or the applicable bank holding company, respectively.
- Recommendation 43. The OCC's examinations of PPSIs and banks that face similar levels of risks should be similar.
- Recommendation 44. The OCC should provide that insider and affiliate transactions relating to PPSIs are subject to the full scope of the Federal Reserve Board's Regulation O and Regulation W.

Permissible Activities of PPSIs

- Recommendation 45. The OCC should clarify that a PPSI may hold only a *de minimis* amount of non-payment stablecoin digital assets as necessary to test a distributed ledger or pay fees.
- Recommendation 46. The OCC should require a PPSI to submit an application if the PPSI seeks to engage in any activity that is not expressly enumerated under section 4(a)(7)(A) of the GENIUS Act or the OCC's regulations and interpretations.
- Recommendation 47. The OCC should not permit uninsured national trust bank PPSIs to conduct activities that are not permissible for other types of PPSIs.

Prohibition on Rehypothecation

- Recommendation 48. The OCC should confirm that the restriction on rehypothecation applies only to PPSIs.

Prohibition on Deceptive Marketing

- Recommendation 49. The OCC should clarify how it will implement prohibitions on deceptive marketing practices.

Other Topics (Section VIII)

Applications and Approvals

- Recommendation 50. The OCC should confirm that IDIs may hold PPSI subsidiaries as "operating subsidiaries."
- Recommendation 51. The OCC should establish a streamlined application process for IDI applicants.
- Recommendation 52. The OCC should consider additional factors for an applicant that is not a subsidiary of an IDI.
- Recommendation 53. The OCC should clarify the standard of review for waivers under section 5(f) of the GENIUS Act.
- Recommendation 54. The OCC should publish and solicit comment on PPSI applications and waiver requests under section 5 of the GENIUS Act.
- Recommendation 55. The OCC should create a clear standard for how it would exercise its authority to waive the required transition to federal oversight, impose a presumption against granting waivers for larger PPSIs and implement certain other safeguards.
- Recommendation 56. The OCC should impose an application requirement for merger transactions involving PPSIs as part of the change in control framework.

Insolvency

- Recommendation 57. The OCC should use the insolvency study required under the GENIUS Act to clarify how the insolvency provisions will operate and to recommend any appropriate changes.

Coordination

- Recommendation 58. The OCC should coordinate with the appropriate federal regulators to clarify the application of federal consumer protection requirements to payment stablecoins, payment stablecoin transactions and PPSIs and FPSIs, and should examine PPSIs for compliance with federal consumer protection laws.
- Recommendation 59. The OCC should coordinate with the other payment stablecoin regulators and the Treasury Department to clarify the effective date of the GENIUS Act, and should coordinate with the other federal banking agencies to update existing guidance applicable to supervised banking organizations by that date.

II. Prohibition on Payment of Interest or Yield on Payment Stablecoins

We appreciate the thoughtful approach that the OCC has taken to implementing the GENIUS Act's prohibition on the payment of interest or yield on payment stablecoins. In particular, the OCC recognizes the importance of applying the prohibition in a manner that addresses the numerous ways in which PPSIs and foreign payment stablecoin issuers ("FPSIs") may coordinate with affiliates and third parties to pay interest or yield. However, the OCC's implementation of this provision should be broadened to implement the GENIUS Act prohibition more effectively, especially in the context of indirect payments.

To ensure that the OCC's regulatory framework does not unduly harm lending to the real economy and the broader financial system, or threaten the safety and soundness of PPSIs, FPSIs and the broader economy, the OCC must ensure that PPSIs and FPSIs are not able to evade the prohibition on the payment of interest or yield. As discussed below, yield-bearing payment stablecoins could trigger deposit outflows that suppress the ability of banks to engage in credit intermediation and increase the cost of borrowing for businesses and consumers, harming the real economy. A narrow or ineffective implementation of the prohibition could also compress the net interest margins of PPSIs and FPSIs, undermining their safety and soundness, as well as that of the broader payment stablecoin market.

Accordingly, the following changes should be made to the proposed rule to better align the OCC's implementation of the provision with Congress's intent:

- replace the proposed presumption with an express prohibition on any PPSI or FPSI providing any economic benefit to a payment stablecoin holder, whether directly or indirectly, including through a person that acts on behalf of, in coordination with, or using funds derived directly or indirectly from, the PPSI or FPSI;[10]

- affirm that the OCC intends to use its anti-evasion authority to prohibit evasive arrangements; and

- define broadly the terms "pay," "interest," "yield" and "holder" for purposes of the GENIUS Act prohibition and clarify the meaning of certain other terms used in the prohibition.

a. Primary Recommendation

The OCC proposes to repeat the language of the GENIUS Act's prohibition on payments of interest or yield, prohibiting any PPSI or FPSI from "pay[ing] 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 stablecoins."[11] In addition, the OCC proposes a

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[10] In the alternative, as discussed below, the OCC should revise certain of the definitions used in the presumption, as well as define other terms, to clarify the scope of the prohibition and ensure that the presumption framework is more effective.

[11] Proposed §§ 15.10(c)(4) (PPSIs); 15.31(c) (FPSIs); *see* 12 U.S.C. § 5903(a)(11).

rebuttable presumption under which certain arrangements in which a PPSI or FPSI pays interest or yield to an affiliate or "related third party," and the affiliate or related third party (or an affiliate of the related third party) pays interest or yield to a holder of the PPSI's or FPSI's payment stablecoin, would presumptively violate the prohibition.[12]

The OCC acknowledges that arrangements that are not subject to the presumption could nonetheless violate the GENIUS Act's prohibition or constitute evasion of that prohibition.[13] However, the presumption could, in practice, serve as the principal means by which the OCC would evaluate whether a payment of interest or yield to a payment stablecoin holder is, or is not, prohibited. Moreover, there is a significant risk that issuers will interpret the presumption as affirmatively permitting interest or yield arrangements not covered by it, and act accordingly. As proposed, the presumption framework would not necessarily encompass all arrangements between a PPSI or FPSI, on the one hand, and an affiliate or third party, on the other hand, that result in the payment of interest or yield to payment stablecoin holders and that should be prohibited under the intentionally broad scope of the GENIUS Act prohibition.

For example, it appears that the presumption may not apply if a PPSI uses interest it receives on reserve assets to compensate an affiliate or related third party, but characterizes the basis for doing so as something other than interest or yield (*e.g.*, as compensation for supporting distribution of the payment stablecoin). In that way, a PPSI could conceivably pay the exact same amount as it would if the payment were forthrightly characterized as constituting interest or yield. A PPSI could also provide economic value to an affiliate or related third party in a way that could be characterized as an incentive other than interest or yield (*e.g.*, by selling them payment stablecoins at a discount, or redeeming payment stablecoins at a premium). If the initial provision of value by a PPSI or FPSI to an affiliate or related third party is not encompassed within the defined scope of the presumption, there would be no presumptive restriction on the affiliate or related third party in turn using the value it has received from the PPSI to pay interest or yield to holders of the PPSI's payment stablecoins.

This result is inconsistent with the broad scope of the GENIUS Act's prohibition against the payment of interest or yield. That broad scope is evident in the terms that Congress used. "Interest," for example, has long been interpreted as referring to a wide range of types of compensation. The Supreme Court considered, for example, whether the term "interest" (in that context, amounts that a bank charged its customers) included late fees.[14] 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.[15] The GENIUS Act's prohibition on payments to holders is not limited to the payment of interest, but also covers the payment of "yield," which has an even broader meaning,

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12 Proposed §§ 15.10(c)(4) (PPSIs); 15.31(c) (FPSIs).

13 NPR, 91 Fed. Reg. at 10,212.

14 *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 737 (1996).

15 *Id.* at 745–46; *see also Brown* v. *Hiatts*, 82 U.S. (15 Wall.) 177, 185 (1872) (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").

encompassing "the amount obtained from some financial transaction."[16] Moreover, the interpretive canon against surplusage—that every word in a statute is to be given effect rather than treated as superfluous—supports the reading that "yield" must cover forms of economic value other than those covered by "interest."[17] Congress intended for these terms to be read expansively, as the GENIUS Act expressly prohibits the payment of interest or yield "in any form."[18]

Congress confirmed these far-reaching meanings of "interest" and "yield" by expressly providing that they are prohibited whether provided "in cash, tokens, or other consideration." "Consideration" in particular is generally defined as effectively anything—whether an act, a forbearance or a return promise—that a person may bargain for and receive.[19] The applicability of the prohibition to amounts "pa[id]" also has an expansive meaning. 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.[20]

A broad reading of the GENIUS Act prohibition is also consistent with the purpose of payment stablecoins. Under the GENIUS Act, payment stablecoins are defined as digital assets that are, or are designed to be, "used as a means of payment or settlement."[21] If payment stablecoins were to be permitted, directly or indirectly, to provide holders or users with economic returns, they would resemble the instruments that the GENIUS Act expressly excludes from the definition of a "payment stablecoin"—deposits and securities (which are types of assets that generally *do* provide interest or yield in some form).[22] It would be inconsistent with the GENIUS Act's prohibition on the payment of any form of interest or yield and the structure of the statute if a PPSI or FPSI could nonetheless directly or indirectly provide holders with interest or yield, including rewards, benefits, incentives or other economic benefits that have a comparable economic effect. Prohibiting PPSIs and FPSIs from providing interest or yield in any form, whether directly or indirectly, is also critical to the safety and soundness of PPSIs and FPSIs as well as the broader economy, because the payment of yield would compress net interest margins, incentivizing higher risk activities and reserve asset concentrations.

Of most importance, a principles-based interpretation of the prohibition against payment of interest or yield would help guard against significant risks that would otherwise be posed to the

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

17 *See Young* v. *United Parcel Serv., Inc.*, 575 U.S. 206, 226 (2015); Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174–79 (2012) (Surplusage Canon).

18 The canon against surplusage also means that the prohibition against payment of interest or yield "in any form" must be given effect to the extent possible. The only way of doing so is to adopt a broad interpretation of "interest or yield," to encompass not only the forms enumerated in section 4(a)(11) (*i.e.*, "cash, tokens, or other consideration"), but also *any other form* of interest or yield, or its economically comparable equivalent.

19 Black's Law Dictionary, *Consideration* (12th ed. 2024).

20 *See, e.g.*, 26 C.F.R. § 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).

21 12 U.S.C. § 5901(22)(A)(i).

22 *See id.* § 5901(22)(B)(ii)–(iii).

fundamental role of banks in credit intermediation.[23] Banks serve as an engine of the U.S. economy, taking in deposits and using those funds to make loans to commercial, consumer and other borrowers, with those loans supporting a wide range of economic activity. PPSIs do not serve a similar purpose.

Any provision of interest, yield or its economically comparable equivalent on payment stablecoins could cause holders of payment stablecoins to treat them not only as a means of payment and settlement (as intended by the GENIUS Act), but also as investments and longer-term stores of value. Businesses, consumers and other market participants that today store funds in bank deposit accounts may change their behavior by switching to payment stablecoins as a remunerated store of value. This risk of "deposit flight" has been recognized already, including by the Comptroller of the Currency.[24] Deposit flight would reduce the amount of funds that banks have available to lend to the real economy and make loans less available and more expensive for a wide swath of borrowers, likely especially impacting small and medium-sized businesses and

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[23] Regarding the possible effects of stablecoins on credit creation, *see* Jessie Jiaxu Wang, *Banks in the Age of Stablecoins: Some Possible Implications for Deposits, Credit, and Financial Intermediation*, FEDS Notes (Dec. 17, 2025), *available at* https://doi.org/10.17016/2380-7172.3970 ("for each $100 billion of net deposit drain not recycled to banks, empirical pass-throughs imply a $60 to $126 billion contraction in bank lending based on empirical estimates of the money multiplier, with an additional $0 to $15 billion composition-driven reduction if the recycled balances take wholesale form under LCR/NSFR assumptions. Scaling to plausible adoption paths gives contractions in loan provision of $65 to $141 billion in a low adoption case, $190 to $408 billion in a moderate adoption case, and $600 billion to $1.26 trillion in a high adoption case"); BPI, *Even Crypto-Funded Research Affirms that Yield-Bearing Stablecoins Reduce Bank Deposits and Lending* (Jan. 23, 2026), *available at* https://bpi.com/even-crypto-funded-research-affirms-that-yield-bearing-stablecoins-reduce-bank-deposits-and-lending/; Andrew Nigrinis, "The Coming Stablecoin Shock to America's Credit Markets," OPEN BANKER (Oct. 16, 2025), *available at* https://openbanker.beehiiv.com/p/stablecoinshock (estimating that yield-bearing payment stablecoins would result in a decline in total deposits of approximately 25 percent, equivalent to a $1.5 trillion decrease in lending capacity—approximately one-fifth of all currently outstanding consumer, small-business and farm credit nationwide); BPI, *The Risks from Allowing Stablecoins to Pay Interest* (Sept. 25, 2025), *available at* https://bpi.com/the-risks-from-allowing-stablecoins-to-pay-interest/.

[24] ABA Banking Journal, *Gould Touts OCC Debanking Moves, Reassures on Stablecoin* (Sept. 10, 2025), *available at* https://bankingjournal.aba.com/2025/09/gould-touts-occ-debanking-moves-reassures-on-stablecoin [hereinafter Gould Remarks] (quoting the Comptroller of the Currency: "[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 . . . "). In the same speech, Comptroller Gould stated that the OCC would have "in large measure, control" over whether deposit flight happened, and would take "steps to address" deposit flight if it happened, but did not specify how the OCC would have control or what steps it could take. *Id.* In the final rulemaking, the OCC should clarify how it intends to address possible deposit flight.

individuals.[25,26] Despite statements by the OCC that it has the tools to address deposit flight if it begins, the OCC has not identified any tools that would enable it to do so.[27] It is critical that the regulations the OCC adopts in connection with this rulemaking not promote deposit flight in the first instance: although the OCC could attempt to revise its regulations in an effort to rein in evasive arrangements after their deleterious effects have become evident, any such effort would necessarily occur only after deposit flight (and its resulting harms) has occurred.

Recommendation 1. *The OCC should replace the proposed presumption framework with an express prohibition.*

The most effective way to implement the prohibition in section 4(a)(11) of the GENIUS Act in a manner that reflects congressional intent would be to prohibit expressly any PPSI or FPSI from providing any economic benefit to a payment stablecoin holder, whether directly or indirectly, including through any affiliate or any other person that acts on behalf of, in coordination with or using funds derived from, a PPSI or FPSI.[28] The OCC should replace the proposed rebuttable presumption with an express prohibition to this effect.

As described above, any arrangement in which a PPSI or FPSI makes—directly or indirectly—payments on, or otherwise provides economic benefits to a payment stablecoin holder in relation to, instruments that are designed not to be interest- or yield-bearing would be inconsistent with the text and purpose of the GENIUS Act, and could have a significant adverse economic impact that Congress sought to prevent. An express prohibition would significantly reduce the risk that the permissibility of certain arrangements will turn on case-by-case and potentially inconsistent evaluations by issuers and the OCC. Moreover, an express prohibition that is appropriately principles-based is necessary to cover the various ways that PPSIs or FPSIs could seek to circumvent the OCC's requirements.

Similarly, the final rule should affirm that no person—whether a PPSI or its affiliate, an FPSI or its affiliate, or any third party—may directly or indirectly take any action that has the effect

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25 Although PPSIs and FPSIs may use funds they receive in connection with payment stablecoin issuance to place deposits at U.S. banks, these deposits will not be all of the reserve assets held by PPSIs or FPSIs. Further, even to the extent that current bank deposits are "replaced" by deposits of PPSIs or FPSIs, this would represent a fundamental change in the composition of bank deposits that could have significant adverse impacts on banks, their customers, bank lending and financial stability. For example, these deposits could be subject to the potential for more rapid withdrawal and otherwise behave differently from other types of deposits banks use to fund loans. Such a fundamental change in the banking system should not be undertaken without careful, detailed consideration, including an examination of the resulting effects on credit provision and financial intermediation broadly.

26 Although nonbank lending in the economy has increased in the past several decades, this growth has been dependent on *bank* lending to nonbanks. *See* Viral V. Acharya, Nicola Cetorelli & Bruce Tuckman, *Nonbanks Are Growing but Their Growth is Heavily Supported by Banks* (June 17, 2024), FRBNY Liberty Street Economics, *available at* https://libertystreeteconomics.newyorkfed.org/2024/06/nonbanks-are-growing-but-their-growth-is-heavily-supported-by-banks/.

27 *See* Gould Remarks, *supra* note 24.

28 This recommended definition should be read in conjunction with our recommendation regarding the interpretation of the phrase "solely in connection with," as discussed below.

of violating, or otherwise evading or circumventing, the prohibition.[29] For example, PPSIs or FPSIs could provide funds, discounts, distribution incentives, marketing support or other consideration to an affiliate or third party that then delivers the economic benefit to the holder. In that circumstance, the holder would receive the same interest or yield amount, but through an intermediary.[30] Any such evasion or circumvention of the prohibition would undermine the public policy considerations that the prohibition was designed by Congress to reinforce.

b. Alternative Recommendation

Recommendation 2. *The OCC should broaden the proposed presumption framework.*

We strongly recommend that the OCC replace the proposed presumption framework for implementing the GENIUS Act's prohibition on payments of interest or yield to payment stablecoin holders with an express prohibition, as described above. However, if the OCC retains the proposed presumption framework, the OCC should revise certain of the definitions used in the presumption, as well as define other terms, to clarify the scope of the presumption and ensure it is more effective.

In particular, the OCC should adjust the presumption to (i) broaden and clarify the third parties that qualify as "related third parties"; (ii) ensure the presumption applies to arrangements involving more than one affiliate; and (iii) clarify how the agency would evaluate requests to rebut the presumption.

Additionally, the OCC should recognize that its presumption framework would not, and likely cannot, cover every arrangement that results in a payment of interest or yield in a manner that is prohibited by the GENIUS Act. PPSIs and FPSIs can develop, including through coordination with affiliates and third parties, various arrangements that are intended to provide, or have the effect of providing, benefits that are substantially economically comparable to prohibited interest or yield. These may be "membership" programs, sweep arrangements, relationships between different "white label" stablecoins, tying relationships or otherwise.[31] The OCC should therefore make clear that it will use its anti-evasion authority to prohibit any arrangements that result in the provision of any economic benefit to a payment stablecoin holder, whether directly or indirectly.[32]

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29 *See* 12 U.S.C. § 5903(h) (providing that the federal payment stablecoin regulators must issue regulations "relating to [PPSIs] as may be necessary to establish a payment stablecoin regulatory framework necessary to administer and carry out the requirements of this section, *including to establish conditions, and to prevent evasion thereof*" (emphasis added)).

30 The OCC should also consider whether there are circumstances in which a well-resourced affiliate of an issuer may make payments to holders of the issuer's payment stablecoins without any corresponding payment from the issuer itself.

31 The OCC should coordinate with the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") to ensure that tying arrangements may not be used to evade the GENIUS Act's prohibition on interest and yield.

32 The OCC should also encourage any person with any question about the application of the presumption to seek the views of the OCC before engaging in a potentially prohibited arrangement.

The following are specific changes that the OCC should make to the presumption framework, which would strengthen the framework to enable it to more effectively implement the GENIUS Act prohibition.

First, the OCC should broaden and clarify the definition of a "related third party." For purposes of the proposed presumption, a "related third party" would be a person (1) "offering to pay interest or yield to payment stablecoin holders as a service" or (2) for whom "the issuer issues payment stablecoins on the person's behalf or under the person's branding."[33] This definition appears unduly narrow and potentially ambiguous, which could lead to the unintended expansion of arrangements in which PPSIs or FPSIs provide interest or yield to payment stablecoin holders through third parties. The OCC should broaden and clarify the definition of related third party to encompass any third party with which a PPSI or FPSI may coordinate (or have an agreement, arrangement or understanding), or which may otherwise use funds derived from a PPSI or FPSI, to pay interest or yield (which, for the reasons discussed above, should include any benefit that is economically comparable to interest or yield) to a payment stablecoin holder.

The NPR indicates the first prong of the proposed definition of "related third party" is intended to cover persons that "offer[] to pay interest or yield to payment stablecoin holders as a service." The NPR, however, does not elaborate on what it means for a third party to pay interest or yield "as a service."[34] This portion of the definition could be read narrowly to apply only if a person's business is specifically to pay interest or yield to payment stablecoin holders as a service to a PPSI or FPSI. It is unclear why the term—and therefore the scope of the presumption—should be limited in this way. If a PPSI or FPSI pays interest or yield (including any economically comparable equivalent) to a person whose business is to pay interest to holders "as a service" and that person pays interest or yield (or any economically comparable equivalent) to payment stablecoin holders in connection with their payment stablecoins, the arrangement is indistinguishable as an economic matter from a PPSI or FPSI paying interest or yield (including any economically comparable equivalent) to a person with a different business (*e.g.*, acting as an exchange or other intermediary) and that person paying interest or yield to payment stablecoin holders in connection with their payment stablecoins. Both fact patterns properly should fall within the scope of the presumptive prohibition, but in the latter case it is not clear that the proposed definition of related third party would achieve this result.

The NPR indicates that the second prong of the definition of "related third party" is intended to cover persons that have entered into a "white-label" relationship with the PPSI under which the PPSI issues payment stablecoins on the third party's behalf.[35] As a result of this definition, the presumption would apply if a PPSI or FPSI pays interest or yield to a "white label" sponsor, and that sponsor pays interest or yield (including any economically comparable equivalent) to payment stablecoin holders in connection with their payment stablecoins. It appears that no presumption would apply if, in contrast, a PPSI or FPSI pays interest or yield (including

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33 Proposed §§ 15.10(c)(4)(ii) (PPSIs); 15.31(c)(3) (FPSIs).

34 The NPR includes only a brief parenthetical that provides little clarification on what it means to pay interest or yield "as a service." NPR, 91 Fed. Reg. at 10,212 ("(*i.e.*, on behalf of the [PPSI]")).

35 NPR, 91 Fed. Reg. at 10,212.

any economically comparable equivalent) to an affiliate or agent of a "white label" sponsor, and that person pays interest or yield (including any economically comparable equivalent) to payment stablecoin holders in connection with their payment stablecoins. It is unclear why the presumption should operate in this way.

The presumption would be more effective if it applied to any "third party," and not only a narrow class of "related third parties." If the "related third party" limitation is retained, the definition of the term should apply to any third party that acts on behalf of, in coordination with or using funds derived from a PPSI or FPSI to pay interest or yield (including any economically comparable equivalent) to payment stablecoin holders in connection with their payment stablecoins.

Second, the OCC should broaden the application of the presumption to affiliates of an affiliate of a PPSI. For purposes of the proposed presumption, the proposed definition of "affiliate" is broad and would be defined by reference to the Bank Holding Company Act's definition of the term.[36] However, the NPR describes that a person would not be included in the second part of the presumption (relating to having an arrangement to pay interest or yield to payment stablecoin holders in connection with their payment stablecoins) "solely because the person is an affiliate of an affiliate of the issuer."[37]

There is no reason to exclude an affiliate of an affiliate of a PPSI or FPSI from this part of the presumption. The result of such an exclusion would be that a PPSI or FPSI could pay interest or yield (including any economically comparable equivalent) to an affiliate, that affiliate could pass through that interest or yield (including any economically comparable equivalent) to a separate affiliate (one that is unaffiliated with the PPSI or FPSI), and that second-order affiliate could pay the interest or yield (including any economically comparable equivalent) to any holder of a payment stablecoin without being subject to the presumption. Such a result is inconsistent with the prohibition in section 4(a)(11) of the GENIUS Act and the NPR does not explain why the exclusion of second-order affiliates (*e.g.*, the controlling person or a sister company of an affiliate), which would create a significant loophole, is appropriate in light of the statutory text and objective.

We support the inclusion of affiliates of PPSIs and FPSIs in the prohibition and the OCC's proposal to define "affiliate" with reference to the Bank Holding Company Act definition. However, we recommend that the second part of the presumption cover affiliates of an affiliate of a PPSI or FPSI to ensure that the presumption is more effective.

Third, the OCC should clarify how it would review requests to rebut the presumption. The proposed rule would provide that a PPSI or FPSI may rebut the presumption by submitting written materials that, in the OCC's judgment, demonstrate that a presumptively prohibited arrangement is

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[36] *See* Proposed § 15.2 ("Affiliate"); NPR, 91 Fed. Reg. at 10,204, n.22.

[37] NPR, 91 Fed. Reg. at 10,212, n.47.

not prohibited and is not evasion of the prohibition.[38] The OCC, however, does not provide a standard of review under which it would evaluate rebuttal requests.

If the OCC retains the proposed presumption, the OCC should clarify the process for rebutting the presumption. Given the significant adverse effects that can arise from payments of interest or yield (including any economically comparable equivalent) on payment stablecoins (as discussed above), the OCC should require, at a minimum, that a person seeking to rebut the presumption submit materials that demonstrate, by clear and convincing evidence, that a proposed arrangement does not violate the GENIUS Act prohibition, evade that prohibition, or have the economic effect of paying prohibited interest or yield (including any economically comparable equivalent) to a payment stablecoin holder. The OCC should permit the public to submit evidence about such arrangements that potentially violate the prohibition, and should also publish details regarding successful and unsuccessful rebuttal requests (on an anonymous basis, as appropriate).

c. Additional Recommendations

Recommendation 3. *The OCC should define terms applicable to the prohibition.*

The proposed prohibition and rebuttable presumption do not define or otherwise clarify certain key terms that determine their scope. The OCC should define the terms "interest or yield," "pay" and "holder," and clarify the meaning of "solely in connection with" in the prohibition.

i. "Interest or Yield"

The OCC does not define what is or is not included in "any form of interest or yield (whether in cash, tokens, or other consideration)." The OCC should define the terms "interest" and "yield" in the context of the GENIUS Act principles to include any economic benefit provided to a payment stablecoin holder. In the final rule, the OCC should also codify that "interest or yield, *or its economically comparable equivalent*, ..." is prohibited.[39] This definition is consistent with the broad language in the GENIUS Act that "interest or yield" may be paid "in any form," including in "cash," "tokens" or "other consideration."

Accordingly, the OCC should clarify that "interest" or "yield" includes providing rewards, including any type of reward paid through blockchain-based applications, such as decentralized finance protocols or smart contract yield disbursements, resulting in an automatic payout, providing incentives or providing any other economic benefit in connection with the holding, use or retention of payment stablecoins.[40] This principles-based definition of "interest or yield" for purposes of the

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[38] Proposed §§ 15.10(c)(4)(iii) (PPSIs); 15.31(c)(4) (FPSIs).

[39] In particular, the OCC should codify the prohibition in its regulations as follows: "A permitted payment stablecoin issuer shall not . . . pay the holder of any payment stablecoin any form of interest or yield, or its economically comparable equivalent (whether in cash, tokens, or other consideration), solely in connection with the holding, use, or retention of such payment stablecoin."

[40] 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.

GENIUS Act reflects Congress' judgment about the features of that product and the importance of a broad prohibition.

ii. "Pay"

The NPR does not define what it means to "pay" interest or yield to a payment stablecoin holder. The OCC should define this term broadly to include not only arrangements where a PPSI or FPSI "pay" funds, but also arrangements in which a PPSI or FPSI provides value by any other means. This interpretation would prevent attempts at evasion that seek to characterize the provision of value as something other than a payment, even though the economic substance is similar to a payment. For example, there is no reason that providing interest or yield through a discount should be treated differently than a transfer of the same amount of funds.

iii. "Holder"

The OCC should define the term "holder," where the OCC has interpretive authority to do so, to include any person with a legal or beneficial ownership interest in a payment stablecoin, including by reference to applicable state law, such that the prohibition applies to the provision of any economic benefit to a person with a legal or beneficial ownership interest in a payment stablecoin.

The OCC does not propose to define the term "holder," which is a key term in the prohibition (no PPSI or FPSI may "pay the *holder* of any payment stablecoin any form of interest or yield"). For example, in connection with custodial or other arrangements that involve holding a payment stablecoin through an intermediary, it could be ambiguous whether the term "holder" refers strictly to the legal owner of the payment stablecoin (which will often be the intermediary), or instead to the beneficial owner of the payment stablecoin (which will often be the intermediary's customer), or to both. The OCC should confirm that a "holder" includes both the legal owner and the beneficial owner of a payment stablecoin, as well as any person that transfers interest or yield (including any economically comparable equivalent) to such a holder.

iv. "Solely in Connection with"

The OCC also does not elaborate on what it would or would not view as paying interest or yield "solely" in connection with the "holding, use, or retention" of a payment stablecoin.

The OCC should clarify that it interprets the phrase "solely in connection with" according to a principles-based approach, such that it encompasses any provision of an economic benefit to a payment stablecoin holder *unless* the person providing the benefit can demonstrate by clear and convincing evidence that the purpose of the payment is for a substantial business purpose other than incentivizing, or otherwise making payments in connection with, the holding, use or retention of a payment stablecoin.

The word "solely" cannot be used to negate Congress's intent in prohibiting the payment of any form of interest or yield on payment stablecoins.[41] The OCC should read the word "solely" in the broader context of the prohibition's language, which is clearly intended to encompass a broad range of remunerative arrangements (*e.g.*, "*any* form of interest or yield"). Fundamentally, a rule provision that gives a narrow construction to the statutory prohibition on paying yield "solely in connection with" the holding, use or retention of payment stablecoins could potentially be circumvented easily, frustrating the overall statutory intent. For example, interest or yield could be characterized as being paid for some activity that is economically immaterial, even if it does not consist of holding, using or retaining the stablecoin, because in substance the economically immaterial activity would serve as a pretext for paying interest or yield on those otherwise prohibited activities. The OCC should use its anti-evasion authority in section 4(h)(1) of the GENIUS Act to prohibit such arrangements.

III. Scope of Payment Stablecoins Subject to Regulation

The definition of "payment stablecoin" is at the heart of the GENIUS Act. The statute, for example, imposes criminal penalties on any person other than a PPSI that issues a "payment stablecoin" in the United States, subject to limited exceptions.[42] Digital asset service providers ("DASPs") are prohibited from offering or selling any "payment stablecoin" in the United States unless it is issued by a PPSI or a qualifying FPSI.[43]

Under the GENIUS Act, 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 distributed ledger."[44] A payment stablecoin is any digital asset (1) that is, or is designed to be, used as a means of payment or settlement and (2) the issuer of which (A) 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 (B) 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.[45] 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 "security" (with limited exceptions).[46]

The application of the GENIUS Act's definition of payment stablecoin could be unclear in multiple ways. However, the NPR proposes to adopt the statutory definition with only minor,

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41 This interpretation is consistent with the presumption against ineffectiveness, or "the idea that Congress presumably does not enact useless laws." *United States* v. *Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in judgment).

42 12 U.S.C. § 5902(a), (f).

43 *Id.* § 5902(b).

44 *Id.* § 5901(6).

45 *Id.* § 5901(22)(A).

46 *Id.* § 5901(22)(B).

technical changes.[47] Given the importance of this definition to the GENIUS Act's regulatory framework and the OCC's implementation of that framework, the OCC should ensure that the definition is clear and precludes evasion of the statutory framework. In particular, the OCC's definition of the term should be revised in the following ways:

Recommendation 4. *The OCC should clearly distinguish payment stablecoins from deposits of insured depository institutions and branches of foreign banking organizations.*

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."[48] In several contexts, however, this exclusion does not create a sufficiently clear separation between instruments that have the characteristics of, and are clearly intended to be, payment stablecoins and instruments that do not and are not.

Section 3 of the FDIA defines a "bank" to include "any national bank and State bank, and any Federal branch and insured branch."[49] Certain types of entities that are expressly contemplated as eligible to become PPSIs, including uninsured national trust banks, federal branches of foreign banks and some state-chartered depository institutions, are therefore "banks" under the FDIA's definition. Moreover, the FDIA defines "deposit" expansively to include many liabilities of a "bank." For example, a deposit generally includes, among other things, the following:

> the unpaid balance of money or its equivalent received or held by a bank . . . in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a[n] . . . account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name . . . ."[50]

Under this broad definition, which was not altered by the GENIUS Act, it is unclear how to differentiate a liability that is issued by a national trust bank or federal branch (*i.e.*, a "bank" under the FDIA), and that has all the characteristics of a payment stablecoin, from a "deposit."

However, the statutory scheme created by the GENIUS Act provides strong support that Congress sought to create two separate categories of tokenized assets: (1) non-deposit payment stablecoins that are issued by PPSIs and are subject to the regulatory framework under the GENIUS Act; and (2) deposits, including those issued in tokenized form, that are issued by deposit-

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47 Proposed 12 C.F.R. § 15.2 ("Payment stablecoin"). *See* NPR, 91 Fed. Reg. at 10,208–09.

48 12 U.S.C. § 5901(22)(B)(ii).

49 12 U.S.C. § 1813(a)(1). A "State bank" is defined for purposes of the FDIA to include "any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and (B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia . . . ." *Id.* § 1813(a)(2).

50 *Id.* § 1813(*l*)(1).

taking institutions and are in all cases to be governed by existing banking laws. The intent of the GENIUS Act was to create a regulatory framework specific to payment stablecoins, as evidenced by the exclusion of "deposits" from the definition of "payment stablecoin" and the requirement that, if an insured depository institution ("IDI") seeks to issue a payment stablecoin, it must do so through a subsidiary. Moreover, the statute clearly intends that some banks (under the FDIA definition of that term) will issue payment stablecoins.

Accordingly, the OCC should clarify that, if an uninsured, non-deposit-taking entity that is a "bank" under the FDIA (*e.g.*, an uninsured national trust bank) issues an instrument that has the characteristics of a payment stablecoin under the GENIUS Act, it should be viewed as issuing a payment stablecoin and therefore subject to regulation under the GENIUS Act. Similarly, the OCC, in coordination with the Treasury Department, the Federal Deposit Insurance Corporation (the "FDIC") and the other federal payment stablecoin regulators,[51] should affirm that liabilities that have the characteristics of deposits—including those issued by IDIs and other deposit-taking institutions, such as uninsured federal and state branches of foreign banks[52]—are excluded from the definition of "payment stablecoin" in the GENIUS Act and the OCC's implementing rule.

Such an exclusion is appropriate because it recognizes the different underlying natures of payment stablecoins and deposits. As the FDIC recently explained: "Although payment stablecoins and tokenized deposits can both be used as a means of payment and can use the same underlying technological components and characteristics, payment stablecoins and tokenized deposits are *economically and legally distinct*."[53] Deposits, including tokenized deposits, "fund a bank's extensions of credit and represent an integral part of the maturity and liquidity transformation services provided by banks."[54]

A broad exclusion for "deposits" is also appropriate because any tokenized deposit issued by an IDI or an uninsured branch of a foreign bank would be subject to comprehensive regulation and oversight pursuant to the federal banking laws. There would be no clear regulatory purpose in

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51 The federal payment stablecoin regulators are the OCC, the FDIC, the Federal Reserve Board and the National Credit Union Administration (the "NCUA").

52 The definition of "bank" in the FDIA does not encompass state-licensed branches of foreign banking organizations. *See* 12 U.S.C. § 1813(a)(1) (defining "bank" to mean any national bank and state bank, and any "Federal branch and insured branch"). As a result, if an uninsured state branch were to issue a tokenized deposit, it may be unclear whether that instrument should nonetheless be considered a "payment stablecoin," because such an instrument may not be viewed as meeting the definition of "deposit" under the FDIA, and thus unclear whether the uninsured state-licensed branch would need to comply with the requirements of the GENIUS Act to issue such an instrument.

53 FDIC, GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions, 91 Fed. Reg. 18,534, 18,560 (Apr. 10, 2026) [hereinafter FDIC GENIUS Act NPR].

54 *Id.* In contrast, payment stablecoins are generally a "liability where the promise to redeem and to maintain a stable value is backed by highly liquid, short-term, and safe assets (including deposits) held in reserve to mitigate concerns of counterparty risk." *Id.*

requiring these products to also be subject to the GENIUS Act's regulatory framework,[55] and the OCC should accordingly provide certainty that this will not occur.

Recommendation 5. *The OCC should close potential loopholes with respect to the scope of payment stablecoins subject to the GENIUS Act.*

Innovation with respect to payment stablecoins, as well as other digital assets and related technologies, is occurring and will continue to occur. It is important that, in implementing the GENIUS Act, the OCC consider distributed ledger technology not only as it exists today, but also as it may evolve. Accordingly, the OCC should clarify certain aspects of the definition of "payment stablecoin," to ensure that the definition is sufficiently flexible to include future, currently unknown developments.

The OCC should interpret the definition of "payment stablecoin," as well as related definitions (such as of "digital asset" and "distributed ledger"), broadly, to include products and technologies that provide comparable functionality, unless those products are specifically excluded (such as deposits, as discussed above). A broad definition of "payment stablecoin" and related terms would provide regulatory clarity to payment stablecoin holders and market participants, encouraging responsible innovation. We therefore encourage the OCC to clarify that these terms will be interpreted broadly and to use its anti-evasion authority as necessary to prevent evasive arrangements.[56]

Specific arrangements that the OCC should address include the following:

- *Payment stablecoins redeemable for other digital assets*. The definition of "payment stablecoin" excludes a digital asset that is otherwise a payment stablecoin if the issuer will convert, redeem or repurchase the asset for "a digital asset denominated in a fixed amount of monetary value."[57] This exclusion should not permit a person to evade characterization of an instrument as a payment stablecoin by creating a stablecoin that is, for example, redeemable at the option of the issuer *either* for fiat currency (*e.g.*, U.S. dollars) or for another payment stablecoin that itself is redeemable for fiat currency.[58] Such an interpretation would create a loophole that entirely undermines the regulatory framework created by Congress. Accordingly, the OCC should ensure that its interpretation of this aspect of the payment stablecoin definition precludes evasive arrangements and covers any digital asset (other than national currency, deposits or securities that are expressly excluded) that is issued or offered directly or indirectly by an issuer as a stable-value instrument

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55 Indeed, the role of IDIs is to create credit by taking deposits and making loans; Congress did not subject them to the GENIUS Act's regulatory framework because that role is incompatible with the GENIUS Act's limitations on lending and one-to-one reserve asset requirement.

56 12 U.S.C. § 5903(h)(1).

57 *Id.* § 5901(22)(A)(ii)(I).

58 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).

that is substantially economically comparable to and provides substantially the same functionality as a payment stablecoin.

- *Related compliant and non-compliant stablecoins*. The OCC should ensure that its regulations would apply to any arrangement in which an issuer issues to customers GENIUS Act-compliant stablecoins, and those payment stablecoins are converted into or exchanged for non-compliant payment stablecoins (*e.g.*, to provide interest or otherwise), with the non-compliant stablecoins converted into GENIUS Act-compliant payment stablecoins only for the purpose of redemption. This practice should be entirely prohibited.[59]

The OCC's authority to interpret "payment stablecoin" to apply to, and (in some cases) prohibit, these and other arrangements is supported by the anti-evasion authority furnished by section 4(h)(1) of the GENIUS Act. This section provides that the federal payment stablecoin regulators, including the OCC, "shall . . . issue such regulations relating to [PPSIs] as may be necessary to establish a payment stablecoin regulatory framework necessary to administer and carry out the requirements of [section 4], including to establish conditions, *and to prevent evasion thereof*."[60] This authority should be read as applicable to the *entire* regulatory framework contemplated by the GENIUS Act. The best reading of the provision is that the language "and to prevent evasion thereof" modifies "*the payment stablecoin regulatory framework necessary to administer and carry out the requirements* of [section 4]."[61] Because the payment stablecoin regulatory framework under the GENIUS Act depends in considerable part on the scope of the definition of a "payment stablecoin," the anti-evasion authority clearly permits the OCC (as well as

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59 In addition, the OCC should coordinate with the Securities and Exchange Commission (the "SEC") to help ensure comprehensive regulation of the stablecoin market, including with respect to stablecoins that are not GENIUS Act-compliant payment stablecoins, but which also may not fall within the SEC's definition of a "covered stablecoin." The SEC recently issued an interpretation that "the offer and sale of Covered Stablecoins does not involve the offer and sale of securities within the meaning of section 2(a)(1) of the Securities Act or section 3(a)(10) of the Exchange Act." SEC and Commodity Futures Trading Commission, Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Interpretive Rule, 91 Fed. Reg. 13,714, 13,720 (Mar. 23, 2026). The SEC's interpretation appears to use a definition of "Covered Stablecoins" that predated the GENIUS Act and which is inconsistent with the definition of a "payment stablecoin" under the GENIUS Act. *See id.* (citing SEC, Division of Corporation Finance, *Staff Statement on Stablecoins* (Apr. 4, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425 ("[T]his statement addresses stablecoins that are designed to maintain a stable value relative to the United States Dollar, or "USD," on a one-for-one basis, can be redeemed for USD on a one-for-one basis (*i.e.*, one stablecoin to one USD), and are backed by assets held in a reserve that are considered low-risk and readily liquid with a USD-value that meets or exceeds the redemption value of the stablecoins in circulation. As discussed below, we refer to the types of stablecoins addressed by this statement as "Covered Stablecoins.")). As a result, there may be "Covered Stablecoins" that are neither "payment stablecoins" under the GENIUS Act nor "securities" within the meaning of section 2(a)(1) of the Securities Act or section 3(a)(10) of the Exchange Act.

60 12 U.S.C. § 5903(h)(1) (emphasis added).

61 The alternative reading—that the scope of the statutory anti-evasion authority is limited to section 4 of the GENIUS Act—would render the anti-evasion provision so ineffective as to make it meaningless. Under this implausible alternative reading, an issuer could evade the regulatory framework established by the GENIUS Act simply by claiming its stablecoin is not a "payment stablecoin," rendering section 4 inapplicable.

the other federal payment stablecoin regulators) to interpret the definition of "payment stablecoin" to prevent evasion of the regulatory framework.

IV. Custody Requirements

The Associations support the OCC's objective of requiring custodial activities related to payment stablecoins and payment stablecoin reserves to be sufficiently robust. Clear and effective custody requirements are critical to protecting assets held in custody, and consequently to making payment stablecoins stable and safe. To further strengthen the proposed custodial requirements, the OCC should align these requirements with clear best practices for custody activities and clarify the scope of their application.

a. Alignment of Custody Requirements with Best Practices

In crafting the custodial requirements applicable to OCC-regulated custodians of payment stablecoin reserves, payment stablecoins used as collateral or private keys used to issue payment stablecoins (*i.e.*, covered custodians),[62] the OCC should align the final requirements with the following three core principles:

- *Segregation of client assets*: All custodians should segregate customer assets from their own assets in a manner that protects the customer assets from the claims of the custodian's creditors.[63]

- *Separation of custody from other financial activities*: 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, payment stablecoins or other assets 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 over covered assets*: Custodians must maintain control over customer payment stablecoin reserves, payment stablecoins and other assets and have the exclusive ability to transfer assets held for their customers based on the receipt of proper instructions from, or as authorized by, their customers. Custodians

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62 The OCC proposes to define a "covered custodian" as a national bank, federal savings association, federal branch or OCC-supervised PPSI to the extent of such person's provision of custodial or safekeeping services for covered assets. Proposed § 15.20 ("Covered custodian").

63 Importantly, however, and as discussed below, 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.

must implement robust systems for authenticating customer instructions and maintain strict protocols for asset transfers.

To appropriately take account of these core principles in connection with implementing the GENIUS Act, the OCC should calibrate the custody requirements according to whether a custodian can (and does) hold funds directly (*e.g.*, IDIs), as well as whether and to what extent a covered custodian is subject to a federal prudential framework or substantially similar state framework that imposes strict regulatory oversight and requires comprehensive compliance programs.[64]

Recommendation 6. *The OCC should clarify the operation of the segregation requirements and the related exceptions, including with respect to omnibus accounts.*

The OCC proposes to permit a covered custodian to commingle the covered assets that it holds on behalf of multiple covered customers in one or more omnibus accounts, provided that the steps taken by the covered custodian under Proposed § 15.21(b)[65] are adequate to maintain safe and sound practices for the use of omnibus accounts.[66] The OCC should define "omnibus account" and clarify the requirements that apply to omnibus accounts.

The OCC should clarify that an "omnibus account" refers to how covered securities or other assets are held by the covered custodian (*e.g.*, at a central securities depository ("CSD"), such as a Federal Reserve Bank or The Depository Trust Company) and not to the accounts maintained by the custodian on its own books for its customers. This clarification would bring the regulation into alignment with normal practice by securities intermediaries and under other applicable regulations, and is supported by the provisions of Article 8 of the Uniform Commercial Code (the "UCC") that give the customers a property interest in the securities to which they have securities entitlements in their accounts, even if they are commingled at the CSD.[67]

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64 For more information on the extensive requirements to which custodian banks are subject, *see* BPI, Association of Global Custodians and FSF, Comment Letter on Custody of Crypto Assets (Sept. 18, 2025), *available at* https://bpi.com/wp-content/uploads/2025/09/AGC-BPI-FSF-Custody-Comment-Letter-9-18-25.pdf.

65 Under Proposed § 15.21(b), a covered custodian must take "appropriate steps to protect the covered assets of covered customers from the claims of creditors of the covered custodian and any sub-custodian, as applicable, including through adopting, implementing, and maintaining written policies, procedures, and internal controls that are adequate to comply with applicable law and that are commensurate with the covered custodian's size, complexity, and risk profile and with the nature of the applicable covered assets for which it provides custodial or safekeeping services."

66 Proposed § 15.22(b).

67 *See* BPI, American Bankers Association and FSF, Comment Letter on Notice of Proposed Rulemaking on Safeguarding Advisory Client Assets 7 (May 8, 2023), *available at* https://bpi.com/bpi-aba-and-fsf-comment-on-sec-proposed-rulemaking-on-safeguarding-advisory-client-assets/ ("In nearly all cases, [custodied] securities are warehoused or "dematerialized" in a [central securities depository], such as the Depository Trust and Clearing Corporation ("DTCC") in the U.S., which are highly regulated public market infrastructures servicing the entire market, and which custody banks have no control over or ability to select. Custody banks hold and transfer the overwhelming majority of client securities in book-entry form, either directly or indirectly through a [central securities depository]."); UCC Art. 8.

The OCC should expressly provide that a covered custodian *must* establish a separate account (or accounts) in its own books and records for each PPSI, FPSI or other covered customer. Permitting covered custodians to credit covered assets to an omnibus account in its own books and records would be inconsistent with appropriate practices.[68] The covered custodian should be required to credit the securities held by the covered custodian for each such customer to such a separate account in the customer's name. This account structure is necessary to ensure appropriate segregation of reserve assets held by one PPSI, FPSI or other customer from other custodial assets held for other customers and from proprietary assets of the covered custodian.

Within an omnibus account held by the custodian with a CSD, bank or other institution, a covered custodian should be permitted to maintain covered assets and non-covered assets for covered and non-covered customers, provided that the covered custodian can control the assets and provide proper recordkeeping to recognize what portion of the assets are covered assets and related to covered customers.

Additionally, the OCC should confirm that a custodian is *not* responsible for ensuring that a PPSI or FPSI has directed reserve assets to the correct account (*i.e.*, a reserve account and not its proprietary account). This approach would be consistent with requirements under the regulatory framework applicable to futures commission merchants ("FCMs").[69] Under the FCM framework, an FCM bears the obligation to segregate customer assets and avoid commingling them with proprietary assets,[70] while the custodian's role is to recognize and maintain the designated customer account as separate from the FCM's accounts.[71] Thus, in line with the existing regulatory framework, a custodian should be responsible only for ensuring that it keeps any customer account separate from its proprietary account.

Recommendation 7. *The OCC should clarify how proper control over assets operates in the payment stablecoin context.*

The OCC proposes that a covered custodian or sub-custodian maintains "control" of a payment stablecoin or reserve asset held in tokenized form if "it can reasonably demonstrate . . . that no other party, including the covered customer, can transfer the payment stablecoin or tokenized asset using a distributed ledger without the consent of the custodian or sub-custodian."[72] The OCC should clarify how custodians can demonstrate "control" of payment stablecoins and

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68 The OCC should consider whether limited exceptions are appropriate for temporary, operational purposes, such as in connection with FICC-sponsored cleared repo, where a covered custodian acting as a sponsoring member may facilitate settlement and margin flows through omnibus account structures.

69 *See* 17 C.F.R. § 1.20.

70 *Id.* § 1.20(a) and 1.20(e) (stating that "[an FCM] must at all times maintain in the separate account or accounts money, securities and property in an amount at least sufficient in the aggregate to cover its total obligations to all futures customers" and that "[an FCM] shall not commingle futures customer funds with the money, securities or property of such [FCM], or with any proprietary account of such [FCM]").

71 *Id.* § 1.20(d) ("[An FCM] must obtain a written acknowledgment from each [depository]."). *See also id.* Part 1, App'x C.

72 Proposed § 15.21(b)(2)(ii).

other tokenized assets. For example, the OCC should provide specific illustrations of how the concept of "control" applies to multi-signature wallets, smart-contract-based custody structures and other arrangements used by financial institutions to hold and transfer tokenized assets.

Recommendation 8. *The OCC should clarify the expectations for a PPSI that custodies its own reserve assets.*

The OCC does not provide detailed information regarding how the proposed custody requirements apply to a PPSI's holding of its own reserve assets, where no use is made of a third-party custodian. Such "self-custody" of reserve assets may give rise to significant risks that warrant careful regulatory attention.[73] Where the PPSI is simultaneously serving as the issuer of payment stablecoins and the custodian of the reserve assets, there is no third-party custodian to maintain a distinction between the reserve assets and the proprietary assets of the PPSI. As such, there is a greater risk that the PPSI could engage in self-dealing activities. Additionally, as the OCC acknowledges, "[o]perating a custody business generates a separate set of risks from operating a payment stablecoin business, and the risk is potentially increased compared with a standalone custody business."[74]

Accordingly, the OCC should clarify the specific requirements that apply to PPSIs that self-custody reserve assets. For example, when a PPSI holds reserves directly, it is not clear whether the PPSI would be the covered customer, whether the PPSI would be required to separate custody from other financial activities or how the PPSI would document that the assets are segregated from the PPSI's proprietary assets. Consistent with the core principles of custody described above, a PPSI that custodies its own reserve assets should be required to segregate the reserve assets from the PPSI's proprietary and any other assets and separate its custody function from its other financial activities, including payment stablecoin issuance and reserve management. In addition, as discussed below, such self-custody activity should be supported by additional capital requirements, because the PPSI is taking on risks that would otherwise sit with the PPSI's custodian.

b. Scope of Applicability of the Custody Requirements

Recommendation 9. *The OCC should clarify that payment stablecoins "used as collateral" refers only to collateral arrangements to which the custodian is a party.*

Consistent with the GENIUS Act,[75] the OCC's proposed custody requirements would apply to the extent a covered custodian provides custodial or safekeeping services for covered assets, which include "payment stablecoins used as collateral."[76] Neither the GENIUS Act nor the OCC's proposal clarifies the meaning of payment stablecoins "used as collateral," which could be read as referencing: (i) all payment stablecoins held in custody; (ii) all payment stablecoins held in custody

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73 A PPSI should not be treated as engaged in "self-custody" if it places reserve assets at an affiliate that is eligible to provide custody of covered assets (*i.e.*, an "eligible financial institution").

74 NPR, 91 Fed. Reg. at 10,242.

75 12 U.S.C. § 5909(a).

76 Proposed § 15.20 ("Covered assets").

that are pledged to the custodian; (iii) all payment stablecoins held in custody that are expressly pledged to any party in connection with a loan, margin agreement, clearing agreement or otherwise, and with respect to which the custodian has entered into a control agreement or potentially has otherwise been notified of the arrangement; or (iv) all payment stablecoins held in custody that are subject to any form of security interest, whether or not the custodian has entered into a control agreement or received notice.

The OCC should clarify the scope of the term "payment stablecoins used as collateral." It most appropriately refers only to payment stablecoins that are used as collateral in arrangements to which the custodian is a party (whether as the secured party or under a control agreement). It will be difficult, if not impossible, for custodians to identify all circumstances in which a beneficial owner of payment stablecoins has granted any form of security interest or lien on the payment stablecoins, particularly if the security interest or lien is perfected by filing, as opposed to a control agreement involving the custodian, or if it is granted under foreign law. Limiting the scope of "payment stablecoins used as collateral" in this way would ensure that a covered custodian could know the exact set of assets to which the proposed rule's obligations apply. Other, broader definitions could raise significant compliance challenges.

Recommendation 10. *The OCC should clarify the applicability of the custody requirements in connection with foreign custodians and foreign issuers.*

The OCC should clarify its expectations regarding sub-custodial relationships with foreign custodians. Under the proposed rule, a "sub-custodian" is a person that provides custody and safekeeping services to a covered custodian.[77] The definitions of covered custodian and sub-custodian imply that foreign custodians are not "covered custodians" and that sub-custodians for foreign custodians are not "sub-custodians" for purposes of the proposed rule. Accordingly, to the extent that an asset that is a covered asset is placed with a foreign custodian, the custody provisions of the proposed rule would not apply, even if the foreign custodian places the covered asset with a sub-custodian that is itself supervised by the OCC (and therefore potentially a covered custodian). The OCC should expressly confirm this understanding.

In addition, the OCC should clarify that the custody requirements do not extend to custody activities that do not have a U.S. nexus (*e.g.*, holding reserve assets for an FPSI with respect to a payment stablecoin that is not offered or sold to U.S. persons).

c. Obligations of PPSIs and Covered Custodians

Like the GENIUS Act, the proposed rule would impose requirements on covered custodians with respect to their custody of covered assets. However, certain aspects of the proposed rule are unclear as to what obligations apply to a PPSI that places covered assets at a covered custodian and what obligations apply to the covered custodian. The following recommendations address changes to the proposed rule, or related confirmations, that would clarify the scope of obligations applicable to PPSIs and covered custodians.

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[77] Proposed § 15.20 ("Sub-custodian"); *see* Proposed § 15.20 ("Covered custodian").

Recommendation 11. *The OCC should not require a covered custodian to verify the sufficiency of reserve assets held by a PPSI at the covered custodian.*

Under the GENIUS Act, it is the responsibility of a PPSI, not its custodian, to maintain reserve assets backing the PPSI's outstanding payment stablecoins on at least a one to one basis.[78] Requiring a covered custodian to verify that the reserve assets they hold for a PPSI are sufficient to back the PPSI's outstanding payment stablecoins would contradict the text of the GENIUS Act and would be impracticable to fulfill: a covered custodian may not know the outstanding issuance value of a PPSI's payment stablecoins, or whether or to what extent the PPSI holds reserve assets itself or with another custodian. The OCC should therefore confirm that no such obligation applies to a covered custodian with respect to its custody of covered assets.

Relatedly, OCC Interpretive Letter 1172 included an expectation that a national bank that holds deposits serving as reserves for certain types of stablecoins will verify at least daily that the reserve account balances are always equal to or greater than the number of the issuer's outstanding stablecoins.[79] The OCC should confirm that this specific aspect of Interpretive Letter 1172, to the extent that it would apply to any payment stablecoins, has been superseded by the GENIUS Act, and is no longer applicable to national banks simply because they hold deposits for PPSIs.

Furthermore, the OCC should not impose requirements on covered custodians to ensure that withdrawals by a covered customer do not cause reserve assets to fall below a minimum amount. Such a requirement would in turn prompt covered custodians to require every customer to implement novel controls and introduce reconciliation requirements at the custodian, and it would be impractical to implement new coordination and control processes if a PPSI holds reserve assets with multiple custodians. Moreover, this type of requirement would, similar to any obligation that a custodian verify the sufficiency of reserve assets, inappropriately shift the burden of maintaining these assets from PPSIs to their custodians.[80]

Recommendation 12. *The OCC should not impose requirements on covered custodians with respect to transaction services they provide.*

The OCC should not impose specific timeframes in which covered custodians must execute or settle transactions involving covered assets or release covered assets to a covered customer's control. The OCC also should not impose similar requirements by specifying that they must be included in agreements between covered custodians and covered customers. The amount of time in which a covered custodian can execute or settle transactions, or release assets, necessarily differs based on the nature of the relevant reserve assets, market conditions (particularly unusual market

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78 12 U.S.C. § 5903(a)(1)(A).

79 Interpretive Letter 1172 confirms that national banks may hold reserves for certain types of stablecoins as a service to customers in the context of stablecoins backed on a one-to-one basis by a single fiat currency where the bank verifies at least daily that reserve account balances are always equal to or greater than the number of the issuer's outstanding stablecoins. OCC Interpretive Letter No. 1172, at 1–2 (Sept. 21, 2020), *available at* https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2020/int1172.pdf.

80 Clarifying that this responsibility lies solely with the PPSI would be consistent with the regulations governing FCMs under the Commodity Exchange Act. *See generally* 17 C.F.R. § 1.20.

conditions) and standard processing times. It should be an obligation solely of a PPSI or other covered customer to confirm that any covered custodian's cut-off times or other processing times satisfy the requirements to which the PPSI or other covered customer are subject, including to support monetization, redemption or other liquidity requirements. Permitting covered custodians and covered customers the freedom to negotiate these terms enables covered customers to select covered custodians that satisfy their requirements without imposing additional burdens on covered custodians or treating covered custodians as subject to obligations that should be the responsibility of a PPSI or other customer.

Recommendation 13. *The OCC should expressly affirm that a PPSI is permitted to grant a covered custodian a first-priority lien and security interest in, and set-off rights against, the PPSI's reserve assets.*

Consistent with the GENIUS Act,[81] the proposed rule would permit a PPSI to pledge, rehypothecate or reuse reserve assets to "satisfy[] obligations associated with the use, receipt, or provision of standard custodial services."[82] The NPR proposes to interpret this provision as "being related solely to" purposes specified in the GENIUS Act, including "the payment of commissions, taxes, storage, and other charges lawfully accruing in connection with the provision of services."[83]

The OCC's proposal does not recognize that a custodian typically receives a lien and security interest in, and set-off rights against, a customer's assets for more than "sole[ly]" charges accruing in connection with the provision of custodial services. The contractual grant of these interests and set-off rights represents an element of standard custody practices that, among other things, helps ensure coverage of a custodian's advance of funds or securities in furtherance of settling transactions in a custody account, a practice that is a fundamental aspect of securities custodial relationships. For instance, custodians routinely advance funds to permit settlement of a securities purchase before the customer has the funds available to pay for the securities. Under the UCC, the custodian has an automatic security interest in those specific securities to secure the repayment of that advance,[84] and a custodian typically requires a lien on other assets held in custody to cover any losses to the custodian in respect of such advances.[85] In addition, most custodians require a lien to cover other obligations to the custodian in respect of assets held in custody.

Accordingly, the OCC should confirm that the security interest expressly permitted in the GENIUS Act for the "use, receipt, or provision of standard custodial services" permits a covered

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81 *See* 12 U.S.C. § 5903(a)(2)(B).

82 Proposed § 15.10(c)(5)(ii).

83 NPR, 91 Fed. Reg. at 10,212 n.48; *see* 12 U.S.C. § 5909(c)(2)(B).

84 UCC § 9-206.

85 If a custodian acts as agent in arranging permitted transactions by custodial customers in respect of reserve assets, the custodian may be required to provide indemnities and guarantees to third parties in respect of those transactions; the custodian would require a lien for this purpose as well.

customer to grant a lien and security interest in, and set-off rights against, reserve assets and other covered assets in accordance with standard market practices.

Recommendation 14. *The OCC should clarify covered custodians' obligations regarding the valuation of reserve assets.*

The OCC proposes to require that PPSIs "maintain reserve assets that . . . [a]t all times have a total fair value that equals or exceeds the outstanding issuance value of the" payment stablecoins issued by the PPSI.[86] This requirement would obligate PPSIs to determine the fair value of their reserve assets under GAAP.[87] Valuations provided by existing custodians in the market are not calculated in a manner designed to arrive at accounting fair value, but instead are market valuations (*i.e.,* the prices observed in the markets).[88] The OCC should clarify that the pricing provided by covered custodians is not necessarily fair value for purposes of GAAP and that PPSIs are solely responsible for determining the fair value of their reserves.

Relatedly, the OCC should confirm that the final rule does not impose any obligation on covered custodians to update pricing of account assets, including PPSI reserve assets, more than once per day, consistent with industry standards. Although covered custodians may provide covered customers "feeds" with prices observed in the market, it is not possible for covered custodians to know or transmit specific asset prices "at all times" or on an intraday basis.

Recommendation 15. *The OCC should not impose additional reporting obligations on covered custodians.*

As part of its supervision of PPSIs, the OCC may leverage information already reported by covered custodians through existing regulatory frameworks, including Call Reports. However, any additional reporting requirements with respect to reserve assets or other covered assets should be imposed on PPSIs, not covered custodians. Unlike individual covered custodians, PPSIs have visibility across their custodial relationships and can therefore provide a more comprehensive view of the reserve assets and other covered assets they hold. Imposing additional reporting requirements on covered custodians related to reserve assets would inappropriately shift the burdens for PPSI reporting and supervision onto covered custodians.

Recommendation 16. *The OCC should clarify that a covered custodian of covered assets will not be deemed to provide services in a "fiduciary capacity" within the meaning of 12 C.F.R. § 9.2(e) or § 15.30 solely because the covered custodian is providing services that may be considered "fiduciary" in nature under state law.*

The OCC notes in the NPR that a national bank or federal savings association may provide crypto-asset custody services in a fiduciary or non-fiduciary capacity, and that it must comply with

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86 Proposed § 15.11(a)(1).

87 As proposed in the NPR, the term "fair value" would mean the "fair value as determined under GAAP." Proposed § 15.2 ("Fair value").

88 The market valuation of an asset may differ from its accounting fair value if, for example, there is significant stress or volatility in the market for the asset.

the provisions of 12 U.S.C. § 92a and 12 C.F.R. part 9, and 12 U.S.C. § 1464(n) and 12 C.F.R. part 150, as applicable, if it provides custody services in a fiduciary capacity.[89] Although custody services *may* be provided in a fiduciary capacity, the OCC should confirm that a covered custodian of covered assets will not be deemed to provide services in a "fiduciary capacity" within the meaning of 12 C.F.R. § 9.2(e) or § 150.30 solely because the covered custodian is providing services that may be considered "fiduciary" in nature under state law. Instead, the OCC should clarify that it will consider a covered custodian to be acting in a fiduciary capacity only if the covered custodian provides a service listed in 12 C.F.R. § 9.2(e) with respect to a national bank, or § 150.30 with respect to a federal savings association, or agrees in the applicable custody agreement to provide services in a fiduciary capacity.[90]

V. Redemption of Payment Stablecoins

Redemption requirements are critical to ensuring that payment stablecoins function as reliable, stable instruments that holders are able to redeem at par and on demand. Moreover, redemption dynamics may transmit stress to the broader financial system—a run on a payment stablecoin may trigger fire sales of reserve assets (including U.S. Treasury securities) or large withdrawals of deposits held by PPSIs at banks.

Due to the importance of timely redemption to the GENIUS Act regulatory framework and potential risks associated with redemption, the OCC should revise certain requirements in the proposed rule applicable to redemption. In particular, the OCC should clarify the "timely redemption" requirement in the form of a more precise and operationally meaningful standard, including by specifying when the redemption period begins, to ensure consistent expectations and minimize uncertainty. In addition, the OCC should eliminate or substantially revise proposed redemption gates that would require the mandatory period for timely redemption to be extended during stress to a minimum of seven calendar days, and that would in fact prohibit redemption requests from being satisfied during this period absent a determination by the OCC that redemptions may proceed. Finally, the OCC should ensure that redemption fees and any changes to those fees are clearly, prominently and consistently disclosed to all holders, as transparent pricing is critical to maintaining market discipline and protecting consumers. These recommendations would avoid unnecessarily restricting holders' ability to redeem payment stablecoins and would reduce potential risks to the broader financial system.

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89 NPR, 91 Fed. Reg. at 10,211.

90 Fiduciary capacity means "trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a." 12 C.F.R. § 9.2(e) (national banks); *see* 12 C.F.R. § 150.30 (federal savings associations).

a. Timely Redemption

Recommendation 17. *The OCC should clarify that the obligation of a PPSI to make "timely redemptions" may be extended beyond two business days if the requestor has not satisfied reasonable and appropriate compliance checks.*

The GENIUS Act requires that a PPSI's redemption policy provide for "timely redemption" of outstanding payment stablecoins.[91] The OCC proposes to require that a PPSI's redemption policy must provide that "timely redemption may not exceed two business days following the date of the requested redemption."[92] The OCC should clarify that a PPSI may provide in its redemption policy that the timely redemption period may be extended for any time period that is required for a person requesting redemption to satisfy applicable compliance checks. Doing so would recognize a PPSI's legitimate interest in ensuring necessary compliance checks are completed. However, the ability to extend the time for redemption on this basis should not permit any PPSI to use its compliance checks and related processes to withhold or delay redemption. Accordingly, the OCC should permit a PPSI to extend its redemption period only as necessary to complete reasonable and appropriate compliance checks for a holder that has not previously been subject to those checks and "on-boarded" to the PPSI. Moreover, the OCC should require PPSIs to submit a monthly report of any instances in which they extended the redemption period beyond two business days due to the need to complete compliance checks.

Given the 24/7 nature of the payment stablecoin market, the OCC should also clarify exactly when the "timely redemption" period begins (*e.g.*, when a request is submitted or received). For example, if a PPSI receives a redemption request outside of business hours, the OCC should clarify whether the two-business-day period begins at the start of the next business day.

b. Redemption in Stress

Recommendation 18. *The OCC should eliminate the proposed provision that would impose an automatic extension of the timely redemption period to a minimum of seven calendar days in times of stress.*

The OCC would impose a required "gate" on redemptions, automatically extending the period for timely redemption to seven calendar days if a PPSI faces redemption demands in excess of 10 percent of its outstanding issuance value in a single 24-hour period.[93] The proposed provision would prohibit redemption requests from being satisfied during this seven-calendar-day period absent a specific determination by the OCC that redemptions may proceed.[94] This provision would likely exacerbate the stress at the PPSI that has triggered the alterations to standard timely redemption procedures, and potentially transmit that stress to other PPSIs. It would effectively incentivize run behavior by pushing payment stablecoin holders to redeem preemptively, before

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91 12 U.S.C. § 5903(a)(1)(B)(i).

92 Proposed § 15.12(b)(1)(i).

93 Proposed § 15.12(c)(1).

94 Proposed § 15.12(c)(3).

any extension of the period for timely redemption is triggered.[95] The first-mover advantage dynamic that would be created by this aspect of the proposed rule could amplify secondary-market dislocations and increase the risk of instability or failure of one or more PPSIs. It could also prompt fire sales of reserve assets as PPSIs try to meet elevated redemption demand from first movers, and transmit stress at a single PPSI to the broader funding and U.S. Treasury markets, as well as to the banking organizations that hold reserve assets as deposits.[96]

Rather than imposing a redemption gate in times of stress, the OCC should require PPSIs to address redemption scenarios that would involve surges in redemption requests in their risk management frameworks and through mandatory stress tests. The OCC should also require consistent liquidity management standards for all PPSIs, regardless of the timeline for redemption that is set out in their redemption policies. Less stringent standards for PPSIs that provide a longer period to satisfy redemption requests would encourage PPSIs to lengthen their redemption periods. Finally, the OCC should specify a non-exhaustive list of consequences of failing to meet the two-business-day timely redemption period, including, but not limited to, limitations on new issuance, a temporary prohibition on redemption fees, and, as warranted, liquidation.

c. Direct Redemption

Recommendation 19. *The final rule should require PPSIs to offer direct redemption to any payment stablecoin holder, with no minimums, subject to appropriate on-boarding and compliance checks.*

Allowing PPSIs to restrict direct redemption to a limited set of entities would enable a discriminatory practice that is inconsistent with the financial stability objectives of the GENIUS Act. When holders lack direct access to the issuer, they become dependent on secondary markets to liquidate their positions, which can expose both institutional and retail holders to potential losses if market liquidity is insufficient or secondary market prices deviate from par. This dynamic can amplify secondary market price volatility and increase the risk that a payment stablecoin de-pegs, with potential contagion effects that extend beyond the individual stablecoin to the broader

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95 In contrast, the FDIC's proposed discretionary approach to extending the timely redemption period may be less likely to result in such run behavior and thus be less likely to exacerbate stress. *See* FDIC GENIUS Act NPR, *supra* note 53, 91 Fed. Reg. at 18,573.

96 *Cf.* SEC, Final Rule: Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A, 88 Fed. Reg. 51,404, 51,405 (Aug. 3, 2023) (discussing how the tie between weekly liquid asset thresholds and the potential imposition of redemption gates appeared to contribute to investors' incentives to redeem from certain money market funds in March 2020 and affected fund managers' willingness to use available liquidity in their portfolios to meet redemptions) (citing 87 Fed. Reg. 7,248 (Feb. 8, 2022); Report of the President's Working Group on Financial Markets: Overview of Recent Events and Potential Reform Options for Money Market Funds 22–23 (Dec. 2020), *available at* https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf [hereinafter PWG MMF Report] ("Definitive thresholds for permissible imposition of liquidity fees and redemption gates may have the unintended effect of triggering preemptive investor redemptions as funds approach the relevant thresholds.").

financial system.[97] In addition, holders may purchase a PPSI's payment stablecoins with the reasonable assumption that they can directly redeem them with that PPSI. If they do not have a direct redemption right, they may bear the loss in times of stress.

Given the financial stability risks of restricting direct redemption and to prevent consumer harm, the OCC should require PPSIs to offer direct redemption to all payment stablecoin holders, with no minimums, subject to appropriate on-boarding and compliance checks. The OCC should also clarify that satisfying this direct redemption requirement may require coordination between PPSIs and digital asset service providers (and other secondary market participants) to facilitate such direct redemptions (*e.g.*, to facilitate the burning of tokens).

Recommendation 20. *The OCC should ensure that redemption fees and any changes to those fees are clearly, prominently and consistently disclosed to all holders, not just direct purchasers.*

Transparent pricing is critical to maintaining market discipline and protecting consumers. Given the novel technology of payment stablecoins, it may not be sufficient for a PPSI to disclose its redemption fees, as well as changes to those fees, on its website or in connection with a direct purchase or redemption. Rather, the OCC should consider whether it should require PPSIs to use alternative disclosure mechanisms (*e.g.*, through smart contracts) to ensure that any holder of a payment stablecoin is made aware of redemption fees and any changes thereto; if a PPSI is unable to deliver required disclosures to all of the holders of its payment stablecoins, the OCC should prohibit the PPSI from raising its redemption fees or otherwise making changes that could adversely impact holders.

VI. Reserve Assets

The Associations appreciate the OCC's focus on implementing robust reserve asset requirements to better ensure PPSIs remain able to redeem payment stablecoins to holders at par. However, targeted refinements to these requirements would further strengthen the resiliency of the reserve asset framework, including by focusing the requirements to most effectively reduce risks that holder claims could be impaired, without imposing unnecessary burdens. In particular, the OCC should:

- carefully consider the advantages and disadvantages of the two approaches the OCC proposed for the reserve asset diversification requirement;
- remove limitations on holding reserve assets in custody at a single eligible financial institution;
- eliminate the insured deposit requirement that was proposed for large PPSIs;

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[97] For a discussion of how major stablecoins de-pegged during March 2023, *see* Cy Watsky et al., *Primary and Secondary Markets for Stablecoins*, FEDS NOTES (Feb. 23, 2024), *available at* https://doi.org/10.17016/2380-7172.3447.

- decline to expand the list of permissible reserve assets beyond those specified in the statute; and

- provide additional clarity regarding the treatment of reserve assets held at U.S. branches and agencies of foreign banking organizations.

a. Reserve Asset Diversification Requirements

The Associations support robust reserve asset diversification requirements for PPSIs. These requirements can meaningfully reduce risks to holders, and how they are implemented should inform the scope of other obligations imposed on PPSIs that also protect holders (*e.g.*, capital and liquidity requirements). However, it is important that diversification requirements be calibrated in a manner that does not create other risks, for example, by increasing operational complexity, imposing unnecessary burdens or restricting PPSIs from placing reserve assets as deposits. In calibrating the reserve asset diversification requirements, the OCC should also consider whether the concentration limits should differ according to whether the PPSI is part of a broader organization that is subject to consolidated federal prudential regulation and supervision (*i.e.*, if the PPSI is a subsidiary of an IDI or controlled by a bank holding company) and whether the PPSI is placing reserve assets at its parent IDI or an affiliate.

Recommendation 21. *The OCC should carefully consider the advantages and disadvantages of a principles-based versus a quantitative reserve asset diversification requirement.*

The Associations support robust reserve asset diversification requirements for PPSIs, as required by the GENIUS Act.[98] These requirements can meaningfully reduce risks to holders, and how they are implemented should inform the scope of other obligations imposed on PPSIs that also protect holders (*e.g.*, capital and liquidity requirements). However, it is important that diversification requirements be calibrated in a manner that does not create other risks, for example by increasing operational complexity, imposing unnecessary burdens or restricting PPSIs from placing reserve assets as deposits.

In determining how to implement the reserve asset diversification requirements in the GENIUS Act, the OCC should give due consideration to the advantages and disadvantages of each approach the NPR proposed:

- *Option A.* A "principles-based" reserve asset diversification requirement that would combine a diversification standard with an optional safe harbor would provide for a more flexible approach that could be more precisely tailored to the business model and risk profile presented by an individual PPSI. If the OCC finalizes the principles-based approach, the OCC should consider whether other actions may be necessary to mitigate risks to payment stablecoin holders that could arise from inconsistent interpretations and the emergence of potentially less protective reserve asset diversification practices. For example, the OCC could require PPSIs (or certain PPSIs) to hold a "buffer" of reserve assets to protect against decreases in reserve asset valuations. Additionally, or as an alternative, the

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98 12 U.S.C. § 5903(a)(4)(A)(iii).

OCC could impose higher capital requirements on PPSIs to offset these risks of the principles-based approach.

- *Option B.* Imposing reserve asset diversification standards as requirements rather than as a safe harbor would establish clear, minimum diversification standards and reduce the risk of inconsistent interpretations and practices across PPSIs. Consistent baseline requirements would provide greater certainty to payment stablecoin holders, and market participants generally, regarding the resilience of a PPSI's reserve assets and the PPSI's ability to redeem at par. In addition, these minimum standards would ensure that PPSIs maintain adequate diversification on an ongoing basis, rather than relying on principles-based interpretations that the OCC may later determine—including after a disruptive episode arises—were not in fact sufficient.[99]

Recommendation 22. *The OCC should exclude assets held in custody from the proposed concentration limit.*

The OCC has proposed to limit the percentage of reserve assets that a PPSI may hold at a single eligible financial institution—whether held as deposits, reverse repurchase agreements or "securities custodied at any one eligible financial institution"—to 40 percent of a PPSI's total reserve assets.[100] This concentration limit should not apply to securities or other assets held in custody. As described above, the custody function is designed to ensure protection of custodied assets, including so that customer assets are protected from the creditors of the custodian. With these protections, the client whose assets are being held in custody does not have "exposure" to the custodian that is in any sense similar to the exposure that a lender has to a borrower. The client whose assets are held in custody retains ownership over the assets and does not face exposure to the custodian's credit risk. As a result, the risk of "excessive exposure" to a single institution that the OCC seeks to mitigate with this limit does not actually exist with respect to assets held in custody.[101]

Accordingly, the OCC should not impose limits on the extent to which a PPSI may custody reserve assets at a single eligible financial institution. Moreover, imposing a concentration limit on assets held in custody could introduce new, unnecessary risks. Forced spreading of reserve assets across multiple custodians would likely increase operational risk due to the heightened complexity of a PPSI maintaining multiple custodial relationships where it would not ordinarily choose to do

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99 Should the OCC implement quantitative diversification requirements (*i.e.*, Proposed § 15.11(c) under Option B), we recommend that the OCC not adopt a requirement that would prohibit a PPSI from entering into reverse repurchase agreements with counterparties that hold the PPSI's reserve assets as deposits or affiliates of such counterparties. *See* NPR, 91 Fed. Reg. at 10,256 (requesting comment on whether to impose such a requirement). Only certain, typically larger banks and bank-affiliated broker-dealers engage in repurchase transactions. As a result, if a PPSI were to face the prospect of being constrained by reserve asset diversification requirements from entering into a reverse repurchase agreement with a bank that holds a PPSI's reserve asset deposits or an affiliate of such bank, PPSIs would be disincentivized from using larger banks to hold their reserve asset deposits. There is nothing in the GENIUS Act that would support such a disincentive, and it would unnecessarily restrict the ability of PPSIs to place deposits at banks of their choosing.

100 Proposed § 15.11(c)(3) (Option B); *see* Proposed § 15.11(c)(2)(iii) (Option A).

101 NPR, 91 Fed. Reg. at 10,218.

so. It would also be inconsistent with current market practices, in which assets of individual entities, including registered funds and others, are generally custodied at a single custodian.

Recommendation 23. *The OCC should finalize a minimum liquid asset requirement of 20 percent.*

The OCC proposes a minimum liquid asset requirement under Proposed § 15.11(c)(1) that would require a PPSI to maintain at least 10 percent of its reserve assets as deposits or insured shares payable upon demand or money standing to the credit of an account with a Federal Reserve Bank.[102] A 10 percent minimum requirement is likely insufficient to withstand a severe and abrupt increase in redemption requests: a PPSI under such stress may not be able to liquidate its reserve assets in an orderly manner, which could erode the market value of its reserve assets and exacerbate the stress at the PPSI and, potentially, other PPSIs. To help ensure that PPSIs are able to meet redemption requests, even in stress, the OCC should impose a minimum liquid asset requirement of at least 20 percent.

Recommendation 24. *The OCC should eliminate the proposed requirement that larger PPSIs maintain a certain percentage of their reserve assets in the form of insured deposits or insured shares.*

The OCC proposes that larger PPSIs (those with an outstanding issuance value of $25 billion or more) must maintain at least 0.5% of their reserve assets, up to a cap of $500 million, in the form of insured deposits or insured shares at an IDI.[103] Adopting this proposal would mean that a PPSI with $100 billion in outstanding payment stablecoins would be required to hold deposits at 2,000 IDIs (assuming the existing deposit insurance limit of $250,000).[104] This proposed requirement would create excessive operational risk for PPSIs by forcing them to establish and maintain this multiplicity of accounts or to rely on third parties to place deposits at numerous IDIs.

b. Additional Reserve Assets

Recommendation 25. *The OCC should not approve any additional type of reserve asset without considering the safety and soundness of PPSIs, should coordinate with other payment stablecoin regulators on any such approval and should not approve U.S. Treasury securities with a remaining maturity of greater than 93 days as "similarly liquid Federal Government-issued" assets.*

The GENIUS Act permits the OCC to approve, as an eligible reserve asset for PPSIs, any "Federal Government-issued asset" that is "similarly liquid" to the other reserve assets that are expressly eligible under the GENIUS Act. The OCC proposes to implement this requirement by setting out a non-exclusive set of factors it would consider in determining whether a "similarly liquid Federal Government-issued asset" is an eligible reserve asset. In applying these factors, the OCC should not approve additional eligible reserve assets without substantial evidence that doing

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102 Proposed § 15.11(c)(1) (Option B); *see* Proposed § 15.11(c)(2)(i) (Option A).

103 Proposed § 15.11(d).

104 Under the FDIC's proposed rule, deposits held as reserves backing payment stablecoins would not be insured to payment stablecoin holders on a pass-through basis. FDIC GENIUS Act NPR, *supra* note 53, 91 Fed. Reg. at 18,559; *id.*, Proposed § 330.11(a)(3).

so will not detrimentally affect the safety and soundness of PPSIs or pose risks to payment stablecoin holders. Further, the OCC should coordinate with other federal and state payment stablecoin regulators on any evaluation of other "Federal Government-issued assets" to determine if they are appropriate as eligible reserve assets.

The NPR asks specifically whether the OCC should approve as an eligible reserve asset Treasury securities with a remaining maturity of two years or less.[105] Doing so would represent a significant expansion of the scope of Treasury securities eligible to serve as reserve assets, because the GENIUS Act treats Treasury securities as eligible reserve assets only if they have a remaining maturity of 93 days or less. Approving PPSIs to hold Treasury securities with a longer remaining maturity as reserve assets is inconsistent with the line Congress drew in the text of the statute it enacted. Treasury securities with a longer remaining maturity are also not, as a matter of economic and market reality, "similarly liquid," as they may be characterized by significantly less liquidity than Treasury securities with a shorter remaining duration. Moreover, longer-duration Treasury securities pose substantially greater interest rate risk.[106] The OCC therefore should not approve as eligible reserve assets any Treasury securities that have a remaining maturity longer than the 93 days that Congress expressly permitted.[107]

c. Reserve Asset Requirements for FPSIs and Foreign Branches and Agencies

Recommendation 26. *The OCC should define the set of "United States financial institutions" at which an FPSI may hold reserve assets.*

Under the GENIUS Act, except as otherwise provided in a reciprocity agreement entered into by the Treasury Secretary, an FPSI must hold reserves at a "United States financial institution" in an amount sufficient to meet liquidity demands of U.S. customers.[108] The OCC proposes to implement this requirement without significant change.[109] The OCC should, however, define the "United States financial institutions" at which an FPSI may hold reserves to include U.S. branches and agencies of foreign banks in addition to other "eligible financial institutions." Adopting a definition of "United States financial institution" along these lines in the final rule would provide necessary clarity and certainty regarding where FPSIs may hold their reserve assets. Furthermore,

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105 NPR, 91 Fed. Reg. at 10,254.

106 *See* OCC, Comptroller's Handbook: Interest Rate Risk 7 (Mar. 2020), *available at* https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/interest-rate-risk/index-interest-rate-risk.html.

107 The OCC should also clarify that the ability of PPSIs to hold eligible reserves in tokenized form, Proposed § 15.11(b)(8), does not apply to "wrapped" tokens or other synthetic claims that are not themselves a tokenized form of an eligible reserve asset, but instead track an eligible reserve asset's value, including by providing a "receipt" for the underlying asset. Permitting such tokenized assets to be eligible reserve assets would introduce additional risks not contemplated by Congress in its specification of eligible reserve assets. For example, these assets frequently require reliance on third parties, smart contracts and redemption mechanics, which introduce risks not present in respect of the underlying assets.

108 12 U.S.C. § 5916(a)(3).

109 Proposed § 15.31(a)(3).

nothing in the GENIUS Act restricts FPSIs from holding reserve assets at a U.S. branch or agency of a foreign banking organization ("FBO"), which is appropriate in view of the fact that these institutions are subject to robust regulation and supervision.

Recommendation 27. *If the final rule permits issuance of multiple brands of payment stablecoins, it should include appropriate safeguards for separation of reserve assets.*

The OCC notes that it "has considered and is requesting comment on whether to prohibit" a PPSI from issuing more than one brand of payment stablecoin.[110] If the final rule allows for issuance of multiple brands of payment stablecoins, it should impose requirements to ensure that the reserve assets backing each brand of payment stablecoin are fully legally segregated and to mitigate potential contagion between the brands.

VII. Safety and Soundness

The GENIUS Act requires that the OCC's regulation, examination and supervision of PPSIs "prioritize[] their safety and soundness,"[111] while simultaneously promoting the development and use of payment stablecoins. As payment stablecoins become more widely used, the more essential the safety and soundness of each PPSI becomes. If the regulatory framework does not develop commensurately with the development of the payment stablecoin market more generally, the very success of the market could threaten the broader financial system.

The statute also directs the OCC to implement specific capital requirements, the liquidity standard under section 4(a)(1)(A) of the GENIUS Act, and reserve asset diversification and interest rate risk management standards, as well as other risk management requirements and standards, to promote the safe and sound operation of PPSIs.[112] As a foundational step in calibrating an appropriate regulatory framework for PPSIs, the OCC should confirm the underlying nature of the legal rights and obligations of a payment stablecoin as a commercial law matter. The legal nature of an instrument has profound implications for designing the associated regulatory framework, and helps explain why, for example, the prudential and related requirements that apply to banks as issuers of deposits are very different from those that apply to money market funds. The different regulatory frameworks reflect, in part, the distinction between the legal nature of deposits (which are liabilities of a bank) and money market fund shares (which are generally considered equity of the money market fund).

In this section, we address first why the OCC should affirm that payment stablecoins issued by a PPSI must be in all cases unsecured debt obligations of the issuing PPSI. We then address the implications of this characterization for the legal arrangements that govern how PPSIs hold reserve assets and the calibration of appropriate capital requirements, risk management expectations and restrictions on permissible activities.

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110 NPR, 91 Fed. Reg. at 10,213.

111 12 U.S.C. § 5904(a)(1)(B).

112 *Id.* § 5903(a)(4).

a. Legal Nature of a Payment Stablecoin

Recommendation 28. *The OCC should affirm that a payment stablecoin is a debt obligation of its issuer.*

The GENIUS Act does not expressly address the legal nature of a payment stablecoin. The OCC similarly does not expressly discuss in the NPR the underlying legal nature of a payment stablecoin, which—if not clarified in the final rule—would create uncertainty regarding the rights of payment stablecoin holders and the duties and obligations of PPSIs. The GENIUS Act does, however, include several provisions that make clear that a payment stablecoin issued by a PPSI must be an unsecured debt obligation—that the PPSI owns *as principal* the reserve assets that back the payment stablecoins it has issued and undertakes a contractual obligation *as principal* to pay the holder of its payment stablecoin when the holder presents a payment stablecoin for conversion, redemption or repurchase.

The text of, and protections provided by, the GENIUS Act clearly contemplate that a payment stablecoin is a debt obligation of its issuer:

- *First*, the definition of a "payment stablecoin" provides that the issuer of the payment stablecoin "is *obligated* to convert, redeem, or repurchase" it,[113] implying the existence of a corresponding claim against the *PPSI* (and not, for example, that the payment stablecoin holders themselves own the reserve assets). Nothing in this definition contemplates any arrangement other than that the PPSI itself is liable for the required conversion, redemption or repurchase of the payment stablecoin.
- *Second*, the insolvency protections in the GENIUS Act assume that, if a PPSI enters an insolvency proceeding, a payment stablecoin holder's claim is one against the PPSI and that the PPSI owns the reserve assets. For example, section 11(a)(1) of the GENIUS Act establishes a priority scheme that preferences the claims of payment stablecoin holders over the claims of the PPSI and any other creditor of the PPSI with respect to the required payment stablecoin reserves.[114] There would be no need for Congress to have established these statutory priorities if the contemplated underlying legal structure were one in which the payment stablecoin holders themselves, rather than the PPSI entity, owned the reserve assets. The priority scheme established by the GENIUS Act does, however, correspond to an underlying legal structure in which the PPSI owns the reserve assets and undertakes a contractual redemption obligation to each payment stablecoin holder.
- *Third*, the prohibition on the payment of interest or yield in section 4(a)(11) of the GENIUS Act is consistent with the PPSI acting as principal with respect to the reserve assets, such that it has no obligation to (and may not) pass through any interest or yield derived from the reserve assets to the payment stablecoin holders.

Likewise, the FDIC also appears to recognize that a payment stablecoin is a debt obligation of the issuer. In its recent notice of proposed rulemaking to implement the GENIUS Act, the FDIC

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113 *Id.* § 5901(22)(A)(ii)(I) (emphasis added).

114 *Id.* § 5910(a)(1).

stated: "Payment stablecoins generally represent *a PPSI's liability* where the promise to redeem and to maintain a stable value is backed by highly liquid, short-term, and safe assets (including deposits) held in reserve to mitigate concerns of counterparty risk."[115]

The OCC should therefore confirm that this is the contemplated legal nature of every payment stablecoin to be issued by a licensed PPSI.

Recommendation 29. *The OCC should finalize the proposed segregation requirements and affirm that a PPSI holds reserves on behalf of, or subject to the interests of, the holders of its payment stablecoins, for the specific purpose of meeting their claims.*

The GENIUS Act and the regulations that are required to be promulgated thereunder create specific protections for the benefit of payment stablecoin holders. For instance, section 10(b)(1) of the GENIUS Act requires a covered custodian to "treat and deal with the payment stablecoins, private keys, cash, and other property of a [customer] as belonging to such customer and not as the property of such person."[116] Consistent with this requirement, the NPR proposes to require a PPSI to segregate the reserve assets from the other assets owned or held by the PPSI as well.[117]

The Associations strongly support the NPR's proposal to require segregation of reserve assets by the PPSI from the proprietary assets of the PPSI, as well as to require the custodians for those assets to segregate those assets from the *custodian's* proprietary assets. Such segregation may be critical to the ability of payment stablecoin holders to realize the value of the reserve assets in the event of the PPSI's failure. As a result, such segregation is important to the stability and resilience of payment stablecoin arrangements. Without full segregation of reserve assets, conflicts of interest and competing claims on reserve assets are more likely to arise; such claims may impair the availability of the reserve assets in the event of a bankruptcy or other insolvency proceeding in respect of the PPSI.

To strengthen market confidence in payment stablecoins and reduce future uncertainty, the OCC should also affirm that a PPSI holds reserves on behalf of the holders of its payment stablecoins, for the specific purpose of meeting their claims. If the OCC does not do so, there could be significant uncertainty about how to resolve the claims of payment stablecoin holders against the PPSI in the event of the PPSI's failure, which could exacerbate run dynamics and contagion within and beyond the payment stablecoin market.

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115 FDIC GENIUS Act NPR, *supra* note 53, 91 Fed. Reg. at 18,560 (emphasis added).

116 12 U.S.C. § 5909(b)(1); *see* 7 U.S.C. § 6d(b) (similar); *In re Smith*, 72 B.R. 61 (N.D. Iowa 1987). The GENIUS Act also prohibits a PPSI from using the reserve assets for its own purposes, *see* 12 U.S.C. § 5903(a)(2), requires a PPSI to account to the holders for the reserves that are held, *id.* § 5903(a)(1)(C), (3), and requires a PPSI to disclose to creditors that the reserve assets are held as reserves, subject to the bankruptcy priority and limitations of the statute, *see id.* § 5903(a)(1)(C).

117 Proposed § 15.11(a)(1); *see* 17 C.F.R. §§ 1.20(a), (i); 22.2; *Grede* v. *FCStone, LLC*, 485 B.R. 854, 871 (N.D. Ill. 2013).

b. Capital Requirements

As issuers of debt obligations that are expected to maintain a stable value and be used as a means of payment, PPSIs should be subject to appropriately calibrated capital requirements. These capital requirements would help to promote the resilience of the PPSI in meeting its obligations based on the operational, liquidity, credit, market and interest rate risks to which it is subject. Although all PPSIs will be subject to this array of specified risks, the proposal would not implement a standardized framework for determining the capital requirements applicable to PPSIs. Instead, the OCC has proposed to implement *individualized*, non-public capital requirements for each PPSI.

The OCC's proposed individualized approach to setting capital requirements would undermine market confidence in the capital sufficiency, and therefore the stability, of PPSIs. It would also undermine the values that are served by the requirement under the Administrative Procedure Act to undertake notice-and-comment rulemaking, in that the OCC has not provided the public with a concrete set of proposed capital requirements that the public can evaluate and comment upon; rather, the OCC is presenting the public with a "black box."[118] The proposed bespoke approach to setting capital requirements also raises questions regarding fairness among OCC-regulated PPSIs, because it will likely be difficult for market participants and the public to determine whether PPSIs that present similar risk profiles, business models and activities are subject to different regulatory requirements. If the firm-specific capital requirements applied to each PPSI are not publicly disclosed, this approach would also deprive consumers of the opportunity to choose among PPSIs based on their capital adequacy. Moreover, if a PPSI were to experience stress, there could be a widespread perception that the entire payment stablecoin market—not just the troubled PPSI—might be undercapitalized, making the market susceptible to contagion risk.

Accordingly, on both procedural and substantive grounds, that the OCC should adopt a standardized framework for establishing capital requirements for PPSIs, in accordance with the following recommendations:

i. Minimum Capital Calculation

Recommendation 30. *The OCC should establish, by regulation, a standardized framework for determining risk-based capital requirements for PPSIs that reflect the risks faced by PPSIs, including operational risk, liquidity risk, credit risk, interest rate and other market risk. The OCC should also establish a minimum leverage ratio for PPSIs.*

Establishing a standardized framework for determining risk-based capital requirements for PPSIs would promote comparability, reduce regulatory uncertainty and help ensure that all PPSIs

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[118] Arguably, this approach is inconsistent with the GENIUS Act, which directs the OCC to "issue *regulations* implementing . . . capital requirements applicable to permitted payment stablecoin issuers." 12 U.S.C. § 5903(a)(4)(A) (emphasis added). Although the GENIUS Act contemplates that the OCC may "tailor or differentiate among issuers on an individual basis or by category," *id.* § 5903(a)(4)(B)(i), the proposed rule would effectively substitute the establishment of capital requirements by *regulation* with an individualized *adjudication*.

maintain sufficient loss-absorbing capacity to support ongoing operations under both normal and stressed conditions. In addition, the OCC should adopt a minimum leverage ratio requirement as a simple, transparent backstop to risk-based measures to require PPSIs to maintain a minimum baseline level of capital relative to their exposures, regardless of risk-weighting assumptions. Together, these measures would better align the prudential regulatory framework applicable to PPSIs with the established benchmark principle of "same risk, same regulation," and would reduce the potential for adverse spillovers to the real economy and credit creation, protect consumers and support overall financial stability.

In the course of establishing appropriate standardized risk-based capital requirements, the OCC should tailor them as necessary to a PPSI's risk profile, business model, complexity, size, activities and other risk-related factors.[119] It is critical, however, for the OCC to adopt a framework that permits market participants and the public generally to evaluate the substantive implications and consequences of the tailoring framework adopted. Accordingly, to facilitate a consistent and comprehensive approach to evaluating the risk of various exposures and assigning the associated capital requirements, the OCC should calibrate these risk-based requirements using the same or similar methodologies that apply in the bank regulatory context (*e.g.*, with respect to risk weights and deductions). In addition, the OCC should calibrate capital requirements applicable to PPSIs based specifically on the anticipated stringency of the supervisory framework applicable to PPSIs. For example, to the extent that the broader supervisory framework is expected to be less stringent than that applicable to insured national banks and federal savings associations (which should not be the case, as discussed below), the OCC should consider whether more stringent capital requirements are appropriate to compensate for this difference.

Notably, the NPR states that the OCC's "proposed approach for capital focuses primarily on the *operational risk* of stablecoin issuers."[120] Operational risk is a significant risk faced by PPSIs, however, it is far from the only relevant risk. Moreover, although the proposed rule's reserve asset requirements (and related diversification and maturity requirements) would, to varying degrees, mitigate certain credit risk, liquidity risk, interest rate risk and other market risks, they would neither eliminate those risks nor obviate the need for capital requirements set under a standardized framework and a robust operational backstop, as discussed below. These risks are especially important because a PPSI, unlike a non-depository trust bank, issues deposit-like liabilities that are supported by its reserve assets.[121] As a result, the OCC should take into consideration the on-balance-sheet risks to which a PPSI is exposed—not just operational risk—in determining applicable capital requirements.

Although a standardized framework for establishing capital requirements for PPSIs would provide significant benefits for PPSIs, stablecoin markets and financial stability more generally, if

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119 *See* 12 U.S.C. §§ 5903(a)(4)(A)(i)(I) (requiring capital requirements to be tailored to the business model and risk profile of PPSIs) and 5903(a)(4)(B)(i) (listing potential tailoring factors).

120 NPR, 91 Fed. Reg. at 10,238 (emphasis added).

121 A PPSI therefore differs considerably from national trust banks, which take on far less principal risk than a PPSI. As a result, the OCC should not analogize to the process it applies "when determining minimum capital requirements for chartering national trust banks." *Id.*

the OCC declines to adopt standardized requirements, we recommend that the OCC modify its proposed approach to setting individualized PPSI capital requirements, as discussed below. These recommended changes would better reflect the risks to which PPSIs are subject and help ensure that PPSIs hold adequate capital against those risks. The changes we recommend are the following:

- *First*, the OCC should implement capital requirements for PPSIs that are appropriately calibrated and reflect the range of risks to which a PPSI is exposed, including as a result of: (i) its outstanding issuance value; (ii) its exposure to interest rate risk and other market risk; (iii) the credit risk of its reserve assets; and (iv) the fair value of assets held in custody by the PPSI, as applicable. The NPR notes that the OCC is considering these types of "variable capital components."[122] In the absence of a standardized framework for establishing capital requirements, the OCC should incorporate each of these variable capital components in a comprehensive and consistent manner such that the ultimate capital requirement established for each PPSI appropriately reflects the risks of its reserve assets and the full scope of its activities and exposures. A variable capital component that reflects the PPSI's outstanding issuance value would be especially important for appropriately calibrating capital requirements.

- *Second*, the OCC should implement capital requirements that reflect any foreign exchange risk faced by the PPSI in respect of its issuance of payment stablecoin denominated in foreign currencies. With respect to foreign exchange risk, the OCC should also establish requirements for permissible PPSI hedging activities and associated capital treatment, acceptable risk-management tools and reporting of foreign exchange exposures.

- *Third*, the OCC should impose most, if not all, of the same deductions from regulatory capital for a PPSI as are currently applicable to national banks. The OCC requires national banks to automatically deduct from regulatory capital, among other things, goodwill and deferred tax assets ("DTAs") that arise from net operating loss ("NOL") and tax credit carryforwards, as well as other deductions that apply if specified items exceed a threshold based on the firm's common equity tier 1 capital (including DTAs arising from temporary differences that cannot be realized through NOL carrybacks).[123] The OCC, however, does not propose to require the same deductions for PPSIs, noting that the deductions for national banks implement statutory requirements applicable to IDIs or "because the potentially volatile valuation of those assets reduces their ability to absorb losses."[124] It is unclear why the same rationale would not apply to PPSIs. The NPR also references that: "[w]hile goodwill and other intangible assets may exhibit similar valuation volatility on the balance sheets of [PPSIs], these risks may be addressed through the backstop

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122 *Id.* at 10,240–42.

123 *See* 12 C.F.R. § 3.22(a)(1)–(3), (d).

124 NPR, 91 Fed. Reg. at 10,239.

requirement and proposed requirements around risk management, capital adequacy assessments, and liquidity."[125] The OCC's reasoning fails to justify the proposed differentiated, less rigorous treatment for PPSIs, because national banks are similarly (if not more so) subject to comprehensive risk management, capital adequacy and liquidity frameworks.

- *Fourth*, as a condition for approval, the OCC should require the top-tier parent or other large shareholder (as applicable) of a large PPSI (*e.g.*, a PPSI with more than $50 billion in outstanding issuance value) to enter into commitments with the OCC under which the parent or other large shareholder of the PPSI would commit to act as a source-of-strength for the PPSI, to include providing financial support to the PPSI if the PPSI experiences significant redemptions or otherwise experiences stress that could lead to its failure.[126]

ii. Operational Backstop

The NPR would require each PPSI to maintain an "operational backstop" that consists of assets equal to twelve months of total expenses.[127] This amount would be calculated based on the PPSI's actual expenses for the previous four quarters or, if the PPSI was not in operation during any of the past four quarters, reasonably determined expenses.[128] As proposed, the list of assets eligible to satisfy the operational backstop requirement would consist of U.S. coins and currency, money standing to the credit of an account with a Federal Reserve Bank, fully insured deposits or Treasury securities with an initial or remaining maturity of 93 days or less.[129]

We broadly support including an operational backstop requirement for PPSIs, subject to the recommendations discussed below. In particular, the OCC should amend the calibration of the operational backstop to avoid providing incentives for a PPSI to minimize its risk management and compliance expenses and to better account for the future operational risks a PPSI is likely to face. In addition, the final rule should permit a PPSI to hold uninsured deposits as eligible assets for purposes of satisfying the backstop requirement. The OCC also should specify that the PPSI must fund the operational backstop amount with capital.

Recommendation 31. *The OCC should modify the calibration of the operational backstop.*

As proposed, the calibration of the operational backstop would provide incentives for a PPSI to minimize its expenses as much as possible, including expenses related to risk management and compliance. The proposed calibration would also fail to account for emerging and anticipated

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125 *Id.*

126 In the money market fund context, sponsor support has demonstrably mitigated stress. *See* PWG MMF Report, *supra* note 96, at 4 n.3 ("A number of other funds that suffered losses in 2008 avoided breaking the buck because they received sponsor support.").

127 Proposed § 15.41(b)(1).

128 Proposed § 15.41(b)(1)(i)–(ii).

129 Proposed § 15.41(b)(2).

future changes to a PPSI's risk profile because it would be based on backward-looking metrics, such that the operational backstop could understate the PPSI's actual risk.

Accordingly, the OCC should modify the calibration of the operational backstop such that the backstop (i) does not incentivize a PPSI to minimize its compliance or risk management expenses, (ii) incorporates forward-looking metrics (*e.g.*, projected redemption volume, issuance value) and (iii) is subject to periodic review and adjustment based on a PPSI's growth and changes to its business model and risk profile.[130] For example, the operational backstop could be based on the outstanding issuance value of a PPSI (*e.g.*, a certain number of basis points for every dollar of outstanding issuance value), with graduated adjustments for outstanding issuance value that exceeds a specified threshold, and incorporate a measure of the PPSI's projected issuance value over a specified time.

Recommendation 32. *The OCC should expressly require a PPSI to fund its operational backstop with capital.*

In the section of the NPR that analyzes the expected costs and cost savings of the proposed rule, including capital requirements, the OCC appears to assume that the backstop requirement would be funded with capital.[131] However, the text of the proposed rule would not specifically require a PPSI to fund the operational backstop with capital and, on its face, would not prevent a PPSI from funding its operational backstop with debt. If a PPSI were to do this, it would become more levered and less financially resilient, which would undermine the intended purpose of the operational backstop requirement. Allowing the operational backstop to be funded with debt could also increase the risk that, in the event of a PPSI's failure, there would be competing creditor claims against the assets of the PPSI.

The OCC should specify in the final rule that the operational backstop must be funded by capital (*i.e.*, that the requirement for a PPSI to maintain a set of eligible assets in the amount of the required operational backstop represents an additional capital requirement for a PPSI). One method for achieving this outcome would be to require a PPSI to deduct its operational backstop from its regulatory capital.

Recommendation 33. *The OCC should include uninsured deposits as an asset eligible to be held in satisfaction of the operational backstop requirement.*

Under the proposed rule, deposits that a PPSI places must be fully insured to be eligible to satisfy the operational backstop requirement. The NPR does not explain why uninsured deposits held at IDIs or at other institutions subject to federal prudential supervision (*e.g.*, U.S. branches of FBOs), and which have access to contingent liquidity facilities, are insufficient for this purpose. Moreover, analogous "backstop" requirements in other contexts, including for designated systemically important financial market utilities that are supervised by the Federal Reserve Board,

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130 To facilitate this review, the OCC should require a PPSI to submit documentation on the calculation of its operational backstop.

131 *See* NPR, 91 Fed. Reg. at 10,280.

do not impose similar restrictions on the types of deposits that may be held to satisfy the requirements.[132]

Requiring deposits to be fully insured could also impose operational burdens and increase operational risk: if a PPSI of any substantial size seeks to hold its backstop assets in the form of deposits, it would be effectively required to establish deposit accounts at a large number of banks or to use reciprocal deposit networks or other types of deposit placement arrangements. The OCC should therefore modify the operational backstop requirement to provide that the backstop may consist of insured *or uninsured* deposits at an IDI or other depository institution subject to federal prudential supervision, such as a U.S. branch of an FBO.

iii. Foreign Payment Stablecoin Issuers

Recommendation 34. *The OCC should require that FPSIs that seek to register with the OCC be subject to home-country capital requirements that are consistent with the requirements imposed on PPSIs.*

The proposed provisions relating to registration of FPSIs that seek to offer and sell payment stablecoins in the United States do not include any provisions regarding the capital adequacy of FPSIs. However, FPSIs may present heightened risks relative to PPSIs because the OCC may have less visibility into, and less ability to impose controls over, the FPSI and related organizations that support the FPSI's U.S. payment stablecoin activities. Applying an appropriate standard for the capital levels of FPSIs would assist in mitigating these risks. Moreover, if the OCC were to permit significant differences in the capital requirements applicable to FPSIs and PPSIs, the result could be a "race to the bottom" that results in competitive advantages to FPSIs relative to PPSIs: in particular, an FPSI operating in the United States could be able to compete on the basis of a weaker capital framework abroad—allowing the FPSI to engage in payment stablecoin activities more cheaply—instead of competing with PPSIs by offering a better product. Not only would this endanger the claims of U.S. payment stablecoin holders, it would also undermine confidence in the payment stablecoin market and provide inappropriate incentives to conduct payment stablecoin activity offshore.

This concern is broadly incorporated within the current bank regulatory framework applicable to FBOs. For example, under the requirements applicable to FBOs under the Federal Reserve Board's Regulation YY, a large FBO operating in the United States must certify to the Federal Reserve Board that it satisfies consolidated home-country capital requirements consistent with the Basel framework.[133] The OCC should similarly require that FPSIs that seek to operate in the United States must be subject to home-country capital requirements that are consistent with the

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[132] *See* 12 C.F.R. § 234.3(a)(15)(i) (requiring any Federal Reserve Board-supervised systemically important financial market utility to maintain a buffer of "unencumbered liquid financial assets").

[133] 12 C.F.R § 252.143(a)(1), 252.154(a)(1). Although this requirement applies only to large FBOs that are subject to enhanced prudential standards, there are similar requirements elsewhere in the current bank regulatory framework that apply to FBOs more broadly. *See, e.g.*, 12 C.F.R. § 225.90(b)(1)(i). Similarly, prior to the Federal Reserve Board approving an application by a foreign bank to establish a U.S. branch, the Federal Reserve Board must determine that "the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to be approved for branching under [domestic laws]." 12 C.F.R. § 211.24(c)(3)(i).

capital requirements to which domestic PPSIs are subject. In order to facilitate this comparison, it is critical that the OCC establish a standardized framework to determine the minimum capital requirements applicable to domestic PPSIs, as described above.

iv. Proposed Adjustments to the Bank Capital and Standardized Liquidity Rules

Recommendation 35. *The OCC should not permit all uninsured national trust banks, including those that are not PPSIs, to elect to follow the capital requirements applicable to PPSIs.*

Currently, uninsured national trust banks are subject to the generally applicable capital requirements prescribed under Part 3 of the OCC's regulations, including the risk-based and leverage capital requirements that apply to all member banks of the Federal Reserve System[134] and to IDIs.[135] The NPR, however, would permit any uninsured national trust bank—regardless of whether it is a PPSI—to opt out of this generally applicable capital framework and instead elect to be subject to the individualized OCC-determined capital requirements that would apply to OCC-supervised PPSIs.[136] For national trust banks that are PPSIs, the OCC justifies this proposed treatment by explaining that the capital required under Part 3 may be "significantly in excess of capital that would be required for other types of [PPSIs] under the proposal."[137] In proposing to extend the ability to opt-in to the PPSI-specific capital regime to *all* national trust banks—even those that are not PPSIs— the NPR asserts that offering this election would "establish parity" among all types of uninsured national trust banks, whether licensed as a PPSI or not.[138]

Although the Associations agree that capital requirements should be commensurate with the activities and risks of a banking organization, allowing *any* uninsured national trust bank to opt into the proposed individualized framework applicable to PPSIs would violate this principle and therefore be inappropriate. The individualized capital framework that the NPR proposes for PPSIs (which, as discussed above, should be replaced with a more standardized framework for establishing capital requirements) has been designed by the OCC specifically for PPSIs based on their business models, reserve structures and risk profiles. Extending that framework to uninsured national trust banks that are *not* PPSIs would therefore inevitably result in applying a capital framework to a type of institution whose particular risks were not considered in its design. Instead, potential revisions to the capital framework applicable to uninsured national trust banks that are not PPSIs should be considered in a separate proposed rulemaking, if undertaken at all.

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134 All national trust banks are members of the Federal Reserve System.

135 NPR, 91 Fed. Reg. at 10,244.

136 Proposed § 15.41(d).

137 NPR, 91 Fed. Reg. at 10,244.

138 *Id.*

Recommendation 36. *The OCC should provide that an insured national bank or federal savings association that is consolidated with a PPSI would deconsolidate that PPSI for purposes of applying the standardized liquidity rules.*

Consistent with the GENIUS Act,[139] the OCC proposes that an insured national bank or federal savings association that is consolidated with a PPSI would deconsolidate any PPSI from its balance sheet and make certain other adjustments when calculating applicable capital ratios.[140] The OCC should similarly provide for an insured national bank or federal savings association to deconsolidate any subsidiary that is a PPSI for purposes of determining the parent national bank's or federal savings association's high-quality liquid asset ("HQLA") amount and available stable funding ("ASF") amount (if applicable). Under this construct, for example, the parent insured national bank or federal savings association would not include HQLA held by a PPSI subsidiary as eligible HQLA of the insured national bank or federal savings association for purposes of its LCR and would not include ASF of the PPSI subsidiary in the parent national bank or federal savings association's ASF amount in its NSFR. Similarly, the PPSI's exposures would not factor into the parent holding company's calculation of its net cash outflows or required stable funding ("RSF").

The LCR currently permits a parent insured national bank or federal savings association to include eligible HQLA held by a U.S. consolidated subsidiary in its own HQLA amount up to the amount of the subsidiary's net cash outflows.[141] In addition, a parent insured national bank or federal savings association may include ASF of the consolidated subsidiary in its ASF amount up to the RSF amount of the consolidated subsidiary.[142] For consistency with the deconsolidation provisions for purposes of the regulatory capital rules, the standardized liquidity rules should provide for a parent insured national bank or federal savings association to deconsolidate a PPSI subsidiary for purposes of the LCR and NSFR. This recommended approach also would mitigate potential unintended consequences for an insured national bank or federal savings association, such as the potential for increased "trapped liquidity" at consolidated subsidiaries, such as a PPSI.

Recommendation 37. *The OCC should coordinate with the other federal banking agencies to amend the standardized bank capital and liquidity requirements to provide for appropriate treatment for payment stablecoins and reserve assets.*

The OCC should coordinate with the federal banking agencies and other federal and state regulators on revisions to regulations applicable to banking organizations to make appropriate changes in light of the GENIUS Act. In particular, consistent with section 16(b) of the GENIUS Act, the OCC and the other federal banking agencies should amend the standardized regulatory capital and liquidity requirements to provide for appropriate treatment of payment stablecoins and other digital assets. There is a risk that activity involving these assets will be unnecessarily and

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139 12 U.S.C. § 5903(a)(4)(C)(iii).

140 Proposed § 3.22(i)(1).

141 12 C.F.R. § 50.22(b)(3).

142 *Id.* § 50.109(a).

inappropriately concentrated outside of the banking system to the extent that these requirements are not appropriately calibrated for payment stablecoin and digital asset activities.

c. Risk Management

The collapse of a large, supposedly comprehensively regulated PPSI could have significant implications for financial stability and the broader economy. To further support financial stability and to help ensure consistent supervision, the OCC should strengthen the risk management framework applicable to PPSIs and align it, where appropriate, with the risk management requirements and expectations applicable to banking organizations.

i. Unsafe or Unsound Practices

Recommendation 38. *The OCC should expressly prohibit PPSIs from engaging in unsafe or unsound practices.*

The GENIUS Act authorizes the OCC to issue "regulations and orders as necessary to ensure financial stability and implement" the principal requirements applicable to PPSIs.[143] The GENIUS Act also authorizes the OCC to examine a PPSI with respect to, among other things, risks associated with the PPSI that may pose a threat to "the safety and soundness of the PPSI."[144] It follows from these provisions that PPSIs should not be permitted to engage in unsafe or unsound practices. The NPR states that, although it did not do so, the OCC considered whether to prohibit a PPSI from engaging in such practices as part of the rule text, and notes that doing so could help the OCC to address practices that could undermine public confidence in PPSIs and the financial system more generally.[145]

We recommend that the OCC modify the proposed rule to add an express prohibition against a PPSI engaging in unsafe or unsound practices. Adopting such a prohibition in the final rule would assist the OCC in identifying and correcting conduct that could threaten a PPSI's safety and soundness, but which may not be apparent as an express violation of the GENIUS Act or other express requirements under the OCC's implementing regulations. Importantly, adoption of a prohibition against unsafe or unsound practices would result in a more level playing field among PPSIs, regardless of whether they are IDI-affiliated; IDIs and their subsidiaries, as well as PPSIs that are part of a bank holding company group, are already subject to express prohibitions related to unsafe or unsound practices.[146]

ii. Risk Management Framework

The OCC should subject PPSIs to risk management standards commensurate with the risks to which they are exposed. As discussed above, a PPSI issues liabilities in the form of payment stablecoins. The assets that the PPSI holds to support its liabilities are not all immediately liquid

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143 12 U.S.C. § 5903(b)(1).

144 *Id.* § 5905(a)(3).

145 NPR, 91 Fed. Reg. at 10,213.

146 *See* 12 U.S.C. § 1818(b)(1); (3).

and may lose value. As a result, a PPSI is exposed to several types of risk, including liquidity, market, operational, compliance and governance risk. Although the business model of PPSIs differs significantly from that of banks, the nature of many of the risks to which PPSIs are exposed parallels those faced by banks.

The OCC should therefore impose risk management expectations on PPSIs that generally parallel those applicable to banks. Although these risk management expectations should be implemented in a way that takes into account substantive differences in business models, aligning these expectations would promote consistency and ensure that functionally similar activities are conducted within comparably rigorous supervisory frameworks. The OCC's risk management expectations should be high-level and principles-based, with additional clarity provided through supplemental guidance such as FAQs, examination manuals with blockchain-specific examples, and supervisory consultations, rather than prescriptive rules.[147] This approach would preserve a PPSI's ability to tailor its risk management to its size and business model, as contemplated by the GENIUS Act, without creating rigid compliance burdens that could stifle innovation or duplicate existing bank frameworks.

The following recommendations address how the OCC should implement these risk management expectations for PPSIs.

Recommendation 39. *The OCC should require a PPSI to establish and maintain a comprehensive risk governance framework.*

In practice, the OCC requires every bank that it supervises to establish and maintain a comprehensive risk governance framework to manage the bank's enterprise-wide risks. The OCC expects that a bank's risk governance framework should be "commensurate with the sophistication of the bank's operations and business strategies."[148] A similar expectation should apply to every PPSI, including that each PPSI should maintain risk governance and related risk management processes commensurate with the PPSI's size, complexity, business model and risk profile. In particular, the OCC should implement the following requirements for each PPSI:

- *A PPSI should have robust, bank-like risk management policies and procedures.* These policies and procedures should address, among other things, capital and liquidity planning, risk appetite and the ability to satisfy redemption requests in a timely fashion.

- *A PPSI's risk governance framework should specifically address risks associated with distributed ledger technology.* For example, the OCC should mandate that a PPSI have

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147 This guidance should clarify how the principles-based requirements in Proposed § 15.13 apply to smart contracts and other blockchain-specific risks, including encryption and key management. NPR, 91 Fed. Reg. at 10,260.

148 OCC, Comptroller's Handbook: Corporate and Risk Governance 39 (July 2019), *available at* https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/corporate-risk-governance/pub-ch-corporate-risk.pdf.

robust cyber-security policies and procedures, hold cyber insurance and establish operational risk standards relating to the use of applicable blockchains.

- *A PPSI should be required to conduct both capital and liquidity stress testing and adopt written liquidity plans.* The required stress tests should be calibrated to foreseeable stress scenarios, including with respect to redemption requests, operational outages and changes in market interest rates. Additionally, the liquidity plans required of PPSIs should be consistent with existing guidance on liquidity planning published by the federal banking agencies.

- *A PPSI should be required to establish recovery and resolution plans.* PPSIs should be expected to formulate plans outlining the measures they would employ to recover from a range of financial and operational shocks while maintaining continuity of operations without entering into insolvency proceedings. PPSIs should likewise be expected to develop and maintain a feasible plan for their orderly resolution in the event of insolvency. With respect to PPSIs that issue and redeem the same or similar payment stablecoins in one or more foreign jurisdictions, the OCC should require that such resolution plans address cross-border implications, including the possibility that competing claims may arise within different jurisdictions.

- *A PPSI should be required to review its risk governance framework at least annually, and whenever there is a material change to a PPSI's risk profile.* The OCC should require that a PPSI's risk governance and related risk management processes remain appropriate, in light of the PPSI's size, complexity, business model and risk profile.

- *A PPSI should be required to address consumer protection-related risks in its risk management framework.* Payment stablecoins may raise numerous risks for consumers. These risks could include those arising from, among other things, unauthorized transactions, errors, data security breaches and inadequate disclosures. A PPSI's risk management processes should identify potential risks to consumers and the mechanisms that the PPSI will implement to mitigate these risks.[149]

- *A PPSI should be required to address risks related to fraud in its risk management framework.* As the OCC acknowledges, payment stablecoins raise substantial fraud concerns, especially for PPSIs with larger outstanding issuance values.[150] The OCC's final regulations should require a PPSI to have procedures to address potential vulnerabilities related to fraud and the theft of payment stablecoins, including those that arise from the use of distributed ledger technology.

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149 The OCC should also coordinate with other appropriate federal agencies to identify appropriate consumer protection requirements applicable to PPSIs.

150 *See* NPR, 91 Fed. Reg. at 10,240.

Recommendation 40. *The OCC should require a PPSI to appoint a chief risk officer and chief audit executive.*

Ensuring appropriate levels of independent oversight within a PPSI is critical for an effective risk management framework. Accordingly, while the proposed rule would establish board oversight and management accountability requirements at a high level,[151] the OCC should specify that a PPSI must appoint a chief risk officer and chief audit executive. The chief risk officer should be responsible for quarterly risk reviews of the PPSI, while the chief audit executive should be responsible for independent third-party audits of critical controls. These officers should have direct access to the board of directors of a PPSI to report on the results of such reviews and audits, as well as on any other material risks.

Recommendation 41. *The OCC should require that a PPSI's policies and procedures address compliance with federal consumer protection laws.*

Although the GENIUS Act does not expressly contemplate that a PPSI's risk management policies and procedures would address compliance with consumer protection laws, the broader regulatory framework "prioritizes consumer protection,"[152] for example, by establishing, among other guardrails, disclosure requirements, redemption requirements and prohibitions on deceptive marketing. Consistent with the statutory scheme, the OCC should require that a PPSI have written procedures in place to ensure compliance with federal consumer protection laws.

Recommendation 42. *The OCC should provide that a PPSI that is a subsidiary of an IDI or controlled by a bank holding company will be deemed to comply with the risk management requirements applicable to a PPSI if the PPSI complies with the risk management requirements applicable to its parent IDI or the applicable bank holding company, respectively.*

IDIs are subject to a robust federal prudential framework that requires extensive risk governance and related risk management processes. IDIs generally implement risk management programs on an enterprise-wide basis. The OCC should encourage PPSIs that are IDI subsidiaries to leverage existing IDI-level risk management frameworks and controls, risk-decision platforms and related governance processes. A PPSI that is subject to a parent IDI's comprehensive, enterprise-wide risk governance framework and risk management processes should be deemed to comply with the risk management requirements specifically applicable to PPSIs, provided that the PPSI has appropriate policies to address any risk types (*e.g.*, redemption risk) that are not otherwise addressed by the parent IDI's risk management framework.

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151 For example, under Proposed § 15.13(b)(2), the board of directors of a PPSI must approve "the information technology and security program" and oversee "the development, implementation, and maintenance of the program, including the appointment of a qualified Information Technology and Security Officer." Proposed § 15.13(b)(2).

152 *Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law*, The White House (Jul. 18, 2025), *available at* https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/.

For similar reasons, a PPSI that is controlled by a bank holding company should also be deemed to comply with the risk management requirements applicable to a PPSI if the PPSI is subject to the enterprise-wide risk management framework of the bank holding company.

This sort of deemed compliance approach would reduce the risk that payment stablecoin activities would ultimately be managed through fragmented control arrangements rather than through the firm's broader enterprise-wide risk framework. In addition, it would avoid unnecessary duplication of expenses and allow PPSIs that are subsidiaries of IDIs to benefit from the substantial existing risk management capabilities that the parent IDIs already have in place.

Recommendation 43. *The OCC's examinations of PPSIs and banks that face similar levels of risks should be similar.*

For the reasons discussed above, the general nature of the liquidity, market, operational, compliance and governance risks faced by PPSIs often parallel the risks faced by banks. The specifics of those risks will necessarily differ. Banks will present risks that are not applicable to PPSIs, such as those relating to bank lending activities. PPSIs will present risks that are not applicable to banks, including risks that relate to issuing payment stablecoins on new blockchains, de-pegging risks and the management of reserve composition. Supervision should necessarily be tailored to the risk profile of a supervised institution.

However, the supervisory approach should not differ based solely on the type of institution. Instead, the OCC should ensure that, to the extent that banks and PPSIs face similar levels or risks, they will be subject to examinations that are similar in frequency, scope and degree of scrutiny. Aligning supervision in this way is important to ensure robust supervision of all types of institutions and provide a level playing field.

iii. Insider and Affiliate Transactions

Recommendation 44. *The OCC should provide that insider and affiliate transactions relating to PPSIs are subject to the full scope of the Federal Reserve Board's Regulation O and Regulation W.*

The OCC proposes to impose restrictions on affiliate and insider transactions of PPSIs that incorporate certain principles that underpin the Federal Reserve Board's Regulation O and Regulation W, but without the specificity and comprehensiveness of those regulatory frameworks.[153] A PPSI that is a subsidiary of an IDI, however, would likely be subject in full to Regulation O (to the same extent as the parent IDI) and to Regulation W (treating the PPSI as part of the parent IDI),[154] assuming that the PPSI is an operating subsidiary of the IDI.[155]

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153 *See* Proposed § 15.13(a)(6).

154 *See* 12 C.F.R. §§ 31.2(a), 31.3(a) (requiring national banks and federal savings associations to comply with Regulations O and W). A subsidiary of an IDI is considered a "member bank" under Regulation O. *Id.* § 215.2(j) (defining a "member bank" subject to Regulation O to include "any subsidiary of a member bank").

155 Assuming that a PPSI subsidiary of an IDI is not a financial subsidiary of the IDI, as discussed below, the PPSI subsidiary would generally be subject to Regulation W as part of the parent IDI. *See id.* § 223.3(w) (defining a "member bank" subject to Regulation W to include any "operating subsidiary of a member bank").

The NPR does not explain why the robust frameworks applicable to banks with respect to insider transactions (Regulation O) and affiliate transactions (Regulation W) are not appropriate for PPSIs. To ensure that PPSIs are not able to engage in risky insider and affiliate transactions and to establish parity among PPSIs, regardless of whether they are affiliated with an IDI, the OCC should apply the full scope of the existing frameworks.

Accordingly, in the final rule the OCC should replace its proposed "principles-based" approach to insider and affiliate transactions with an express cross-reference to Regulation W and Regulation O that incorporates the full range of substantive restrictions imposed by these regulations, treating each PPSI in the same fashion as a member bank for purposes of the application of these standards. Such treatment would correspond to how the OCC's existing banking regulations cross-reference the Federal Reserve Board's Regulation W and Regulation O frameworks in applying them to national banks and federal savings associations.[156] This approach would promote consistent expectations with respect to insider and affiliate transactions across all types of PPSIs and reduce the risk that materially similar transactions are treated differently.

Regulation W and Regulation O are foundational elements of safety and soundness. Their statutory antecedents were enacted in response to affiliate and insider abuse that had caused financial distress—and even failure—at banking organizations. The full application of these frameworks to PPSIs is even more important than in the banking context because, unlike banks, there will in many cases be no direct regulation of the parents and other affiliates of PPSIs.

d. Permissible Activities of PPSIs

As a matter of fundamental design, the GENIUS Act authorizes PPSIs to engage only in a narrow set of core payment stablecoin-related activities. The statute specifies that these activities are expressly limited to issuing and redeeming payment stablecoins, managing related reserves, providing custody or safekeeping services for payment stablecoin-related assets and undertaking directly supportive activities.[157] The statute's narrow specification of the scope of permissible activities that may be engaged in by a PPSI is consistent with the statutory objective to narrowly confine the set of risks to which the entity that is the issuer of payment stablecoins may be exposed. The more activities that a PPSI engages in, the more likely it could be to suffer losses from those activities or be subject to claims arising from those activities, potentially undermining the ability of the PPSI to honor its obligations to holders of the payment stablecoins it has issued.

If the PPSI is a financial subsidiary of the IDI or otherwise not an "operating subsidiary" of the IDI for purposes of Regulation W (which defines "operating subsidiary" more broadly than under the OCC's regulations, *compare id.* § 5.34 (OCC's regulation applicable to operating subsidiaries of a national bank), *with id.* § 223.3(aa) (Regulation W)), the parent IDI's transactions with the PPSI would be treated as, and subject to Regulation W restrictions on, transactions with an affiliate.

156 *See id.* §§ 31.2(a) (Regulation O); 31.3(a) (Regulation W).

157 12 U.S.C. § 5903(a)(7)(A).

In light of the clear statutory objective to minimize the potential for this type of disruptive outcome, the OCC should construe the permissible activities of PPSIs narrowly, in accordance with the overall statutory scheme of the GENIUS Act.

Recommendation 45. *The OCC should clarify that a PPSI may hold only a* de minimis *amount of non-payment stablecoin digital assets as necessary to test a distributed ledger or pay fees.*

Consistent with the GENIUS Act,[158] the OCC would permit a PPSI to (1) hold non-payment stablecoin crypto-assets as principal that are necessary for testing a distributed ledger, because doing so directly supports both issuance and redemption of payment stablecoins,[159] and (2) pay fees to facilitate customer transactions, including by holding non-payment stablecoin digital assets to pay blockchain-related fees on behalf of customers.[160]

In OCC Interpretive Letter 1186, the OCC addressed similar considerations for national banks, concluding that national banks "may hold amounts of crypto-assets as principal necessary for testing otherwise permissible crypto-asset related platforms" and may "hold, as principal, amounts of crypto-assets on balance sheet necessary to pay network fees."[161] In reaching this conclusion, the OCC emphasized that "the total amount of crypto-assets held at any given time would be kept *de minimis* relative to the Bank's capital" and would be further limited by "reasonably foreseeable need."[162]

Consistent with the expectations for national banks, and the principle of "same risk, same regulation," the OCC should expressly provide that a PPSI similarly may only hold a *de minimis* amount, relative to the PPSI's regulatory capital, of non-payment stablecoin crypto-assets for the purpose of testing a distributed ledger or paying transaction fees.[163] In addition, the OCC should require that a PPSI hold only the amount of non-payment stablecoin crypto-assets that is necessary for reasonably foreseeable transactions (*e.g.*, the amount necessary for one week's worth of transactions, as based on the PPSI's needs from the past 30 days). A *de minimis* limit would help ensure that PPSIs do not retain such assets in a manner that could represent speculative activity that would be outside the scope of permissible PPSI activities. It would also reduce the risk that PPSIs are exposed to volatility or loss events associated with non-payment stablecoin crypto-assets.

In addition, the OCC should confirm, either in the final rule or in subsequent guidance, that a PPSI must have appropriate procedures in place to ensure it can operate in a safe and sound manner if it accepts the payment of fees in the form of non-payment stablecoin crypto-assets.

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158 *Id.* § 5915(b).

159 NPR, 91 Fed. Reg. at 10,210; *see* Proposed § 15.10(a)(6).

160 NPR, 91 Fed. Reg. at 10,211; *see* Proposed § 15.10(a)(7).

161 OCC, Interpretive Letter No. 1186, at 1 (Nov. 18, 2025), *available at* https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1186.pdf.

162 *Id.* at 4.

163 With respect to uninsured national trust bank PPSIs, the OCC should consider aligning the permissibility of holding non-payment stablecoin crypto-assets with that of national banks.

Recommendation 46. *The OCC should require a PPSI to submit an application if the PPSI seeks to engage in any activity that is not expressly enumerated under section 4(a)(7)(A) of the GENIUS Act or the OCC's regulations and interpretations.*

Section 4(a)(7)(A) of the GENIUS Act provides that a PPSI "may *only*" conduct an enumerated list of activities, as well as "undertake other activities that directly support" those enumerated activities.[164] Section 4(a)(7)(B) of the GENIUS Act provides a "Rule of Construction" stating that nothing in section 4(a)(7)(A) "shall limit a [PPSI] from engaging in payment stablecoin activities or digital asset service provider activities . . . , and activities incidental thereto," with approval of the appropriate payment stablecoin regulator.[165]

In the NPR, the OCC confirms that this rule of construction clarifies the scope of section 4(a)(7)(A) and does not, for example, provide an independent grant of authority.[166] Accordingly, the NPR provides that, "to the extent that a [PPSI] seeks to engage in 'digital asset service provider activities' or 'activities incidental thereto,' the activity must be authorized under another source of applicable law."[167] Moreover, the NPR indicates that, if a PPSI requires clarity on whether an activity is permissible under section 4(a)(7)(B), the PPSI should consult directly with the OCC. The NPR does not indicate whether the OCC plans to publish information about the outcome of such consultations, or the OCC's process for determining whether such an activity is permissible.

To ensure that PPSIs are subject to equal treatment and to promote consistency of interpretation among PPSIs subject to OCC supervision, the OCC should require a PPSI to submit an application before the PPSI engages in any "digital asset service provider activity" or "activity incidental thereto" that is independently authorized under another source of applicable law, unless the OCC has publicly approved the activity by regulation or in a public interpretation. The OCC should also establish an appropriate set of criteria to guide its review and action upon these applications, which should include an evaluation of whether the proposed activity could pose additional risks to a PPSI and therefore to holders of the payment stablecoins issued by the PPSI. Specifically, any decision to approve the engagement by a PPSI in an activity not encompassed within the enumerated activities in section 4(a)(7)(A) should take due account of relevant safety and soundness considerations and the level of risk and complexity associated with the new activity. This approach would be consistent with established OCC precedent for evaluating new bank activities.

Additionally, the OCC should publish any approval under section 4(a)(7)(B) of the GENIUS Act, as well as any other opinion or guidance on the permissibility of such activity.

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164 12 U.S.C. § 5903(a)(7)(A) (emphasis added).

165 *Id.* § 5903(a)(7)(B).

166 NPR, 91 Fed. Reg. at 10,211.

167 *Id.*

Recommendation 47. *The OCC should not permit uninsured national trust bank PPSIs to conduct activities that are not permissible for other types of PPSIs.*

Section 16(a) of the GENIUS Act is another "Rule of Construction" that provides that nothing in the GENIUS Act "may be construed to limit the authority" of a depository institution, credit union, national bank or trust company "to engage in activities permissible pursuant to applicable State and Federal law."[168] The NPR proposes to interpret this provision to apply even to specified institutions that are themselves PPSIs: "Consistent with this provision, for example, an uninsured national trust bank that is a [PPSI], may engage in fiduciary, trust, and other related activities consistent with applicable law."[169]

The NPR's proposed interpretation of section 16(a) is inconsistent with the overall framework of the GENIUS Act and would unfairly preference uninsured national trust bank PPSIs over other types of PPSIs with regard to the scope of permissible activities. It would also significantly expand the range of risks that national trust bank PPSIs in particular would be permitted to incur, well beyond the narrow confines the GENIUS Act, properly interpreted, imposes on all PPSIs, whether organized in the form of a national trust bank or otherwise. Moreover, the proposed interpretation would provide support for the otherwise unsubstantiated argument that uninsured, state-chartered depository institutions and trust companies that are PPSIs should also be able to engage in activities permissible pursuant to state law.[170]

The best reading of section 16(a) is that it addresses the activities of depository institutions that are *not* PPSIs. Consistent with the structure and intent of the GENIUS Act, a PPSI that is an uninsured national trust bank should be subject *both* to the restrictions of its charter *and* to the limitations on the scope of permissible PPSI activities specified by the GENIUS Act. In other words, the activities specified in section 4(a)(7)(A) should be viewed as an outer bound of the set of activities that are permissible for uninsured national trust bank PPSIs.[171]

This reading is consistent with the statutory canon of construction of *generalia specialibus non derogant* (*i.e.*, the general/specific canon): if there is a conflict between a general provision and a specific provision, the specific provision prevails.[172] Section 4(a)(7)(A) is a specific provision—as described above, it enumerates the specific activities that a PPSI may conduct; in contrast, section 16(a) is a more general provision (in fact, a rule of construction) about the authority of

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168 12 U.S.C. § 5915(a).

169 NPR, 91 Fed. Reg. at 10,211.

170 The argument that section 16(a) could be read to support the permissibility of activities that are not enumerated in section 4(a)(7)(A) of the GENIUS Act within an uninsured, state-chartered depository institution or trust company is even weaker than that for uninsured national trust banks because the GENIUS Act does not even explicitly contemplate that such state-chartered entities will be PPSIs. *See* 12 U.S.C. § 5901(11)(B) (contemplating that an uninsured national bank may be a federal qualified payment stablecoin issuer).

171 The OCC's proposed reading of section 16(a) is also inconsistent with the OCC's conclusion that section 4(a)(7)(B) is not an independent grant of authority because it effectively reads out the requirement that a PPSI must obtain the OCC's approval to conduct activities beyond those enumerated in section 4(a)(7)(A).

172 *See* Scalia & Garner, *supra* note 17, at 183–88.

banking institutions. This reading is also more consistent with the overall purpose and fundamental structure of the GENIUS Act, which as a foundational matter seeks to ensure that PPSIs operate under a narrow, low-risk business model, with strict limitations on assets and activities as a means of ensuring the reliability and soundness of the PPSI in its ability to honor and timely redeem the payment stablecoins it has issued. Permitting certain types of PPSIs to engage in a substantially broader set of activities would undermine this purpose. Furthermore, the OCC's proposed reading would lead to a fundamental regulatory asymmetry, under which uninsured depository institution PPSIs would be able to conduct a broad range of activities, especially if the state regulators interpret section 16(a) in the same manner, while other PPSIs would face the stringent restrictions expressly provided for in the GENIUS Act.

If the OCC retains its proposed interpretation of section 16(a), the OCC should subject an uninsured national trust bank that is a PPSI to capital requirements that are appropriate to the specific activities in which it is engaged. In particular, the bank's PPSI activities should be subject to the PPSI capital requirements and the bank's non-PPSI activities should be subject to the OCC's existing capital requirements for uninsured national trust banks. If the OCC does not implement this segmented approach, it would create an opportunity for regulatory arbitrage: an uninsured national trust bank could engage in a small amount of PPSI activities to reduce the capital requirements applicable to its non-PPSI activities.

e. Prohibition on Rehypothecation

Recommendation 48. *The OCC should confirm that the restriction on rehypothecation applies only to PPSIs.*

Consistent with the GENIUS Act,[173] the OCC would prohibit PPSIs from pledging, rehypothecating or reusing reserve assets, except in specified circumstances.[174] The OCC should affirm that the restriction on rehypothecation applies only to PPSIs, and does not apply to any other party, including an IDI at which a PPSI holds reserve assets in the form of deposits. When reserve assets are placed on deposit at an IDI, the IDI incurs a liability to the PPSI and the funds become an asset of the IDI. The IDI may then use the funds to support lending or other investments, in the same way and subject to the same requirements as any other deposited funds. Nothing in the GENIUS Act restricts how an IDI that receives a deposit from a PPSI may use the funds once they are deposited, and the OCC should confirm that this is the case, including by explicitly confirming that the prohibition on rehypothecation applies to PPSIs only and therefore has no applicability to an IDI.

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173 12 U.S.C. § 5903(a)(2).

174 Proposed § 15.10(c)(5).

f. Prohibition on Deceptive Marketing

Recommendation 49. *The OCC should clarify how it will implement prohibitions on deceptive marketing practices.*

Consistent with the GENIUS Act,[175] the OCC proposes to prohibit a PPSI from engaging in certain deceptive marketing practices.[176] The NPR clarifies that misrepresentations by a PPSI cannot be cured by a "general disclaimer" and that "representations and disclosures should be clear to" payment stablecoin holders and customers.[177] However, the OCC does not provide further information regarding what would constitute an impermissible "general disclaimer" as opposed to a more specific disclaimer that would be more appropriate and legally effective. To provide more clarity around permissible marketing practices, and strengthen the achievement of the customer protection objectives of these prohibitions, the OCC should clarify the factors it would consider relevant to finding a disclaimer sufficiently clear and specific and provide examples of disclaimers that would be acceptable.

VIII. Other Topics

a. Applications and Approvals

i. Applications from Prospective PPSIs

The application process that the OCC would establish for prospective PPSIs would be the same for IDIs that are applying to issue payment stablecoins through a subsidiary and for nonbank entities, uninsured national banks and uninsured federal branches that are applying to issue payment stablecoins.[178] The OCC, however, should tailor its licensing and approval framework under the GENIUS Act to appropriately account for the differing risk profiles of applicants. In particular, the OCC should provide a streamlined application process for applicants that are subsidiaries of IDIs, recognizing that such entities are already subject to consolidated supervision, prudential standards and established risk management frameworks. For other applicants, the OCC should ensure that these applicants are subject to a comprehensive assessment similar to what would apply to an IDI generally, consistent with the principle of "same risk, same regulation."

More broadly, the OCC should take steps to enhance transparency, consistency and interagency alignment in carrying out its decision-making processes on applications. The OCC should confirm that an applicant that is a public company not predominantly engaged in one or more financial activities (or a wholly or majority owned subsidiary or affiliate of such public company) has obtained the unanimous vote of the Stablecoin Certification Review Committee, as

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175 12 U.S.C. § 5903(a)(9), (e).

176 Proposed § 15.10(c)(1)–(3).

177 NPR, 91 Fed. Reg. at 10,212.

178 *See* Proposed § 15.30(b)–(c).

contemplated by section 4(a)(12)(B)(i) of the GENIUS Act.[179] The OCC should also require that applications be published for public comment, which would promote accountability, improve regulatory outcomes and align with established practices for bank applications. Consistent with the evolving nature of the payment stablecoin market, the OCC should also commit to revisiting and, as necessary, updating its application standards and processes by the conclusion of the initial three-year "de novo" period, to ensure that they remain appropriately tailored to observed risks and market developments.

Recommendation 50. *The OCC should confirm that IDIs may hold PPSI subsidiaries as "operating subsidiaries."*

Although the GENIUS Act and proposed rule make clear that an IDI may own a PPSI as a subsidiary, the OCC did not address in the NPR what type of subsidiary the PPSI would be. Under applicable banking law, the OCC categorizes subsidiaries of national banks into several types, including operating subsidiaries and "financial subsidiaries."[180] Among other requirements, an operating subsidiary may engage only in "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."[181] A financial subsidiary generally must engage in at least one activity that may not be conducted in an operating subsidiary or other type of subsidiary that a national bank is expressly permitted by statute to hold.[182] A national bank is subject to substantially more extensive requirements with respect to a financial subsidiary, as compared to an operating subsidiary. A national bank must, for example, implement a capital deduction with respect to, and safeguards for its interactions with, a financial subsidiary.[183] A national bank may be required to divest a financial subsidiary if the bank does not remain well capitalized and well managed or maintain appropriate safeguards.[184]

The OCC should confirm that an insured national bank or federal savings association may hold a PPSI subsidiary as an operating subsidiary. The OCC has already determined that national banks may permissibly engage in stablecoin activities, including issuing stablecoins.[185] PPSIs are

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179 12 U.S.C. § 5903(a)(12)(B)(i). Similarly, the OCC should confirm that an applicant that is a company not domiciled in the United States or its Territories that is not predominantly engaged in one or more financial activities has obtained the unanimous vote of the Stablecoin Certification Review Committee, as contemplated by section 4(a)(12)(C)(i) of the GENIUS Act. *Id.* § 5903(a)(12)(C)(i).

180 *See, e.g.*, OCC, Comptroller's Licensing Manual: Subsidiaries and Equity Investments (Feb. 2022), *available at* https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/file-pub-lm-subsidiaries-equity-investments.pdf.

181 12 C.F.R. § 5.34(e)(1)(i).

182 *See* 12 U.S.C. § 24a(g)(3).

183 *Id.* § 24a(c)–(d).

184 *Id.* § 24a(e)(4).

185 OCC, Interpretive Letter No. 1174, at 7 (Jan. 4, 2021) ("[B]anks may buy, sell, and issue stablecoin to facilitate payments."), *available at* https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf.

therefore engaged in activities that are permissible for a national bank to engage in directly, consistent with the ability of national banks to hold PPSI subsidiaries as operating subsidiaries.

Recommendation 51. *The OCC should establish a streamlined application process for IDI applicants.*

All IDIs are subject to a robust federal prudential framework that is focused on safety and soundness. That framework continues to apply in full if the IDI seeks to issue payment stablecoins through a subsidiary. To reflect the comprehensive regulation and supervision applicable to IDIs, the OCC should establish an expedited application process for IDI applicants that seek to issue payment stablecoins through a subsidiary. This process should be similar to the process under which a national bank or federal savings association may establish an operating subsidiary,[186] taking into consideration the factors and timing requirements in section 5 of the GENIUS Act.[187]

Recommendation 52. *The OCC should consider additional factors for an applicant that is not a subsidiary of an IDI.*

Under section 5(c)(5) of the GENIUS Act, in evaluating applications from prospective PPSIs, the OCC may consider, in addition to specifically enumerated factors, any other factors established by the OCC that are "necessary to ensure the safety and soundness of the [PPSI]."[188] Because non-IDI applicants to become PPSIs are not subject to the same robust federal prudential framework to which every IDI is subject, including the federal prudential framework applicable to the parent and affiliates of an IDI, the OCC should exercise this authority to ensure that these applicants are subject to a comprehensive assessment that demonstrates that the non-IDI applicant can effectively operate in a safe and sound manner in compliance with all applicable law. The OCC should, for example, require a non-IDI applicant to demonstrate the adequacy of its governance, risk management procedures, operational resilience, cybersecurity practices and recovery planning. The OCC should also require a non-IDI applicant to demonstrate that it can comply with applicable law, including federal consumer protection laws.

Any approval of a PPSI license should be subject to an enforceable written commitment that the PPSI will continue to operate in a safe and sound manner in compliance with all applicable law, including federal consumer protection laws. These are requirements that apply to any IDI, including its subsidiaries and affiliates, and they should apply to other PPSIs as well. In addition, as discussed above, the OCC should require the parent (as applicable) of a PPSI to commit in writing to serve as a source-of-strength for the PPSI.

Recommendation 53. *The OCC should clarify the standard of review for waivers under section 5(f) of the GENIUS Act.*

Section 5(f) of the GENIUS Act provides that the OCC may waive the application of the requirements of the Act for a period not to exceed 12 months beginning on the Act's effective date,

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186 *See* 12 C.F.R. §§ 5.34(f)(1) (application process for operating subsidiary of national bank), 5.38(f)(1) (application process for operating subsidiary of federal savings association).

187 12 U.S.C. § 5904.

188 *Id.* § 5904(c)(5).

with respect to a subsidiary of an IDI, if the IDI has an application pending for the subsidiary to become a PPSI on the effective date, or a federal qualified payment stablecoin issuer with a pending application on the effective date.[189] The NPR proposes that the OCC may grant such a waiver if it finds that the waiver would be "in the public interest" or that "extraordinary circumstances justify the waiver."[190] However, the NPR does not specify what factors the OCC would consider to make a finding that the waiver is, in fact, in the public interest or justified by extraordinary circumstances.

Clear standards are necessary to promote confidence in the administration of the GENIUS Act, support the safe and sound operation of PPSIs and promote fair and consistent treatment of waiver applicants. The OCC should therefore adopt clear, uniform standards that account for the size, scope and complexity of the proposed activities of the prospective PPSI, including by clarifying the factors the OCC would consider in determining whether a waiver is "in the public interest" or is justified by "extraordinary circumstances." The OCC should also require waiver applicants to demonstrate a compelling and well-substantiated need for the relief.

The OCC should also coordinate with the other federal payment stablecoin regulators to establish a waiver process that avoids conferring undue advantage on particular applicants and applies a robust threshold for approval. Waivers should not be granted where doing so would introduce material risks to the U.S. banking or financial system, undermine competition, reduce consumer protections or enable regulatory arbitrage.

Recommendation 54. *The OCC should publish and solicit comment on PPSI applications and waiver requests under section 5 of the GENIUS Act.*

Many applications and notices that banks submit are subject to a public comment process that provides the applicable regulator with additional information that helps the regulator evaluate whether the proposal is consistent with the relevant statutory factors and the safe and sound operation of the bank. The OCC should similarly incorporate public comment into the application and waiver request processes for prospective PPSIs under section 5 of the GENIUS Act. Doing so is especially important given the novelty and rapid development of the payment stablecoin market and the nascent regulatory framework under the GENIUS Act.

Solicitation of public comment would also provide the OCC with important information that may otherwise remain unknown to the agency. Members of the public may have material information regarding the competence, experience or integrity of an applicant's officers, directors or principal shareholders, as well as their history of compliance with applicable law. This information may be particularly useful to the OCC with respect to relatively new institutions that have not undergone supervisory evaluation over a meaningful period. Further, providing a formal process for public input would help ensure that the OCC's evaluation is based on a complete record.

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189 *Id.* § 5904(f).

190 NPR, 91 Fed. Reg. at 10,234; Proposed § 15.30(f)(3).

ii. Waiver Requests for State Qualified Payment Stablecoin Issuers

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.[191] However, this requirement may be waived by the applicable federal regulator and, in some cases, will be subject to a presumption of waiver.[192]

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 federal regulator.[193] It also serves the important objective of ensuring that, subject to limited exceptions, larger PPSIs will be subject to consistent federal prudential standards with respect to capital, liquidity and risk management. The importance of consistent standards for larger PPSIs is heightened because 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 are correspondingly greater, and the required transition is an important mechanism to ensure consistency in the regulation and supervision of these issuers.

Under the proposed rule, the OCC would establish a process to receive requests from nonbank state-regulated PPSIs (*i.e.*, state qualified payment stablecoin issuers that are nonbank entities) to waive the required transition upon exceeding $10 billion in outstanding payment stablecoins. However, the proposed rule provides little detail on how the OCC would review and adjudicate these requests. In the final rule, the OCC should provide a clear standard of review that reflects Congress's intent to make the $10 billion threshold a clear "cut-off," above which state-regulated PPSIs generally must transition to federal oversight. The OCC should also impose certain safeguards, as described below, to help ensure that a PPSI is not able to evade the transition when it is warranted.

Recommendation 55. *The OCC should create a clear standard for how it would exercise its authority to waive the required transition to federal oversight, impose a presumption against granting waivers for larger PPSIs and implement certain other safeguards.*

Given the importance of the required transition to federal regulation under section 4(d) of the GENIUS Act to the broader statutory scheme, the final rule should include a robust review process for such waiver requests. In particular, the OCC should:

- *Clarify the OCC's standard of review for waivers.* The standard for granting a waiver should ensure that waivers do not undermine the fundamental objective

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191 12 U.S.C. § 5903(d)(1), (2).

192 *Id.* § 5903(d)(3).

193 *Id.* § 5905(a)(1).

underlying the required transition from state to federal oversight. In particular, before granting a waiver, the OCC should require the PPSI to demonstrate a compelling case for approval, including demonstrating that granting the waiver would not (i) introduce additional risk to the PPSI, the holders of its payment stablecoins or to financial stability; (ii) have an anti-competitive effect; or (iii) heighten the risk of illicit finance.

- *Impose an expiration date on waivers, such that a state-regulated PPSI must re-apply periodically*. Requiring only a "one-time" waiver (in which case a state-regulated PPSI that obtains a waiver could remain regulated exclusively at the state level regardless of any changes in its operations or the applicable supervisory framework) would undermine the purpose of the required transition to federal oversight. Factors that may justify a waiver at one time (*e.g.*, a satisfactory operational and examination history) may change quickly. Moreover, the OCC should specify triggers for reevaluation and potential revocation of a waiver, including material changes to the PPSI's risk profile or business model, or to the applicable state regulatory regime.

- *Apply heightened scrutiny to waivers for large PPSIs.* Due to the comparatively greater risks posed by larger PPSIs (*e.g.*, those with over $50 billion of outstanding payment stablecoins), the OCC should subject waiver requests from large PPSIs to heightened scrutiny. In particular, the OCC should presume that it will deny a waiver request from a large PPSI, including from a state qualified payment stablecoin issuer qualifying for presumptive approval under section 4(d)(3)(C)(ii) of the GENIUS Act, unless the PPSI can demonstrate by clear and convincing evidence that granting the waiver would not cause any significant increase in risk to the safety and soundness of the PPSI and the financial system.

- *Define "outstanding issuance value" to include the par value of payment stablecoins issued by all affiliates of a PPSI, including non-consolidated affiliates.* The OCC proposes to define outstanding issuance value as the "total consolidated par value of all of a [PPSI's] payment stablecoins."[194] This measure is used to determine whether a state-regulated PPSI must transition to the federal regulatory framework. For purposes of defining this threshold, the OCC should also include the par value of payment stablecoins issued by affiliates, including non-consolidated affiliates. 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 statutory threshold. In addition, in the final rulemaking, the OCC should affirm that "outstanding issuance value" encompasses "the

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194 Proposed § 15.2 ("Outstanding issuance value").

combined total par value of different brands of payment stablecoin issued by the [PPSI] (*e.g.*, under a white label arrangement)" and its affiliates.[195]

iii. Change in Control

The Associations strongly support the OCC's proposal to apply a change in control framework to PPSIs that is similar to the framework applicable to banking organizations under the Change in Bank Control Act.[196] Requiring prior notice of a prospective change in control over a PPSI will help to prevent inappropriate, unsafe or abusive practices resulting from a change in control of the PPSI, which will in turn promote the safety and soundness of PPSIs and confidence in the payment stablecoin market.

Recommendation 56. *The OCC should impose an application requirement for merger transactions involving PPSIs as part of the change in control framework.*

The proposed change in control framework would not necessarily apply to a merger transaction involving a PPSI, even though merger transactions clearly present many of the same supervisory concerns as other changes in control and may have significant implications for financial stability and market structure. Accordingly, the final rule should characterize any merger transaction involving a PPSI as a change in control, or otherwise subject any such merger transaction to prior OCC approval.[197]

b. Insolvency

The insolvency-related provisions set forth in section 11 of the GENIUS Act are a crucial component of the customer protection framework of the GENIUS Act: they provide that a payment stablecoin holder's claim has priority, on a ratable basis with claims of other payment stablecoin holders, with respect to required payment stablecoin reserves.[198] In addition, section 11 provides that this preferential treatment would apply under any insolvency regime (bankruptcy, receivership or otherwise) and regardless of the type of PPSI. Furthermore, section 11(e)(3) of the GENIUS Act excludes required reserve assets from the bankruptcy estate, which appears intended to strengthen the protections applicable to payment stablecoin holders.[199] These insolvency provisions reflect, among other things, that the PPSI is holding the reserve assets on behalf of payment stablecoin holders.

However, it is unclear how several of the provisions in section 11 of the GENIUS Act would operate in practice. For example, it is unclear how the priority applicable in a bankruptcy proceeding would interact with the statutory exclusion of reserve assets from the applicable

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195 NPR, 91 Fed. Reg. at 10,208.

196 *See* 12 U.S.C. § 1817(j).

197 The OCC appears to acknowledge the possibility of mergers: it proposes to require a PPSI to monitor, evaluate, and adjust its IT program in light of various factors, including the PPSI's "own changing business arrangements, such as *mergers and acquisitions*." Proposed § 15.13(b)(6) (emphasis added).

198 12 U.S.C. § 5910(a)(1).

199 GENIUS Act, § 11(e)(3), 139 Stat. 458 (to be codified at 11 U.S.C. § 541(b)(11)).

bankruptcy estate. Similarly, it is unclear how it will be determined whether the reserve assets of a failed PPSI are sufficient to permit redemption of all of the PPSI's outstanding stablecoins, or the extent of any shortfall (and, therefore, the need to pursue other assets of the failed PPSI), if administrative expenses (such as the engagement of an auditor) cannot be paid. Commentators have identified a number of other questions regarding the interaction of these provisions with the existing provisions of the Bankruptcy Code.[200]

The treatment of reserve assets held by FPSIs also raises a number of questions. For example, the requirement that an FPSI hold reserve assets in a U.S. financial institution sufficient to meet liquidity demands of U.S. customers (unless otherwise permitted under a reciprocal agreement) appears intended to ensure these reserve assets are available to U.S. customers in the event the FPSI fails; however, it is unclear that this intent would be respected in an insolvency proceeding involving an FPSI, because the Bankruptcy Code does not appear to provide for a priority in favor of U.S.-based stablecoin holders based on the location of the reserve assets.

In addition, these provisions focus primarily on PPSIs subject to the Bankruptcy Code;[201] however, PPSIs may also be national trust banks or other types of entities chartered under state banking laws that may not be eligible for a proceeding under the Bankruptcy Code.[202] The GENIUS Act provides that a depository institution PPSI would be resolved by the FDIC, NCUA or state payment stablecoin regulator;[203] however, it is unclear, for example, whether the FDIC has statutory authority or the necessary funding to resolve a PPSI.

Significant risks arise when there is no clear and definitive mechanism for the resolution of a failed financial institution, particularly when there is little prior experience for the public to draw upon. A "messy" resolution of a small PPSI could result in disproportionate damage to other PPSIs, and to the broader financial system, if the inability of that PPSI's payment stablecoin holders to redeem their tokens leads to a run on other PPSIs and spillover effects on interconnected financial institutions (including the financial institutions that hold PPSI reserve assets).

Recommendation 57. *The OCC should use the insolvency study required under the GENIUS Act to clarify how the insolvency provisions will operate and to recommend any appropriate changes.*

Section 11(h) of the GENIUS Act requires the OCC and the other federal payment stablecoin regulators to conduct a study of potential insolvency proceedings involving PPSIs.[204]

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200 *See, e.g.*, Adam Levitin, *Sorry to Break It to You Geniuses: Under the GENIUS Act the Holders of Stablecoins Actually Have FIFTH Priority in an Issuer Bankruptcy*, CREDIT SLIPS (Dec. 2, 2025), *available at* https://creditslips.org/2025/12/02/sorry-to-break-it-to-you-geniuses-under-the-genius-act-the-holders-of-stablecoins-actually-have-fifth-priority-in-an-issuer-bankruptcy/.

201 12 U.S.C. § 5911.

202 *See* 11 U.S.C. § 109(b)(2) (excluding any "bank" from being a debtor under the Bankruptcy Code). This exclusion has been interpreted in different ways in relation to uninsured non-depository state trust companies, which could lead to some confusion in the context of a failure of such an entity. It would be helpful to resolve definitively which court or other body would resolve each type of PPSI.

203 12 U.S.C. § 5911(1).

204 Section 11(h)(1) of the GENIUS Act requires an "examination of (1) existing gaps in the bankruptcy laws and rules for [PPSIs]; (2) the ability of payment stablecoin holders to be paid out in full in the event a [PPSI] is

The regulators must publish a report containing all findings of this study, "including any legislative recommendations."[205]

As described above, this study will need to address numerous complex questions relating to the insolvency of a PPSI, ideally before the failure of any PPSI. Identifying and remediating gaps in applicable insolvency law will be critical to protecting holders of payment stablecoins and preventing PPSI failures from having unexpected and potentially unmanageable negative effects. Accordingly, the OCC should ensure that this study is both comprehensive and timely by publishing a preliminary draft, in coordination with the other federal payment stablecoin regulators, within one year of the effective date of the GENIUS Act.

In addition, we urge that the OCC and other federal payment stablecoin regulators consult with private sector and public sector bankruptcy and insolvency experts with expertise in each of the relevant resolution frameworks (at a minimum, the Bankruptcy Code, the FDIA, the National Bank Act, and state insolvency law) and that the study include recommendations for regulatory clarifications and, if necessary, statutory changes, that would be necessary to ensure that a clear and complete framework is established for each type of PPSI to permit the rapid resolution and repayment of payment stablecoin holders in the event of an issuer's failure.

c. Coordination

It is critically important that the OCC coordinate with the other federal payment stablecoin regulators, the Treasury Department, other federal regulators and state payment stablecoin regulators to create a robust regulatory framework that provides a level playing field for all types of payment stablecoin issuers, appropriately balances promoting innovation with preserving safety and soundness and financial stability, and explicitly discourages regulatory arbitrage. Such coordination is especially important in light of the Treasury Department's recent proposal to primarily consider the OCC's framework in defining the "federal regulatory framework" that is relevant for purposes of determining the substantial similarity of state-level regulatory regimes (and therefore the availability of those state regimes for PPSIs).[206]

Cooperation with other regulators will be especially important in the following areas:

Recommendation 58. *The OCC should coordinate with the appropriate federal regulators to clarify the application of federal consumer protection requirements to payment stablecoins, payment stablecoin transactions and PPSIs and FPSIs, and should examine PPSIs for compliance with federal consumer protection laws.*

The GENIUS Act does not address the application of various federal laws, including consumer protection requirements, in the context of payment stablecoins. For instance, it does not

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insolvent; and (3) the utility of orderly insolvency administration regimes and whether any additional authorities are needed to implement such regimes." GENIUS Act, § 11(h)(1), 139 Stat. 459.

205 *Id.* § 11(h)(2).

206 *See* Treasury Department, GENIUS Act Broad-Based Principles for Determining Whether a State-Level Regulatory Regime Is Substantially Similar to the Federal Regulatory Framework, Notice of Proposed Rulemaking, 91 Fed. Reg. 16,844 (Apr. 3, 2026).

address whether the Electronic Fund Transfer Act (the "EFTA") and its implementing regulation, Regulation E, apply to payment stablecoin transfers.[207] It also does not address other frameworks such as prohibitions on unfair, deceptive (and, if applicable, abusive) acts or practices ("UDAP" or "UDAAP," as applicable) under the Federal Trade Commission Act and Consumer Financial Protection Act, or privacy standards under the Gramm-Leach-Bliley Act.

Clarity on the application of the EFTA and Regulation E is crucial to the efficient and safe functioning of the payment stablecoin market. For example, whether the EFTA and Regulation E apply will determine how fraud and consumer disputes involving the transfer of payment stablecoins will be resolved and any related protections that PPSIs and market intermediaries will implement. The OCC should therefore coordinate with the appropriate federal regulators to clarify whether and how these requirements apply to payment stablecoins, payment stablecoin transactions and PPSIs and FPSIs.

The OCC should also coordinate with the Consumer Financial Protection Bureau, the Federal Trade Commission and other appropriate regulators to ensure that PPSIs within the OCC's jurisdiction are examined for compliance with federal consumer protection laws, including the UDAP provisions in section 5 of the Federal Trade Commission Act,[208] the UDAAP provisions of sections 1031 and 1036 of the Dodd-Frank Act,[209] and the privacy standards under the Gramm-Leach-Bliley Act.[210] The GENIUS Act provides that the OCC must examine a PPSI to assess the "financial, operational, technological, and other risks associated within the [PPSI] that may pose a threat to" the safety and soundness of the PPSI or financial stability.[211] The failure of a PPSI to comply with federal consumer protection laws can pose material safety and soundness concerns by undermining consumer confidence in the PPSI, which can in turn trigger mass redemptions and the failure of the PPSI.[212]

Recommendation 59. *The OCC should coordinate with the other payment stablecoin regulators and the Treasury Department to clarify the effective date of the GENIUS Act, and should coordinate with the other federal banking agencies to update existing guidance applicable to supervised banking organizations by that date.*

The GENIUS Act states that it becomes effective on the earlier of "(1) the date that is 18 months after the date of enactment of this Act [*i.e.*, July 18, 2025]; or (2) the date that is 120 days after the date on which the primary Federal payment stablecoin regulators issue any final

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207 15 U.S.C. § 1693 *et seq.*; 12 C.F.R. Part 205.

208 15 U.S.C. § 45.

209 12 U.S.C. §§ 5531, 5536.

210 15 U.S.C. §§ 6801–6809.

211 12 U.S.C. § 5905(A)(3).

212 The OCC also has plenary examination authority over uninsured national trust bank PPSIs under the National Bank Act. 12 U.S.C. § 481. To the extent the OCC has any concerns about the scope of its examination authority under the GENIUS Act with respect to PPSIs that are not uninsured national trust banks, the OCC could require such PPSI applicants to agree in writing to be subject to such examinations, similar to the approach the OCC takes to minority bank investments. *See* 12 C.F.R. § 5.36(e)(7).

regulations implementing this Act."[213] It is unclear whether the statute's effective date is triggered upon (i) issuance of the first final rule by any of the federal payment stablecoin regulators, (ii) the issuance of the first final rule issued jointly or in coordination by all of the federal payment stablecoin regulators, (iii) the date on which each of the federal payment stablecoin regulators has issued at least one final rule, or (iv) the issuance of all required rulemakings by all federal payment stablecoin regulators under the GENIUS Act. A clear timeline for effectiveness of the statute will help reduce uncertainty for PPSIs, FPSIs and digital asset service providers and promote the GENIUS Act's orderly implementation. The OCC should therefore coordinate with the other payment stablecoin regulators and the Treasury Department to clarify the effective date of the GENIUS Act.

The OCC and the other federal banking agencies should also coordinate to evaluate and, as appropriate, update existing guidance applicable to supervised banking organizations before the effective date of the GENIUS Act.

IX. Conclusion

We appreciate the opportunity to comment on the OCC's proposal to implement the GENIUS Act. We support the OCC's efforts to develop a clear framework for payment stablecoins and their issuers that fosters innovation while promoting safety and soundness and financial stability. However, we urge the OCC to consider adjustments to the final rule, as described in this letter, to ensure that payment stablecoins and their issuers are subject to requirements commensurate with the risks that they pose and to address potential "spillover" risks to the broader financial system. The OCC should also continue to reassess and refine its regulatory framework under the GENIUS Act as the market evolves and as the effects of regulation in this area become clearer.

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213 12 U.S.C. § 5901 note.

The Bank Policy Institute, the Consumer Bankers Association and the Financial Services Forum appreciate the opportunity to comment on the proposal. If you have any questions, please contact Paige Paridon at paige.paridon@bpi.com, David Pommerehn at dpommerehn@consumerbankers.com or Patricia Yeh at pyeh@fsforum.com.

Respectfully Submitted,

/s/

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/s/

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/s/

Patricia Yeh
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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.

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.