CRITICAL DIFFERENCES IN STABLECOIN LEGISLATION

SENATE: LUMMIS-GILLIBRAND PAYMENT STABLECOIN ACT (PSA)
HOUSE: CLARITY FOR PAYMENT STABLECOINS ACT

Aside from the significant disparity in page length, the two stablecoin bills circulating Congress have critical differences such as:

1. State Pathway / Dual Banking System

In the Lummis-Gillibrand PSA, there's an emphasis on creating a regulatory framework that involves both state and federal oversight. This act authorizes state non-depository trust companies to issue payment stablecoins, but with the requirement that these companies must register with the Federal Reserve. By setting up a registration requirement with the Federal Reserve, the act ensures that while states can initiate stablecoin issuances, there is a significant federal oversight component. Moreover, the act calls for the Federal Reserve to establish regulations in consultation with state banking supervisors, promoting a collaborative regulatory approach.

In contrast, the Clarity for Payment Stablecoins Act offers a dual regulatory path for stablecoin issuers: they can either remain under state regulation (if they are non-banks) or opt for federal registration and oversight. This choice allows for flexibility and can be tailored to the preferences or strategies of individual entities. Non-banks that choose federal oversight must be approved by the Federal Reserve, and while state regulators generally handle the approval and oversight of these issuers, there is a provision allowing state regulators to defer their supervisory and enforcement powers to the Federal Reserve if they choose to do so.

The act also assigns the Federal Reserve a special enforcement role for "exigent" or urgent situations. This means that even though the act places a strong emphasis on state control and regulation, the Federal Reserve has the authority to step in under extraordinary circumstances to enforce rules. This provision acts as a safety net, ensuring that there is a federal oversight capability in case there are significant issues or crises that necessitate intervention beyond the state level.

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Lummis-Gillibrand PSA:

- Allows state non-depository trust companies to issue payment stablecoins up to $10 billion, requiring these entities to register with the Federal Reserve within 180 days, ensuring a blend of state initiative and federal oversight.
- Authorizes a limited-purpose state/OCC depository institution charter for the exclusive purpose of payment stablecoin activities up to any amount.
- Creates a federal floor for application standards and regulatory requirements (including basic capital, liquidity and risk management standards) with the Federal Reserve required to issue rules in consultation with state bank supervisors.
- Enforcement: PSA grants the Federal Reserve or state/OCC [whoever issues trust charter] the ability to take independent enforcement action against a depository institution issuer. The Fed and state must act jointly to take enforcement action against a trust company below $10 billion.

Clarity for Payment Stablecoins Act:

- This bill requires banks and credit unions to be subject to federal regulation, while nonbanks would have the option to be subject to existing state regulation or federal registration and oversight.
- Nonbanks—defined in the bill as entities that are not IDIs or subsidiaries thereof—that choose the federal option must receive approval from the Fed.
- State regulators would presumably approve state qualified payment stablecoin issuers (non-banks) and be responsible for their supervision and enforcement, whereas the Fed would be responsible for writing regulations for these institutions. However, the bill would give state regulators the option of ceding their supervision and enforcement authorities to the Fed.
- Enforcement: Provides the Federal Reserve with backup enforcement authority over state-regulated non-banks for "exigent" circumstances, maintaining a federal oversight role while emphasizing state control.

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2. Receivership Framework

The discussion around stablecoin legislation has been significantly influenced by real-world financial events. Notably, the bank failures in March 2023 caused a ripple effect in the stablecoin market, where several issuers lost their 1-to-1 dollar peg—a key feature that is supposed to maintain stability in the value of these digital assets.

In the wake of those events, the Lummis-Gillibrand PSA aims to directly address the concerns that were highlighted by the bank failures. It does so by establishing a structured Federal Deposit Insurance Corporation (FDIC)-managed protocol for addressing the failure of stablecoin issuers. This includes provisions for keeping customer assets segregated from the issuers' balance sheets, which is critical in preventing customer funds from being at risk during a collapse. Importantly, the PSA stipulates that in the event of failure, the Treasury's credit is not to be utilized, aiming to protect taxpayers from bearing the cost of private sector risks and failures.

On the other hand, the Clarity for Payment Stablecoins Act doesn't specify particular receivership provisions,

Lummis-Gillibrand PSA:
- Establishes a detailed receivership framework under the FDIC to manage the affairs of failing payment stablecoin issuers.
- Specifies the order of priority for claims, ensuring that customer assets are treated as separate from the assets of the issuer.
- Prohibits the FDIC from accessing Treasury lines of credit, relying instead on the capital and assets of the institution to fund the receivership.

Clarity for Payment Stablecoins Act:
- Does not include specific provisions or a detailed framework addressing the receivership of payment stablecoin issuers.

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3. Treatment of Algorithmic Stablecoins

The Lummis-Gillibrand PSA bans algorithmic stablecoins outright, whereas the Clarity for Payment Stablecoins Act puts a temporary two-year hold on them and calls for further studies.

Lummis-Gillibrand PSA:

- Prohibits the issuance of algorithmic payment stablecoins.

Clarity for Payment Stablecoins Act:

- Imposes a two-year moratorium on algorithmic (called endogenously collateralized) stablecoins and requires a study on these and other nonpayment stablecoins.

4. Custody

The Lummis-Gillibrand PSA imposes strict regulations on the segregation and quick redemption of customer assets, contrasting with the Clarity for Payment Stablecoins Act that focuses on maintaining reserve liquidity and requires detailed public financial disclosures.

Lummis-Gillibrand PSA:

- Provides that state trust companies which are stablecoin issuers can be the legal custodian of record for payment stablecoins and reserves, but must use a federal/state chartered-depository institution as subcustodian to hold the assets.
- Provides that depository institutions that are stablecoin issuers can perform all custodial services in relation to payment stablecoins, including being the legal custodian and actually holding the assets.
- Provides that customer payment stablecoins and reserves relating to those stablecoins must be strictly segregated from the proprietary assets of the issuer and that rehypothecation–using collateral that a firm does not own to help finance assets–is prohibited.

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Clarity for Payment Stablecoins Act:

- Only custodians [of stablecoins or private keys of stablecoins] supervised by either a federal stablecoin regulator or a state banking or credit union supervisor are authorized to safeguard stablecoins.
- Custodians are prohibited from comingling their own funds with customers, with exceptions such as they are complying with similar requirements required by a federal payment stablecoin regulator, the SEC, or CFTC. Custodians would be required to "take such steps as are appropriate" to protect customer funds from a custodian's creditors.
- Federal payment stablecoin regulators cannot make rules that would limit an individual's use of digital assets or ability to self-custody.

5. Transitional and Operational Provisions

The Lummis-Gillibrand Act sets specific rules and start dates once the Federal Reserve completes its rulemaking, compared to the Clarity for Payment Stablecoins Act which includes a safe harbor period for pending applications, easing the transition into new regulations.

Lummis-Gillibrand PSA:

- Provides clear transitional provisions for existing issuers and a defined start upon completion of rulemaking by the Federal Reserve.

Clarity for Payment Stablecoins Act:

- Includes a safe harbor for pending applications for issuance once approval requirements take effect, providing a transition period for compliance.

For all questions contact Chief Policy Officer, Cody Carbone at Cody@digitalchamber.org and Senior Policy Associate, Taylor Barr at Taylor@digitalchamber.org.