

Stablecoin Bills Moving to the Floor of the Senate and the House

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As of yesterday, stablecoin bills in the House and the Senate have been voted out of committee and moved onto the floor of each house for a full vote. The Senate voted their bill, the Guiding and Establishing National Innovation for US Stablecoins ([the GENIUS Act](#)) out of committee in mid-March, after updating it to reflect bipartisan concerns. Similarly, the House's bill, the Stablecoin Transparency and Accountability for a Better Ledger Economy ([the STABLE Act](#)), enjoys bipartisan support.

Both bills set up a structure such that all issuers of stablecoins pursuant to the bill will be regulated by the Federal banking agencies. In the STABLE Act, if the issuer is a bank or credit union, then their primary prudential regulator will be the "Primary Federal Payment Stablecoin Regulator", and if the issuer is a non-bank, then the Office of the Comptroller of the Currency (OCC) will be the regulator. However, in the GENIUS Act, the Federal Deposit Insurance Corporation (FDIC) is not contemplated as being a stablecoin regulator – only the Federal Reserve, the OCC, and the National Credit Union Association (NCUA) would be stablecoin regulators. At the state level, both bills contemplate state banking regulators to also be stablecoin regulators.

Some other important differences between the bills that will need to be worked out –

- The STABLE Act definition for a "payment stablecoin" exempts from the definition deposits "regardless of the technology used to record such deposit", which is a position consistent with the approach taken by the 2022 Amendments to the Uniform Commercial Code. The GENIUS Act does not include such an exemption.
- The STABLE Act also provides for a two-year "wind-down" period (dating from the passage of the bill) during which pre-existing stablecoins (i.e., those issued before the bills are passed) may continue to be offered or sold by "custodial intermediaries" and a process for such stablecoins to be deemed "comparable" to "payment stablecoins". The STABLE Act also makes it unlawful, at the expiration of the two years, for any stablecoin to be issued that is not a "payment stablecoin". The GENIUS Act does not provide a method for pre-existing stablecoins to be considered "payment stablecoins", and does not provide for a wind-down period, suggesting that "custodial intermediaries" could continue to offer and sell pre-existing stablecoins.
- The GENIUS Act includes provisions addressing how to manage an "insolvent" payment stablecoin issuer. The STABLE Act does not address this situation.

Both bills presently require 1-to-1 reserves to be held against the stablecoins that are issued and prohibit rehypothecation of those reserves (i.e., if the reserves are deposits, then those deposits may not be deployed back into the marketplace to support loans or other activities of banks). While the reserves may be held in a variety of forms, not just deposits, if payment stablecoins begin to take off, it is reasonable to anticipate that there could be some deleterious effects upon deposit markets, which would then impact credit markets. At present, neither bill contemplates relaxing the prohibition on rehypothecation, which means that it would require an act of Congress to change it. Accordingly, we think the bills could be improved by providing a method for either the Federal Reserve or the OCC to engage in rulemaking to relax the prohibition, should it be necessary to balance the marketplace.