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April 19, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Re: Community Bank Perspective on Stablecoin Legislation

Dear Chairman McHenry and Ranking Member Waters:

On behalf of the Independent Community Bankers of America and the nearly 50,000 community bank locations we represent, I write to offer the community bank perspective on draft stablecoins legislation before the Financial Services Committee. Community banks have a strong interest in ensuring that digital assets such as stablecoins do not create systemic, investor, or consumer risk and that resulting risks created by non-banks operating in this manner do not spillover into the traditional banking system. We appreciate the committee's engagement with key stakeholders throughout this process.

We believe legislation is needed to address the emerging systemic risk created by a proliferation of unregulated stablecoins. ICBA supports the draft legislation's goal of establishing a clear federal regulatory framework that addresses the gaps in the existing authority of financial regulators and its attempt to bring unregulated stablecoins into the regulatory perimeter. Currently, stablecoin arrangements are not subject to comprehensive consolidated supervision, which allows for risks to multiply and creates an unequal playing field with highly regulated banks. It is critical that stablecoin arrangements be subject to comprehensive federal prudential oversight and examination.

We would also like to thank the committee for its cautious approach to a Central Bank Digital Currency (CBDC). A U.S. CBDC would introduce significant privacy and cybersecurity risks to the nation's monetary system and obstruct bank deposit taking and lending, thus threatening the stability of the U.S. banking system. ICBA supports payments innovation and efforts to increase financial inclusion, but we do not think a CBDC is the best way to achieve those objectives. We urge Congress to keep these significant risks in mind while considering whether to authorize the creation of a CBDC.

The Nation's Voice for Community Banks.®

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While we support these goals, we look forward to working with you to address some community bank concerns as this important process moves forward.

Specific Concerns Raised by the Discussion Draft

Access to Federal Reserve Programs

- Highly regulated depository institutions are given access to the Fed deposit account, as well as discount window and borrowing privileges, because they are subject to rigorous and comprehensive federal supervision and examination. Granting this access to nonbank payment stablecoin issuers, which are not subject to the same stringent regulatory oversight, would create significant systemic risk.
- Central bank reserves should not be used to back nonbank stablecoins. This change could lead to credit disintermediation by effectively creating a “pass-through CBDC,” or a CBDC equivalent mediated by nonbank stablecoins. This concern was flagged in a January 2022 Federal Reserve paper.
- Nonbank stablecoin issuers should not be granted a privilege that is not available to money market mutual funds, which are structurally similar to stablecoins.

In practice, the Federal Reserve would not have effective “discretion” over application approval

- While the discussion draft grants the Federal Reserve discretion over approval of stablecoin issuers and issuer access to master accounts and other services, in practice, the Fed would be under extraordinary pressure to approve applications. Access to these privileges would be viewed as a directive from Congress, placing the burden on the Federal Reserve to demonstrate that an applicant does not qualify. Approval of one application, would create a precedent for the approval of additional applications. Denied applicants would seek relief from the courts and from Congress.

Permissive licensing of stablecoin issuers

The discussion draft would create three pathways to becoming a stablecoin issuer:

- **Insured depository institutions.** These highly regulated and supervised institutions offer a reasonable path for stablecoin issuance.
- **Nonbank applicants directly to the Federal Reserve.**
 - Federal Reserve review would be undermined because applications would be deemed approved if a decision is not rendered within 90 days. Placing a clock on application review is without precedent in financial regulation. Given the stakes for systemic safety, applications must be subject to rigorous review. The predictable outcome is

- “deemed” approval of numerous, high-risk, nonbank applicants, and increased risk to the financial system.
 - The draft legislation also lacks needed detail on capital levels, supervision, and examination requirements for nonbank stablecoin issuers.
- **Nonbank state qualified payment stablecoin issuers.** The discussion draft would empower states to qualify stablecoin issuers in competition with the Federal Reserve. This would result in a non-uniform and even contradictory 50-state regime.
 - Moreover, the Federal Reserve would be forced to rely on examination reports made by state agencies. The Federal Reserve would be denied direct access to critical information needed to assess the safety and soundness of state-qualified stablecoin issuers. Inconsistent oversight would leave consumers vulnerable. Banks must comply with federal regulations governing all aspects of their operations, putting them at a competitive disadvantage to state-qualified, nonbank issuers.

Nonbank stablecoin issuers would have a significant regulatory competitive advantage and would effectively crowd out bank issuers

- For a bank subsidiary, stablecoin issuance would be likely considered a high-risk activity subject to burdensome requirements such as Bank Secrecy Act compliance, liquidity and risk-based capital requirements, and stress testing.
- The difficulty of obtaining regulatory approval and subsequent additional regulatory burden would effectively sideline banks. The draft should clarify that all well-capitalized and highly rated insured depository institutions will be considered qualified to establish a subsidiary to issue stablecoins.
- We recognize that the discussion draft attempts to apply the same regulatory regime to all stablecoin issuers, bank or nonbank. But this isn’t the full story. Banks would remain at a significant competitive regulatory disadvantage. Nonbanks would dominate stablecoin issuance, creating a riskier financial system.

Recommendations for Stablecoin Legislation

ICBA encourages policymakers to harmonize regulations to ensure strong, clear, and consistent oversight of all stablecoin issuers.

- Any regulatory regime applied to stablecoins should be comparable to regulations applicable to traditional, functionally similar payments products and services offered by the banking system.
- The scope of regulation should include capital adequacy and reserves; activity restrictions; due diligence; information security and privacy; business resiliency; ownership and control of data; anti-money laundering and anti-terrorist financing; reporting and maintenance of

books and records; consumer protections; safeguarding customer information; vendor and third-party management; and ongoing examination.

- A more comprehensive, coordinated regulatory approach by banking and market regulators, including the Securities and Exchange Commission and the Commodity Futures Trading Commission, could help address risks, dispel confusion in the marketplace, and prompt more community banks to explore digital asset products and services to address customer needs. Stablecoin companies are not subject to comprehensive consolidated supervision, which allows for risks to multiply and creates an unequal playing field with banks.
- The harmonization of regulations would not only address risk—the additional clarity would level the playing field and create opportunities for more community banks to consider offering digital products and services, including stablecoin. Without such information, many banks may choose not to engage in digital asset activities.
- Collaboration can also help to ensure that the development of digital assets will not harm the integrity of the U.S. financial system by disintermediating community banks.
- Stablecoins must be brought within the regulatory perimeter. Appropriate federal oversight is needed to close regulatory gaps and mitigate the risk of regulatory arbitrage regardless of how these digital assets are classified by policy makers. The regulatory framework should address risks posed by any entity within a stablecoin arrangement that participates in the creation, transfer, or storage of stablecoins. Unregulated entities should not be permitted to issue stablecoins.
- A consistent federal regulatory framework for stablecoins should balance their benefits and risks and preserve the separation of banking and commerce.

We urge you to carefully consider the concerns expressed above and look forward to further discussions of the details of this important bill.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

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