

Section 401 of the CLARITY Act: What It Means for Banks and Credit Unions

A plain-language briefing on the Digital Asset Market Clarity Act's banking provisions, prepared for bank and credit union executives.

Executive Summary

On May 14, 2026, the U.S. Senate Banking Committee advanced the Digital Asset Market Clarity Act (“CLARITY Act”) in a 15–9 bipartisan vote. Title IV, §401 of the bill amends the Bank Holding Company Act, the National Bank Act, the Federal Reserve Act, and the Federal Credit Union Act to authorize a defined list of fourteen digital asset activities for financial holding companies, national banks, state banks, federal credit unions, and state credit unions. The activities include custody, Bitcoin-backed lending, payments, riskless principal facilitation, brokerage, market-making, and self-custodial wallet software. Section 401(h) eliminates any prior notice or approval requirement beyond what the underlying banking acts already provide.

Background

For most of the last decade, banks and credit unions interested in digital asset services have operated under a patchwork of OCC interpretive letters, state-by-state guidance, and limited or indirect NCUA direction. Comprehensive permissibility guidance — uniform across charters — had not materialized. The CLARITY Act addresses that gap at the statutory level. The bill is the Senate Banking Committee’s companion to last year’s GENIUS Act, which established the federal framework for payment stablecoins. CLARITY extends statutory clarity to the broader digital asset market, including the banking permissibility provisions in Title IV.

Key Provisions

§401(b) — Authority for financial holding companies. An FHC may use a digital asset or distributed ledger system to perform any activity it is otherwise authorized to perform. Under §401(b)(2), the activities described in §401(g) are deemed “financial in nature” for §4(k) of the Bank Holding Company Act. FHCs receive the broadest scope of any covered institution. *Citation: EHF26374, §401(b), pp. 195–197.*

§401(c) — Authority for national banks. Under §401(c)(2), §401(g) paragraphs (1) through (5) and (7) through (14) are authorized as part of, or incidental to, the business of banking. Paragraph (6) — naked principal purchase or sale for investment or trading — is not included for national banks. Federal- and state-licensed branches receive the same authority as principals. *Citation: EHF26374, §401(c), pp. 196–198.*

§401(d) — Insured state banks. For purposes of §24 of the FDI Act, the activities authorized for a national bank under §401(c) are permissible for an insured state bank and any subsidiary, engaging as principal. *Citation: EHF26374, §401(d), p. 198.*

§401(e) — Authority for federal credit unions. A federal credit union may use a digital asset or distributed ledger system to perform any activity it is otherwise authorized to perform. The §401(g) activities are deemed part of, or incidental to, the business of credit unions under FCUA §107(17). *Citation: EHF26374, §401(e), pp. 198–199.*

§401(f) — State credit unions. The activities authorized for a federal credit union under §401(e) are permissible for a state credit union, subject to state law and any limitations imposed by NCUA on insured credit unions. *Citation: EHF26374, §401(f), p. 199.*

§401(g) — The fourteen authorized activities. Custodial, fiduciary, and safekeeping services (g)(1); related custodial services including staking, distributed ledger governance, and lending facilitation (g)(2); facilitating customer purchases and sales (g)(3); **making loans collateralized by digital assets (g)(4)**; payment activities (g)(5); principal purchase or sale for investment or trading (g)(6); operating a node on a distributed ledger (g)(7); providing self-custodial wallet software (g)(8); derivatives with related hedging, consistent with 12 CFR 7.1030 (g)(9); brokerage services including clearing and execution (g)(10); **riskless principal facilitation (g)(11)**; incidental principal holdings (g)(12); **underwriting, dealing in, or making a market in digital assets (g)(13)**; and all incidental powers necessary to carry out the above (g)(14). *Citation: EHF26374, §401(g), pp. 199–201.*

§401(h) — No prior approval requirement. No prior notice or approval requirement applies to the authorized activities beyond what is already required under the National Bank Act, Federal Reserve Act, Bank Holding Company Act, or Federal Credit Union Act. *Citation: EHF26374, §401(h), p. 201.*

§401(i) — Floor, not ceiling. The §401(g) list is non-exclusive. Federal banking agencies and NCUA retain authority to determine that other activities are also permissible via interpretation, guidance, or rulemaking. Safety- and soundness supervision authority is fully preserved. *Citation: EHF26374, §401(i), p. 202.*

§401(j) — Application. Section 401 does not apply to nonfungible assets. *Citation: EHF26374, §401(j), p. 203.*

Risk Assessment and Remaining Uncertainty

Statutory authorization is necessary but not sufficient. The federal banking agencies — Fed, OCC, FDIC — and NCUA retain safety-and-soundness supervisory authority under §401(i). Each agency may issue further guidance on capital, concentration, and risk-management expectations for digital asset activities. Section 403 requires the Fed, OCC, and FDIC to develop capital requirements addressing netting agreements within 360 days of enactment; NCUA is likely to follow a similar timeline for credit union activities.

Section 404 of the bill, which prohibits payment stablecoin issuers and digital asset service providers from paying deposit-like interest or yield on payment stablecoin balances, remains contested. The banking trade associations — including ABA, ICBA, BPI, and others — have asked for §404 to be tightened to prevent indirect “rewards” that could function as yield. The digital asset industry has asked for it to be loosened. The final language is not yet settled.

For national banks specifically, §401(c)(2) excludes §401(g)(6) (purchasing or selling digital assets as principal for investment or trading) from the “business of banking” authorization. National banks receive every other authorized activity. Financial holding companies and credit unions are not subject to this carve-out.

Timeline

- **May 14, 2026:** Senate Banking Committee advanced EHF26374 by a 15–9 bipartisan vote.
- **Pending:** Full Senate floor consideration. Date not scheduled.
- **If passed:** Conference with House version (H.R. 3633) and presidential signature.
- **Effective date:** 360 days after enactment, or 60 days after the relevant final rule, whichever is later.
- **§403 capital requirements:** Federal banking agencies have 360 days from enactment to develop netting-agreement capital rules.
- **Implementing rulemaking:** Required within one year of enactment from federal banking agencies and NCUA.

Galoy Relevance

Galoy builds Bitcoin-native core banking infrastructure designed for regulated financial institutions of every charter type — national banks, financial holding companies, insured state banks, federal credit unions, and state credit unions. **Lana by Galoy**, our Bitcoin-backed lending platform, is custody-independent, ISO 27001:2022 certified, and operates as a sidecar alongside an institution’s existing core. Lana’s full lifecycle credit-facility management, real-time LTV monitoring, double-entry accounting, role-based access controls, and committee approval workflows are designed for examination by federal and state banking and credit union supervisors. Galoy’s broader infrastructure also supports the custody, payments, brokerage, and exchange activities authorized in §401(g). The CLARITY Act does not change what Galoy does; it changes the statutory basis on which banks and credit unions can do it.

This briefing is provided for informational purposes only and does not constitute legal, regulatory, or investment advice. Banks and credit unions considering digital asset activities should consult with their own counsel, compliance staff, and primary regulator. Galoy is a software company, not a law firm or regulator.

For ongoing coverage of the CLARITY Act and other Bitcoin banking regulatory developments, subscribe to *The Bitcoin Banking Standard* at galoy.io. To discuss what §401 enables for your institution specifically, contact the Galoy team at galoy.io.

Sources

- Senate substitute EHF26374 (the bill): <https://www.banking.senate.gov/imo/media/doc/ehf26374.pdf>
- Senate Banking Committee section-by-section summary: <https://www.banking.senate.gov/imo/media/doc/section-by-section.pdf>
- Senate Banking Committee fact sheet: <https://www.banking.senate.gov/newsroom/majority/the-facts-the-clarity-act-protects-main-street-unleashes-responsible-innovation-and-cracks-down-on-fraud-and-money-laundering>
- Bank Policy Institute joint trades statement: <https://bpi.com/banking-trades-statement-on-senate-banking-committee-vote-to-advance-clarity-act/>