STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

June 30, 2025

The Honorable Members of the United States Senate
United States Senate
Washington, DC 20510

The Honorable Members of the U.S. House of Representatives
United States House of Representatives
Washington, DC 20515

Re: Proposed Stablecoin Legislation

Dear Honorable Members of Congress:

We write to highlight investor protection provisions necessary for responsible stablecoin legislation. Two bills, H.R.2392 – Stablecoin Transparency and Accountability for a Better Ledger Economy Act of 2025 (the "STABLE Act") and S.394 - Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (the "GENIUS Act"), have been submitted to Congress for consideration, and the Senate recently passed the GENIUS Act. A third bill introduced by Rep. Maxine Waters (the "Waters Bill")[1], remains a discussion draft. We recognize the urgency and importance of getting stablecoin legislation right; however, we have serious concerns that the STABLE Act and the GENIUS Act do not contain the necessary guardrails to protect the American public. We urge Congress to take the time necessary to draft legislation that will enhance innovation while protecting our banking system that is the envy of the world.

This letter follows our April 8, 2025 letter regarding digital asset regulation and our June 6, 2025 statement for the record submitted to the House Financial Services Committee concerning the CLARITY Act[2] and cryptocurrency market structure.

[1] H.R. COMM. ON FIN. SERVS., 119th Cong., Discussion Draft on the Regulation of Payment Stablecoins (2nd Sess. 2024).

[2] H.R. 3633, 119th Cong. (2025).

A. Limit Banking Contagion Risk by Regulating Stablecoin Issuers as Banks and Eliminating Non-Bank Issuers from the Bills.

Stablecoin issuers are *de facto* lenders who relend customer funds to banks that hold the underlying deposits. Given that stablecoin issuers essentially function as banks, they should be subject to the same regulations as banks in order to reduce systemic risk.[3] In addition to regular exams and enhanced net capital requirements, regulating stablecoin issuers in the same manner as banks would reduce systemic risk by enabling stablecoin issuers to borrow from the federal discount window in times of market stress, as opposed to liquidating assets or withdrawing deposits from other banks. It would also provide stablecoin holders with enhanced Federal Deposit Insurance Corporation ("FDIC") protection and ensure a transparent process for customers to be made whole outside of bankruptcy proceedings, where they would otherwise be considered unsecured creditors.

Without full banking protection at the issuer level, investor funds are still at risk if a non-bank stablecoin issuer fails—as shown by the failure of Synapse, a fintech platform which lost $95 million of customer funds despite keeping funds at a FDIC-insured depository institution.[4] In the absence of a bank charter requirement, Congress should strengthen the existing bills to mimic the protections afforded banks in, at least, the following ways:

1. Authorize the Federal Reserve Board to supervise non-bank issuers.

Responsible stablecoin legislation should designate the Federal Reserve Board ("Board") to supervise stablecoin issuers. The Board is uniquely empowered to protect financial market stability, a role that is necessary for the oversight of stablecoins given the potential scale of stablecoin deposits, the volatility of cryptocurrency business cycles and the spillover effects into the real economy. Its political independence ensures the Board can freely conduct its supervisory roles without undue pressure from the President or Congress. Additionally, authorization for Secretary of Treasury waivers on trading restrictions for non-permitted issuers—which essentially provides a backdoor for non-permitted issuers to escape Board scrutiny—should be struck from

[3] Such risks were recently realized when Circle, which had $3.3 billion of USDC customer funds deposited with Silicon Valley Bank, withdrew its money, resulting in the bank's collapse.

[4] Synapse was a "banking as a service" fintech company that served as an intermediary for customer deposits between user-facing fintech applications and regulated depository institutions like Evolve Bank and Trust. Synapse had claimed to keep customer deposits at FDIC insured banks like Evolve Bank. When Synapse collapsed, there was no FDIC protection for customer funds that Synapse had collected, as FDIC protection only applied if Evolve Bank went under. Stablecoin issuers are functionally equivalent to Synapse serving as the intermediary between regulated depository institutions and end-user facing applications. Adam Rust, *The Synapse Crisis Reveals the Urgent Need for Supervision of BaaS*, CONSUMER FED'N OF AM. (July 8, 2024), https://consumerfed.org/the-synapse-crisis-reveals-the-urgent-need-for-supervision-of-baas/.

the legislation.[5] Removal of the waiver will minimize the appearance of conflicts of interest and promote Americans' trust in the process.

2. Require stronger prudential supervision and capital requirements.

Responsible stablecoin legislation requires strong prudential supervision, which should:

i. Ensure ongoing exams by federal and state banking regulators to monitor and address risks in real time, including audits (and not just attestations) of reserves.

ii. Require increased capital requirements to meet the increased run risk of volatile market exposure for stablecoins (allowing issuers to first draw down on reserves instead of drawing down on deposits or selling massive amounts of treasuries or other collateral that could impact markets and place undue pressure on banks).

iii. Apply the requirements under the Bank Holding Company Act, including the ability to look to affiliates when evaluating conflict of interest risks posed by other business activities. Affiliates of non-bank stablecoin issuers should be restricted from engaging in other business activities, such as lending money to or borrowing money from any affiliated stablecoin issuers, and actively trading in the stablecoin, which can lead to market manipulation. Group or affiliate restrictions quarantine financial distress in a related entity from spreading to the stablecoin issuer and breaking the stablecoin's parity with the dollar.[6]

iv. Give prudential regulators explicit authority to apply greater supervisory scrutiny of liquidity risks and asset-liability management if the stablecoin

[5] Section 8(e)(2) of the current draft of the GENIUS Act gives the Secretary of Treasury a waiver of secondary trading restrictions on non-permitted issuers based on national security grounds. None of the other draft bills include such a provision. The executive branch, including the President, already has extraordinary powers to regulate transactions on national security grounds under the International Emergency Economic Powers Act.

[6] Gemini, the New York based cryptocurrency platform, is instructive. Gemini was subject to New York Department of Financial Services ("DFS") examinations, inspections, and reviews. But investor money was invested with Genesis Global Capital – an entity that was not regulated by DFS or any other regulatory agency. Billions in investor assets were lost when Genesis filed for bankruptcy. As a result, my office sued both Gemini and Genesis for fraud and ultimately reached a settlement with both entities, resulting in billions of dollars in assets being returned to aggrieved investors. Press Release, *Attorney General James Expands Lawsuit Against Cryptocurrency Company Digital Currency Group for Defrauding Investors*, N.Y. STATE OFF. OF THE ATT'Y GEN. (Feb. 9, 2024), https://ag.ny.gov/press-release/2024/attorney-general-james-expands-lawsuit-against-cryptocurrency-company-digital; Press Release, *Attorney General James Secures Settlement Worth $2 Billion from Crypto Firm Genesis Global Capital for Defrauded Victims*, N.Y. STATE OFF. OF THE ATT'Y GEN. (May 20, 2024), https://ag.ny.gov/press-release/2024/attorney-general-james-secures-settlement-worth-2-billion-crypto-firm-genesis; Press Release, *Attorney General James Recovers $50 Million from Crypto Firm Gemini for Defrauded Investors*, N.Y. STATE OFF. OF THE ATT'Y GEN. (June 14, 2024), https://ag.ny.gov/press-release/2024/attorney-general-james-recovers-50-million-crypto-firm-gemini-defrauded. Our litigation against Genesis' parent company and certain individuals remains ongoing. *See* Cheyenne Ligon, *Judge Rules Against Most of DCG's Motion to Dismiss NYAG's Civil Securities Fraud Suit*. COINDESK (Apr. 11, 2025 at 6:14pm), https://www.coindesk.com/policy/2025/04/11/judge-rules-against-most-of-dcg-s-motion-to-dismiss-nyag-s-civil-securities-fraud-suit.

issuer's funds represent a material portion of a depository institution's funding profile, including increasing capital and reserve requirements.

3. Protect consumers in the event of issuer bankruptcy.

Consumers must be protected against the real risk of bankruptcy by stablecoin issuers.[7] Stablecoin legislation should require issuers to segregate customer funds and reserve assets in off-balance sheet bankruptcy-remote entities. This ensures that these funds do not become part of the issuer's bankruptcy estate and subject to Chapter 11 proceedings by corporate creditors. A special procedure should be used to ensure the prompt return of customer deposits held in the bankruptcy-remote entity in lieu of time-consuming and highly uncertain bankruptcy proceedings.

4. Require timely redemption for retail holders.

Stablecoin issuers currently do not accept redemption requests from ultimate holders of their stablecoin (*i.e*. retail holders). Instead, issuers sell their stablecoins to large distributors, such as platforms or market makers. The bills should expressly permit retail holders to redeem their stablecoins from the issuers for underlying U.S. dollars, within a timeframe similar to that set forth in the Expedited Funds Availability Act.

5. Ensure pass-through FDIC insurance for stablecoin deposits.

Without pass-through FDIC protection, full reserves are not sufficient to protect consumers in the event of bankruptcy and do not address wider banking system run risks. Both the STABLE Act and the GENIUS Act require that reserves be held "as demand deposits … at insured depository institutions." However, deposit insurance only covers *individual deposits* up to $250,000—meaning that, absent pass-through insurance, stablecoin issuers would very likely have uninsured deposits above $250,000 at each bank where they place customer funds. Neither the STABLE Act nor the GENIUS Act protects investors from the vulnerability of an issuer depositing a very concentrated and fragile deposit in a single bank.

For pass-through insurance to attach to each stablecoin holder, the FDIC requires that the intermediary aggregating customer funds (*i.e.*, the stablecoin issuer) have records identifying each unique owner. The STABLE Act and the GENIUS Act do not expressly require a stablecoin issuer to identify the holders of the stablecoins, without which pass-through insurance would not apply to customer deposits.

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[7] In January 2024, Terraform Labs, the company behind the stablecoin TerraUSD and its sister coin Luna, filed for bankruptcy as a result of the de-pegging of TerraUSD and the crash in Luna's price in 2022, which wiped out an estimated $40 billion. The collapse of the TerraUSD and Luna stablecoin pair had a cascading effect in the cryptocurrency market, contributing to the financial distress of companies like Genesis, Voyager, Celsius, BlockFi and FTX, which all filed for bankruptcy. Greg Grzesiak, *The Collateral Consequences of Terra Luna's Collapse*, FIN. TECH TIMES, https://financialtechtimes.com/collateral-consequences-terra-luna-collapse/.

6. Expressly carve out interest-bearing stablecoins as securities.

If stablecoin issuers were fully regulated as banks and subject to FDIC insurance, then issuing interest-bearing stablecoins would largely fall under exemptions for bank-issued securities. In the absence of that, interest-bearing stablecoins would function as transferable, liquid money market funds, which are well established as securities. As such, interest-bearing stablecoins should be regulated as securities with accompanying risk disclosures that are required of securities.

B. Strengthen National Security by Requiring Stablecoin Issuers to Identify Ultimate Stablecoin Holders, Which Is Possible Through Digital Identity Credentials.

Digital identity is the critical missing piece to cryptocurrency market infrastructure—especially for stablecoins that function as digital cash with claims to real U.S. dollars. Digital identity is essential to ensuring that stablecoin issuers can provide pass-through FDIC coverage to all token holders. Moreover, without digital identity, the ability of law enforcement to stop parties from engaging in sanctions evasion, terrorist and illicit financing, money laundering, and violations of the Foreign Corrupt Practices Act, the Lobbying Disclosure Act and other federal and state anti-fraud statutes will be hobbled.

1. Digital identity that preserves privacy is technologically possible today.

Digital identity is an exciting area of innovation that is compatible with blockchain and smart contracts and enables cost-effective compliance to meet law enforcement and national security needs while preserving privacy and civil liberties.[8] Although the industry has been developing interoperable standards for digital identity credentials which can be associated or attached to digital wallets while protecting privacy, there is no impetus for cryptocurrency companies and projects to adopt this technology at a wide scale unless required to do so.

Lawmakers should require stablecoin issuers to only allow transfers of the token between wallets that satisfy know-your-customer requirements, which can be accomplished automatically by verifying the authenticity of digital identity credentials associated with each wallet. This transfer restriction is technologically feasible today, as stablecoin issuers can control the digital assets they issue, such as by freezing or burning stolen stablecoins. The law should also mandate that intermediaries, such as cryptocurrency platforms, encode Bank Secrecy Act ("BSA") requirements into their smart contracts or other software that operates websites and mobile applications. For example, the law should only permit trades with customers whose digital wallets provide verifiable digital identity credentials. With breakthroughs in a technology known as zero-

[8] A wide variety of protections already exist to protect the privacy of digital identities. For example, actual identities would be kept private from the public and could only be revealed pursuant to the Bank Secrecy Act or a lawful order/subpoena. Privacy is further maintained by allowing verifiers to receive only the information they need without unnecessary exposure to sensitive or personal identifying data by focusing on whether certain attributes are met – *e.g.*, that a person is a U.S. person, is at least 18 years old, has a valid government issued ID and recent address. Additionally, personal identifying data can be stored in a decentralized manner or locally with the stablecoin holder to minimize security risks.

knowledge proofs, it is now possible to verify key identity and transaction attributes without needing to share or expose underlying personal identifying information. Innovations in the area of digital identity can achieve law enforcement goals without compromising privacy and security.

2. Stablecoin legislation should require digital identity.

While the GENIUS Act requires stablecoin issuers to maintain an effective customer identification program, those provisions will effectively only apply to institutional clients without visibility into the identity or activity of ultimate stablecoin holders, which include retail holders. This is especially problematic given the global nature of stablecoins, including in sanctioned and adversarial jurisdictions. Without digital identity, the anonymous nature of cryptocurrency makes it practically impossible to redeem retail holders while satisfying BSA obligations.

Such issues would be addressed by requiring stablecoin issuers to apply Know Your Customer, anti-money laundering and BSA requirements downstream to retail holders and end users of stablecoins, which can be achieved by using digital identity credentials issued by regulated entities that associate digital wallets with real-world identities. This would prevent sanctioned or suspicious wallets from transacting in stablecoins and accessing the U.S. financial system. It would also ensure a fair playing field for all actors in the U.S. market and deter compliant good actors from losing market share.

C. Onshore Stablecoin Issuers to Ensure National Security.

Both the STABLE Act and GENIUS Act leave room for foreign issuers of U.S. dollar denominated and backed stablecoins to operate, essentially creating the "Tether loophole."[9] Currently, Tether (the largest stablecoin issuer) has relocated its headquarters to El Salvador. My office was the first law enforcement agency to hold Tether to account for misrepresenting its reserves and hiding $850 million of losses.[10] Today, Tether holds at least $94.5 billion in U.S. Treasury bills, representing 55% of the average daily trading volume of Treasury Bills.[11]

Neither bill imposes meaningful restrictions, prohibitions or penalties on foreign issuers that fail to meet the same regulatory requirements as U.S. domiciled issuers. This structure

[9] The GENIUS Act allows the Secretary of Treasury to implement reciprocity with foreign jurisdictions with "comparable" regulatory regimes while the STABLE Act requires both "comparable" regulatory regimes and some U.S. reporting and examination requirements. GENIUS Act of 2025, S. 394, 119th Cong. §18; STABLE Act of 2025, H.R. 2392, 119th Cong. §3(b)(2)(A).

[10] Press Release, *Attorney General James Ends Virtual Currency Trading Platform Bitfinex's Illegal Activities in New* York, N.Y. STATE OFF. OF THE ATT'Y GEN. (Feb. 23, 2021), https://ag.ny.gov/press-release/2021/attorney-general-james-ends-virtual-currency-trading-platform-bitfinexs-illegal

[11] This was calculated using the average trading volume of T-Bills in January and February 2025 for both ATS and interdealer volume and dealer to customer volume, using data from FINRA's TRACE system available here: TREASURY DATA AGGREGATE STATISTICS, https://www.finra.org/finra-data/browse-catalog/about-treasury/daily-data. (last visited June 25, 2025).

incentivizes stablecoin issuers to move offshore, including to jurisdictions that may be adversarial to the U.S. or outside of U.S. diplomatic or extraterritorial reach. Stablecoins issued into the U.S. market without the use of a U.S. based custodial intermediary makes enforcement against non-compliant foreign issuers unduly difficult. American investors would be subject to diluted protections contrary to the legislative goal. The Waters Bill expressly prohibits offshore stablecoin issuers from entering the U.S. market and language from this bill should be adopted.

One of the critical issues preventing the enforcement of laws over foreign issuers is jurisdiction. Congress should require permitted foreign issuers to be automatically subject to the laws and jurisdiction of the U.S. and any state in which the issuer's stablecoin is accessible.

The U.S. must maintain control over dollar-pegged stablecoin issuers—especially as stablecoin issuance grows and their ownership of U.S. Treasuries becomes systemically important to the U.S. Treasury markets. Congress should not risk American markets being held hostage by foreign-domiciled stablecoin issuers.

D. Prohibit Non-Banks from Issuing Stablecoins to Avoid Undermining Community Banks and Access to Rural America and Underserved Communities.

The STABLE Act and GENIUS Act both allow for non-bank entities to issue stablecoins providing an undeserved advantage over community banks that are already in decline.[12] Between 2000 and 2020, the number of banks in the U.S. declined by half, with more than 2,000 bank branches closing in rural America, cutting off vital financial lifelines and gutting a pillar of local community life. Additionally, both the STABLE Act and GENIUS Act allow for non-bank entities—such as large technology companies which are difficult for smaller community banks to compete with—to issue stablecoins without being required to comply with the Community Reinvestment Act ("CRA"). Under the CRA, regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs (including credit needs) of the communities they serve.[13] The CRA requires banks to provide credit access in the local communities where they operate, particularly in low-and moderate-income neighborhoods. Allowing non-banks to issue stablecoins will undermine the congressional goals of the CRA and will limit financial access of marginalized communities and local economies.

E. Preserve State Prudential Supervisory Authority and Strengthen Law Enforcement's Ability to Combat Fraud.

The supervisory role of states under stablecoin legislation should be on par with existing banking regulation, which allows banks to choose dual state and federal regulation by chartering

[12] *Senate passed GENIUS Act lays out stablecoin regulatory framework*, ICBA (June 18, 2025), https://www.icba.org/newsroom/news-and-articles/2025/06/18/senate-passed-genius-act-lays-out-stablecoin-regulatory-framework

[13] 12 U.S.C. §2901(a) & (b)

as state banks with FDIC protection and/or Federal Reserve Board oversight. Accordingly, neither state banking regulators nor state securities regulators should be preempted on broad swaths of banking adjacent or commercial activities by stablecoin issuers.

States should also have concurrent jurisdiction with federal regulators to go after fraud, including stopping the use of stablecoins for scams, sanctions evasion, illicit financing and market manipulation which, in the case of stablecoins, would have an outsized impact on the U.S. dollar and currency markets. Given the national security importance of policing stablecoin-related fraud, we need more cops on the beat, not fewer.

To minimize fraud and investor confusion, stablecoin legislation should also prohibit the use of the term "stablecoin" for cryptocurrencies that peg their value to the U.S. dollar but do not meet the reserve requirements mandating that at least 100% of the reserves are in U.S. dollars or dollar equivalents.

Lawmakers should further require that stablecoin issuers comply with subpoenas and administrative requests (and not just court orders) issued by state and federal law enforcement to freeze assets and provide information to investigators. Due to the irreversible nature of cryptocurrency transactions and fraud, time is of the essence, and we need to ensure immediate compliance in order to recover stolen or fraudulent funds for victims.

Finally, both the GENIUS Act and the STABLE Act list penalties "per violation." The bills should globally define a violation to clarify how penalties arising from stablecoin issuance will be assessed—be it per issuance, per stablecoin token, or another measure.

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We thank members of Congress for their hard work on a difficult and important area of legislation, and we welcome the opportunity to work together.

Respectfully submitted,

Letitia James
Attorney General for the State of New York