Operation and Structure of the GENIUS Act of 2025 on Payment Stablecoins

June 24, 2025

1. Introduction.

The Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (the "***GENIUS Act***" and the "***Act***")[1] establishes a regulatory infrastructure for defining, managing, custodying and issuing a specific kind of cryptocurrency -- "*payment stablecoins*".

Stablecoins generally are a type of digital asset based on the technology underpinning cryptocurrencies such as Bitcoin, Tether, and Ether, which are recorded on a cryptographically secured distributed ledger (often, a blockchain), and are intended to maintain a stable value against a defined reference asset (*e.g.*, $1 USD per stablecoin). Stablecoins can take a variety of forms and be used for a variety of purposes. As more fully described herein, the Act defines a specific subset of stablecoins that are designed to be used as a means of payment or settlement.

The Act lays out clear guidelines on how payment stablecoins can be issued, who can issue them, how reserves backing up these stablecoins should be maintained and what disclosures must be provided, as well as how payment stablecoins are to be treated in bankruptcy proceedings. Additionally, the Act contemplates both Federal and State rules for the approval and supervision of U.S. issuers of payment stablecoins to U.S. persons, and provides registration requirements for foreign issuers that offer payment stablecoins to U.S. persons.

2. Effectiveness of the Act and Important Milestones.

The Act becomes effective the *earliest* of: 1) 18 months after the President signs the Act or 120 days after the issuance of any final regulations implementing the Act by the primary Federal

[1] S.1582 - 119th Congress (2025-2026): GENIUS Act, S.1582, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/1582. The GENIUS Act was voted out by the Senate Banking Committee on March 13, 2025, and passed the Senate by a 68-30 vote on June 17, 2025. The bill will now move to the House of Representatives, where House leaders have voiced concerns about earlier versions of the Senate bill, but amendments made since March may allay some of those concerns. This summary is based on the version that passed the Senate on June 17.

payment stablecoin regulators. Nevertheless, there is a three-year grace period ("***Grace Period***") after which it becomes illegal to offer, sell or issue payment stablecoins that were not issued by a PPSI.[2] That three-year period begins to run when the President signs the Act, not once the Act has become effective. Payment stablecoins that had been issued before the enactment of the Act, or during the Grace Period, but not in compliance with the provisions of the Act, will not be treated as payment stablecoins.[3] The Act provides several additional milestones when various obligations and prohibitions would become effective and when certain rulemakings would have be completed by applicable regulators to implement the Act.

This memorandum briefly summarizes the main provisions of the GENIUS Act as it was passed in the Senate on June 17, 2025.

3. Definitions.

Some definitions in the Act incorporate existing concepts (*e.g.*, depository institutions), while others overlap with definitions also used in the proposed market structure bill for digital assets (the Clarity Act of 2025 (the "***Clarity Act***"))[4], (*e.g.*, disseminated ledger) and yet other definitions are novel and introduce entirely new regulatory concepts, such as, "payment stablecoin" and "permitted payment stablecoin issuer" ("***PPSI***"). Outlined below are some of the key definitions useful to understanding the Act and this summary.

Payment Stablecoin. This is the most important definition in the Act. A payment stablecoin must be a "digital asset" (*i.e.*, "any digital representation of value that is recorded on a cryptographically secured distributed ledger") that is designed only to be used for payment or settlement purposes.[5]

Next, the definition requires that a payment stablecoin may only be issued by an issuer that: (1) is obligated to convert or redeem the payment stablecoin for a fixed amount of monetary value; and (2) will maintain the stable value of the payment stablecoin against a fixed amount of monetary value. Importantly, a payment stablecoin may be issued by both PPSIs and "foreign payment stablecoin issuers," but only PPSIs may issue them in the United States after the Grace Period.

An integral part of the definition of "payment stablecoin" is, of course, a list of assets that cannot qualify as payment stablecoins and are expressly carved out of the definition. Specifically, a

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[2] Once the three-year period has run, if anyone other than a PPSI issues payment stablecoins in the U.S., they will be subject to a $1 million fine and/or a 5-year imprisonment for each violation. Act § 3(f)(1).

[3] Act § 3(g) - Treatment.

[4] H.R.3633 - 119th Congress (2025-2026): Digital Asset Market Clarity Act of 2025, H.R.3633, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/house-bill/3633.

[5] Act § 2(22)(A)(i).

payment stablecoin does not include national currency (*e.g.*, $USD), bank deposits (whether traditional deposits or deposits that are on-chain) or securities as defined in U.S. securities laws.[6] In addition, the Act amends the Commodity Exchange Act ("***CEA***")[7] to carve out "payment stablecoins" that are issued by a PPSI from the definition of "commodity" in §1a(9) of the CEA.[8] This carve-out means that neither U.S. registered commodity exchanges (*i.e.*, designated contracts markets) nor the non-U.S. exchanges, that may give a direct access to persons located in the U.S. to trade futures on payment stablecoins,[9] may list and offer for trading futures contracts on payment stablecoins.[10]

Permitted Payment Stablecoin Issuer. A PPSI is defined as a person formed in the U.S. that is any of:

- a subsidiary of an insured depository institution that has obtained the approvals required by the Act to issue payment stablecoins;
- a Federal-qualified stablecoin issuer, approved by a primary Federal payment stablecoin regulator; or
- a State-qualified payment stablecoin issuer, approved by a State payment stablecoin regulator.

Foreign Payment Stablecoin Issuer. When a digital asset meets the definition of a "payment stablecoin," but the stablecoin has been issued by an issuer organized under the laws of, or domiciled in, a foreign country or a territory of the U.S., Puerto Rico, Guam, American Samoa, or the

[6] The Act amends several U.S. securities laws to clarify that "payment stablecoins" are not "securities" and that the PPSI would not qualify as an "investment company" even if payment stablecoins may otherwise qualify as "securities." *See,* Act § 2(22)(B)(iii) and Act §17(b). Also see Statement on Stablecoins, SEC Div. Corp. Fin, April 4, 2025, stating that generally payment stablecoins do not meet the conditions of the Reves test and the Howey test and therefore do not qualify as "securities."

[7] 7 U.S.C. § 1a *et seq*.

[8] We note, however, that as of the date of this writing, existing stablecoins are widely recognized to qualify as "commodities" and subject to CFTC's jurisdiction. *See* Tether and Bitfinex CFTC enforcement matters , CFTC Release Number 8450-21, October 15, 2021, where the CFTC had unequivocally stated that "The [stablecoin] USDt is a commodity as defined in the Act". If a payment stablecoin is not a "commodity," the CFTC will not have enforcement jurisdiction over fraud and manipulation in transactions involving these instruments. After the effective date of the Act, the CFTC would not be able to bring similar enforcement matters.

[9] Act § 3(c) gives the extraterritorial effect to §3 prohibition on issuances of payment stablecoins by persons other than PPSIs.

[10] *See* § 17(f) of the Act. At the present time, it is less clear whether "swaps" (as defined in § 1a(47) of the CEA) can be offered on payment stablecoins given that swaps may reference many other assets in addition to referencing "commodities." Likewise, it is unlikely that swaps on payment stablecoins could qualify as "security-based swaps" as defined in § 1a(42) of the CEA and the § 3(a) of the Securities Exchange Act of 1934 given that payment stablecoins are not "securities."

Virgin Islands, AND the issuer is not a PPSI, then the issuer is a "foreign payment stablecoin issuer."

Digital Asset Service Provider. A "digital asset service provider" is broadly defined to encompass any for-profit business in the United States (or on behalf of U.S. customers) that exchanges, transfers, or keeps custody of digital assets, or participates in financial services relating to the issuance of digital assets (*i.e.*, not just the issuance of payment stablecoins). However, this definition expressly excludes entities engaged only in certain technical activities related to distributed ledger protocols, including when the entity is *per se* a distributed ledger protocol; when the entity is developing, operating or validating transactions on a distributed ledger; or when it is participating in liquidity pools and similar mechanisms for peer-to-peer transactions.

Primary Federal Payment Stablecoin Regulator. The "primary Federal payment stablecoin regulator" is the existing appropriate Federal banking agency – meaning, for depository institutions and/or their subsidiaries -- the Federal Reserve Board ("***FRB***"), the Office of the Comptroller of the Currency ("***OCC***"), the Federal Deposit Insurance Corporation ("***FDIC***"), or the National Credit Union Administration ("***NCUA***"), depending upon the type of issuer. And, for non-banks that apply to be a permitted payment stablecoin issuer at the Federal level, the OCC.

State Payment Stablecoin Regulator. A "State payment stablecoin regulator" is defined in the Act to mean a State agency that has primary regulatory and supervisory authority in such State over payment stablecoin issuers. To be clear, not all States must have a State Payment Stablecoin Regulator, and if they do not have one, then entities in those states would apply to the appropriate Federal Payment Stablecoin Regulator.

As the parameters embedded in these definitions suggest, the intent of the Act is to sanction the creation and regulation of an entirely new asset that is not a bank deposit, not a security, not a national currency and not a commodity.

4. Issuance of Payment Stablecoins.

General Rules on Issuance, Offer or Sale of Stablecoins. Section 3(a) of the Act lays down the basic rule of *issuance* of payment stablecoins: after the Grace Period expires, only those entities that have been approved as PPSIs may issue payment stablecoins in the United States.[11]

Section 3 also restricts who may *offer or sell* payment stablecoins. The Act similarly prescribes that after the Grace Period expires digital asset service providers may only offer or sell payment

[11] Act §3(a).

stablecoins to U.S. persons that have been issued by a PPSI, with a few exceptions.[12] For example, payment stablecoins issued by a "foreign payment stablecoin issuer" may only be offered or sold to U.S. persons when that foreign payment stablecoin issuer has applied for a determination by the Department of Treasury ("***Treasury***") that it has the technological capability to comply with lawful orders and reciprocal arrangements (i.e., U.S. anti-money laundering and sanctions laws and regulations) and has then proceeded to register with the OCC.[13] In addition, Treasury is directed under the Act to issue rules on "foreign payment stablecoin issuers" not later than one year of enactment of the Act and may issue other regulations that provide limited safe harbors that would apply to a "de minimis volume of transactions."[14]

Payment stablecoins that have not been issued by PPSIs, upon the expiration of the Grace Period, will lose treatment as cash equivalent assets for accounting purposes and as cash equivalent margin and collateral for futures commission merchants, derivative clearing organizations, broker-dealers, registered clearing agencies and swap dealers, as well as settlement assets for wholesale payments, exchange and settlement among banking organizations.[15]

Exceptions to General Rules on Issuance, Offer and Sale. Section 3 does provide certain exceptions and safe harbors:

Exempt Transactions. Section 3 of the Act exempts from both the general issuance rule and the offer and sale rule three types of transactions. Such transactions are wholly outside the scope of Section 3:

- *Non-intermediated Transfers Between Individuals*. Transfers of digital assets between two individuals, acting on their own behalf for lawful purposes, without the involvement of an intermediary;

- *Cross-Border Transfers Between an Individual's Accounts*. Transactions involving the receipt of digital assets, between an individual's account in the United States and that same individual's account abroad, which accounts are offered by the same parent company; and

[12] Act §3(b)(1).

[13] Act §3(b)(2) and §18(a)(2) and (c).

[14] Act §3(c)(1).

[15] Act §3(g).

- *Self-Custody Wallet Transactions*. Any transaction by means of a wallet (software or hardware) that "facilitates an individual's own custody of digital assets."[16]

De Minimis Issuance Safe Harbors. The Act empowers the Secretary of the Treasury to issue regulations providing for safe harbors from the issuance restrictions in Section 3(a) of the Act, as long as those safe harbors are consistent with the Act, limited in scope and apply to a de minimis volume of transactions.

Unusual and Exigent Circumstances Issuance Safe Harbors. The Act also empowers the Secretary of the Treasury to provide limited safe harbors from the issuance restrictions in Section 3(a) of the Act if the Secretary determines that unusual and exigent circumstances exist. The Secretary is required to submit a justification of such determination to leaders of Senate Banking, Housing and Urban Affairs Committee and House Financial Services Committee.

It is notable that the latter two safe harbor authorizations are limited only to the issuance rules in Section 3(a) that mandates that only PPSIs may issue payment stablecoins, and do not cover the offer and sale rules in Section 3(b).

Prohibition of Issuance by Non-Financial Public Company Issuers. The Act includes a specific prohibition against a public company (or its subsidiaries or affiliates) issuing a payment stablecoin if the public company is not "predominantly engaged" in one or more financial activities.[17] This prohibition reflects the general public policy inherent in the Bank Holding Company Act[18] and federal banking law of a general separation between banking commerce and applies to foreign public companies, as well.[19] However, such a public company (or subsidiary) may be permitted to issue a payment stablecoin if the Stablecoin Certification Review Committee unanimously makes the following three findings:

- Such permission will not pose a material risk to the safety and soundness of the banking system, the financial stability of the U.S. or the Deposit Insurance Fund;

[16] Act §3(h)(1)(A)-(C).

[17] Act §4(a)(12). "Financial activities" are defined by reference to Section 4(k) of the Bank Holding Company Act of 1956, as well as including activities involving issuance, redemption and managing the reserves of payment stablecoins, and exchanging, transferring and maintaining custody of digital assets.

[18] 12 U.S.C. § 1841, *et seq*.

[19] Act §4(a)12(c).

- Such public company will comply with data use limitations restricting use of personal data obtained from stablecoin transactions from use in targeting advertising, from sale to third parties, or from being shared, unless consented to by the consumer; and

- Such public company will comply with the Act's anti-tying provisions (*see* Paragraph 10 of this memorandum).

5. Payment Stablecoin Reserves and Prohibitions.

In addition to establishing rules for who can issue, offer and sell payment stablecoins, the Act establishes detailed standards for the payment stablecoins themselves that are subject to such issuance. Perhaps the most central requirements are those surrounding the reserves required to be maintained by PPSIs.[20]

"Backing". Section 4(a)(1) of the Act states that a PPSI "shall" maintain reserves "backing" the outstanding payment stablecoins on at least a "1 to 1 basis" and composed of specified assets.

Although the Act makes several references to the reserves "backing" payment stablecoins, it does not mandate any particular legal structure for the payment stablecoin to achieve such backing. The Act thereby accords latitude to payment stablecoin issuers to derive appropriate structures to achieve the Act's policy of supporting payment stablecoins with their reserves, as well as allowing for continued technological development. Further, the Act specifically notes that it is prohibited to represent that the FDIC will provide deposit insurance for payment stablecoins or to otherwise create an impression that the payment stablecoins are "backed" or otherwise "guaranteed" by the U.S. Government.[21]

Composition. The reserves of payment stablecoins are restricted to highly liquid and creditworthy assets such as certain currency deposit accounts and Treasury bills, notes or bonds with tenors to maturity of 93 days or less and certain other liquid financial assets and instruments.[22] The primary

[20] Act §4(a)(1).

[21] Act § 4(e).

[22] Permitted reserves for payment stablecoins include:

(i) United States coins and currency (including Federal Reserve notes) or money standing to the credit of an account with a Federal Reserve Bank;

(ii) funds held as demand deposits (or other deposits that may be withdrawn upon request at any time) or insured shares at an insured depository institution (including any foreign branches or agents, including correspondent banks, of an insured depository institution), subject to limitations established by the Corporation and the National Credit Union Administration, as applicable, to address safety and soundness risks of such insured depository institution;

(iii) Treasury bills, notes, or bonds—

Federal payment stablecoin regulator (in consultation with any relevant State payment stablecoin regulator) can add similar liquid, Federal Government-issued assets to the list.

Further, it is notable that the permitted composition of assets for payment stablecoin reserves includes tokenized forms of all of the types of reserve assets other than money under repurchase agreements and reverse repurchase agreements. Similar to the reference to reserves "backing" payment stablecoins, the term "tokenized" here is not defined, again leaving space for market participants to determine appropriate tokenization structures for reserve assets, and for future technological development. Note that with respect to the reserves, the PPSIs are expressly permitted to engage in non-payment stablecoin activities that are authorized by the primary Federal or State payment stablecoin regulator, provided that "the claims of payment stablecoin holders rank senior to any potential claims of non-stablecoin creditors with respect to the reserve assets."

Importantly, the Act does not include many other assets that are commonly used as collateral and reserves for stablecoins, such as, for example precious metals (*e.g.*, gold and platinum).

Prohibition on Yield. The Act forbids any PPSI or foreign payment stablecoin issuer from paying to a holder of any payment stablecoin

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(I) with a remaining maturity of 93 days or less; or

(II) issued with a maturity of 93 days or less;

(iv) money received under repurchase agreements, with the permitted payment stablecoin issuer acting as a seller of securities and with an overnight maturity, that are backed by Treasury bills with a maturity of 93 days or less;

(v) reverse repurchase agreements, with the permitted payment stablecoin issuer acting as a purchaser of securities and with an overnight maturity, that are collateralized by Treasury notes, bills, or bonds on an overnight basis, subject to overcollateralization in line with standard market terms, that are—

(I) tri-party;

(II) centrally cleared through a clearing agency registered with the Securities and Exchange Commission; or

(III) bilateral with a counterparty that the issuer has determined to be adequately creditworthy even in the event of severe market stress;

(vi) securities issued by an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)), or other registered Government money market fund, and that are invested solely in underlying assets described in clauses (i) through (v);

(vii) any other similarly liquid Federal Government-issued asset approved by the primary Federal payment stablecoin regulator, in consultation with the State payment stablecoin regulator, if applicable, of the permitted payment stablecoin issuer; or

(viii) any reserve described in clause (i) through (iii) or clause (vi) through (vii) in tokenized form, provided that such reserves comply with all applicable laws and regulations; ...

Act §4(a)(1)(A).

"any form of interest or yield, whether in cash, tokens or other [23]consideration, solely in connection with the holding, use, or retention of such payment stablecoin."[24]

A payment stablecoin that itself bears interest or pays yield (for example, from earnings on reserves) would not be able to qualify as a payment stablecoin under the Act, and would therefore not benefit from the exclusions accorded payment stablecoins from the definitions of "security" and "commodity" for certain Federal regimes in Section 17 of the Act .[25] Interestingly however, there is no prohibition for PPSIs' on collecting interest from holding U.S. government securities or the yield on the reserves that are used to back payment stablecoins, which may be a substantial source of revenue.

Prohibition on Rehypothecation. The Act includes a prohibition against using the reserves required to back such payment stablecoins being rehypothecated (*i.e.*, the required reserves may not be used as the basis for lending or other activities), pledged or otherwise "reused" directly or indirectly by the issuer.[26] The reserves may be used to satisfy margin obligations in connection with investments in permitted reserves, to satisfy obligations associated with the use, receipt or provision of custodial services, and to create liquidity reasonably necessary to redeem payment stablecoins.

Regardless of this prohibition, the Act does provide that the Federal and State regulators shall prescribe custom capital requirements for PPSIs.[27] Further, to the extent the PPSI is an insured depository institution or a depository institution holding company that is required to meet a leverage capital requirement or risk-based capital requirement on a consolidated basis, if the PPSI custom capital requirements result in an "excess of the capital" required to be held, that institution or company does not need to hold such additional capital amounts.[28]

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[23] Note that the most recent version of the bill struck this word.

[24] Act §4(a)(11).

[25] The precise scope of "any form" of "yield" may be an area for further rulemaking by regulators. For example, since the Act permits reserve assets to include tokenized forms of assets, if protocol staking rewards are considered a type of "yield" under the Act, then issuers would be unable to stake such reserve assets for permitted payment stablecoins. [*Cf.* "Statement on Certain Protocol Staking Activities," Securities and Exchange Commission, Division of Corporate Finance (May 29, 2025) (expressing the Division's view that protocol staking activities do not involve the offer and sale of securities). https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925]

[26] Act §4(a)(2).

[27] Act §4(a)(4).

[28] Act § 4(a)(4)(C).

6. Regulation of Payment Stablecoins.

The regulatory structure for approving, supervising and enforcing against PPSIs under the GENIUS Act strives to avoid additional regulators for depository institutions by assigning responsibility to the existing appropriate Federal banking agency while offering flexibility for non-banks and State regulated institutions. In addition, the Act provides comprehensive direction for the evaluation, approval and oversight of Foreign Payment Stablecoin Issuers.

<u>Identifying the Correct Regulator – Insured Depository Institutions or Subsidiaries Thereof.</u>[29] For an insured depository institution or subsidiary thereof, the appropriate stablecoin regulator is the same Federal banking agency that is primarily responsible for the institution. This means that national banks or subsidiaries thereof seeking to become a PPSI would have the OCC as their "primary Federal payment stablecoin regulator," and an insured credit union subsidiary would have the NCUA as theirs.

At the State level, the issuers are allowed to choose whether they will be subject to a State-level regime of stablecoin regulation (if such State-level regulatory regime is available) or the Federal regime.[30] The Secretary of the Treasury is instructed to engage in notice-and-comment rulemaking to establish that a State-level regime is substantially similar to the Federal regulatory framework. Then States that do wish to maintain a "State payment stablecoin regulator" must submit certification to the Stablecoin Certification Review Committee that their framework is substantially similar, and must annually re-certify. Note that if a State already has a regulatory agency that is responsible "for the supervision of digital assets or payment stablecoins", such as the New York Department of Financial Services, then the Secretary's review will automatically be conducted on an expedited basis and concluded within 180 days after the enactment of the Act.[31]

As a result, if a State-chartered depository institution that is not a member of the Federal Reserve System (i.e., a state non-member bank) wants to be a PPSI and their State does not have a State-level regime of stablecoin regulation, then that institution would apply to the FDIC. Likewise, a state-chartered bank that has opted to be a member of the Federal Reserve System (i.e., a state member bank) without an adequate state-level regime, would apply to the FRB. If the State does have a State-level regime of stablecoin regulation, then such an institution would have the option to choose the State-level regime or the applicable Federal regulator, unless their outstanding issuance of payment stablecoins is more than $10 Billion, in which case the institution must follow the Federal regime.

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[29] Depository institutions that are not insured are treated as non-banks for purposes of the Act.

[30] Act § 4(c).

[31] *See,* 4(c)(7).

Identifying the Correct Regulator – Non-Banks and Existing U.S. Issuers of Stablecoins. If a non-bank[32] wants to become a PPSI, that non-bank may choose to apply to the certified State-level payment stablecoin regulator (if available) of the state in which they are resident or it can apply to the OCC to become a "Federal qualified payment stablecoin issuer." This would also be the method by which non-banks that have already issued payment stablecoins would go about becoming a PPSI, which would in turn mean that their stablecoins would be deemed payment stablecoins issued by a PPSI. Of course, such non-banks would have to ensure that the payment stablecoins had no yield, were backed 1-to-1 by reserves in the United States and that the reserves were not being reused in a manner inconsistent with the prohibition against rehypothecation.

Foreign Payment Stablecoin Issuers. The GENIUS Act recognizes that some foreign payment stablecoin issuers may want to become PPSIs, in which case those issuers would apply to the OCC and would be required to meet the same requirements regarding reserves and limited activities, etc., as a non-bank applying to become a PPSI.

However, the GENIUS Act also recognizes that foreign payment stablecoin issuers need to be regulated, as well. To this end, Section 18 of the Act provides that such entities must meet a series of requirements. First, the Secretary of the Treasury must determine that the foreign payment stablecoin regulator overseeing the foreign payment stablecoin issuer is "comparable" to the regulatory and supervisory regime established by the Act. The foreign payment stablecoin issuer must then register with the OCC, hold reserves in a United States financial institution "sufficient to meet liquidity demands" of U.S. customers and must be domiciled in a jurisdiction that is not subject to sanctions or be a "jurisdiction of primary money laundering concern."[33]

7. Anti-Money Laundering Provisions / Sanctions.

The GENIUS Act has several provisions addressing the applicability of anti-money laundering ("***AML***") and sanctions laws to stablecoin activities, whether the stablecoins are issued by PPSIs or not.

Applicability of Existing Law. Pursuant to Section 4(a)(5) of the Act, "Treatment Under the Bank Secrecy Act and Sanctions Laws", PPSIs are treated as financial institutions for purposes of the Bank Secrecy Act ("***BSA***"), which means that they must maintain an effective AML program, retain appropriate records, engage in ongoing monitoring and reporting of suspicious transactions, and have a KYC/CIP program. The bill would largely codify existing guidance from Treasury's Financial Crimes Enforcement Network ("***FinCEN***"), which treats stablecoin issuers as money services businesses subject to the BSA's AML program requirements. The bill mandates that FinCEN shall

[32] *See,* Footnote 21.

[33] Act § 18(a).

adopt rules "tailored to the size and complexity" of PPSIs. This mandate differs from existing AML rules, which require financial institutions to develop and implement an AML program responsive to risks each financial institution identifies; the mandate suggests that FinCEN will promulgate different rules for PPSIs on the basis of PPSI risk profiles that FinCEN itself identifies.

Lawful Orders. In seeking to broadly encompass this area of security concerns, the GENIUS Act uses phrasing such that foreign payment stablecoin issuers must have the "technological capability to comply" with "lawful orders."[34] Lawful orders are defined[35] to mean any final rule, command, process, order or other requirement under Federal law issued by a court of law or a Federal agency that: 1) requires a person to seize, freeze, burn or prevent the transfer of payment stablecoins issued by the person; 2) specifies the payment stablecoins or accounts subject to blocking; and 3) is subject to judicial or administrative review or appeal. A PPSI is only permitted to issue a payment stablecoin which has the technological capacity to comply with a lawful order – in effect, the Act mandates that the computer code for payment stablecoins includes certain security functions.[36] This requirement is immediately applicable to payment stablecoins upon the Act's enactment. In other words, it is required that all payment stablecoins issued by a PPSI must meet these standards, even if the Grace Period has not yet run. The Secretary of Treasury is expressly permitted to supersede a PPSI's procedures to "block and prohibit transactions in property and interest in property of a foreign person."

For example, if FinCEN ordered, this functionality would allow PPSIs to inactivate a payment stablecoin issued by a blocked PPSI that was acquired by an unrelated third-party purchaser in a secondary market transaction if FinCEN so ordered.

Related Studies by FinCEN and Treasury. The GENIUS Act provides that Treasury will quickly commence obtaining public comment "to identify innovative or novel methods, techniques, or strategies that regulated financial institutions use, or have the potential to use, to detect illicit activity, such as money laundering, involving digital assets, including comments with respect to—(1) application program interfaces; (2) artificial intelligence; (3) digital identify verification; and (4) use of blockchain technology and monitoring."[37] FinCEN will work with Treasury to conduct additional research and then, within two years after the Act is enacted, FinCEN is required to issue a rulemaking for notice and comment addressing best practices for identifying and reporting illicit

[34] *See, e.g.,* Act §3(b)(2) and §4(a)(6).

[35] Act §2(16).

[36] Such security patterns may include approaches such as emergency stops, circuit breakers, self-destruct functions, and timelocks. For example, the OpenZeppelin Pausable contract component is a common module to permit authorized accounts to temporarily disable certain smart contract functions. *https://docs.openzeppelin.com/contracts-cairo/1.0.0/security* *See generally* Emergency stops, Ethereum.org https://ethereum.org/en/developers/docs/smart-contracts/security/#emergency-stops

[37] Act §9. Such public comment period is limited to 60 days beginning on the date 30 days after enactment of the Act.

activity, best practices for monitoring transactions that mix stablecoins in such a way as to make a transaction or its counterparties less identifiable, and risk management standards for financial institutions interacting with decentralized finance protocols.

8. Custody of Payment Stablecoin Reserve and Collateral.

The Act prescribes requirements for entities that provide custodial or safekeeping services not only for payment stablecoins, but also for: (i) payment stablecoin reserves, (ii) payment stablecoins used as collateral, and (iii) the private keys that are issued along with permitted payment stablecoins.[38] The only entities that may engage in those activities must be subject to supervision or regulation at either the Federal level by a primary Federal payment stablecoin regulator, the SEC or the CFTC; or at the State level by a State bank regulator or credit union supervisor.[39]

All entities engaged in these activities must "treat and deal with the payment stablecoins, private keys, cash, and other property" of the customer (*i.e.*, the PPSI or the holders of the payment stablecoins) as belonging to that customer, and not as being the property of such entity. In addition, these entities must take steps to protect the customer from the entity's own creditor claims. Finally, the reserves must be fully segregated; it is prohibited for these entities to commingle payment stablecoin reserves, payment stablecoins, cash, and other property of a PPSI or a customer with its own reserves, stablecoins, cash or other property.[40]

The Federal banking agencies, NCUA and the SEC may not require depository institutions, credit unions, national banks, trust companies or any affiliate thereof to include digital assets held in custody that are not owned by the entity as a liability on their financial statements, including payment stablecoin custody or safekeeping activities. Nor can these regulators require these entities to "hold in custody or safekeeping regulatory capital against digital assets and reserves backing such assets", except as necessary to mitigate operational risks in custody or safekeeping services.[41]

[38] § 10(a).

[39] In this case, the applicable State regulator must provide information on the entity to the FRB describing "the person's business operations and processes to protect customer assets, in such form and manner" as the FRB determines in a rulemaking.

[40] Nevertheless, it would be possible for these entities to combine payment stablecoin reserves for more than one PPSI in an omnibus account, and if the entity is an insured depository institution and the reserves are held as cash in the form of a deposit liability, then such cash need not be separated from the property of the applicable depository institution.

[41] § 16(c).

9. Insolvency Provisions

Section 11 of the Act ("Treatment of Payment Stablecoin Issuers in Insolvency Proceedings") is the primary section relating to insolvency matters.

Priority of Claims. Section 11(a)(1) works together with section 11(d) to elevate the claims of stablecoin holders above all other unsecured claims, including administrative expense claims. Administrative expenses—like post-petition vendor invoices and professional fees—are typically granted top priority under Section 507 of the Bankruptcy Code to encourage parties to continue doing business with a debtor and support a successful reorganization. The Act departs from this principle by giving stablecoin holders first priority to reserves and the PPSI's estate, if those reserves are insufficient to fully satisfy their claims.

The Act purports to apply this principle "in any insolvency proceeding of a [PPSI] under Federal or State law, including any proceeding under title 11, United States Code, and any insolvency proceeding administered by a State payment stablecoin regulator with respect to a [PPSI]." Section 11(d) expressly amends section 507 of the Bankruptcy Code to create this priority in bankruptcy —though Congress appears to be applying the priority to "any insolvency proceeding" at state or Federal law.

Claims of Transferees. Some stablecoins are structured so subsequent holders may not have a direct contractual redemption right from the issuer. In bankruptcy currently, those holders arguably may lack a claim in an issuer's future bankruptcy. The Act seeks to address this problem by including language aimed at ensuring subsequent holders are deemed to hold a claim against a debtor irrespective of the terms of the permitted payment stablecoin. Section 11(a)(2) provides that:

> "[N]otwithstanding any other provision of law, including the definition of "claim" under section 101(5) of title 11, United States Code, any person holding a payment stablecoin issued by the permitted payment stablecoin issuer shall be deemed to hold a claim; ..."

Bankruptcy Automatic Stay. Section 11(c), amends the automatic stay provisions of Section 362 of the Bankruptcy Code to create a pathway for redemption of permitted payment stablecoins from required reserves. The Bankruptcy Code's "automatic stay" imposes a freeze on any actions that would seek to collect or otherwise litigate with a debtor that has filed for bankruptcy. This is called the "automatic stay." Under section 11(c) of the Act, the automatic stay would apply to: "the redemption of payment stablecoins issued by the [PPSI], from payment stablecoin reserves required to be maintained under section 4 of the GENIUS Act."

However, section 11(c) seeks to create a path toward terminating the automatic stay at the outset of a PPSI's bankruptcy. It requires the PPSI debtor to file a motion to "lift" the stay "with respect to the redemption of payment stablecoins held by a person, if the court finds . . there are payment stablecoin reserves available for distribution on a ratable basis to similarly situated payment stablecoin holders . . ." Congress would require the Court "to enter a final order to begin distributions under this paragraph not later than 14 days after the date of the required hearing."

This provision, while creating a path toward redemption from the reserves, also creates a delay in redemption from the reserves of more than two weeks. We note there is some discrepancy between the application of the automatic stay – which applies to the debtor, and section 11(e)'s removal of the reserves from the debtor's estate. This inconsistency could create challenges for bankruptcy courts – and potentially customers seeking immediate redemption.

Priority in Bankruptcy. As noted above, Section 11(d) amends Section 507 of the Bankruptcy Code (regarding priority in Bankruptcy proceedings) by providing that, if a payment stablecoin holder is not able to redeem all outstanding payment stablecoin claims from the reserves, any remaining claim of a person holding a payment stablecoin shall have first priority claim over any other claim (including administrative expenses such as attorneys' fees) "to the extent compliance with Section 4 of the Genius Act would have required additional reserve to be maintained . . .".

Property of the Estate. Section 11(e) of the Act amends the Bankruptcy Code to expressly exclude "required payment stablecoin reserves" from a debtor's bankruptcy estate "provided that notwithstanding the exclusion of such reserves from the property of the estate" the automatic stay described above "shall apply to the reserves."

The Act apparently aims to prevent outcomes like the one in Celsius Networks LLC, where the court held, over the objection of customers, that digital assets in certain yield-bearing accounts were property of the bankruptcy estate.[42] Exclusion of these reserves ensures that such reserves are not subject to claims of other creditors (or general administrative costs of the bankruptcy estate) and affirms that the reserves are dedicated solely to redeeming stablecoin claims. However, the language ensuring the application of the automatic stay to those reserves, at best creates delay in freeing the reserves from the bankruptcy estate – and potentially creates uncertainty around the treatment of the reserves.

[42] *See In re Celsius Network LLC*, 647 B.R. 631, 637 (Bankr. S.D.N.Y. 2023) (concluding that "the cryptocurrency assets remaining in the Earn Accounts on the Petition Date became property of the Debtors' bankruptcy estates.")

Other Insolvency Provisions. Section 11(g) provides that if a PPSI is a regulated depositary institution, an insolvency proceeding shall be resolved by the FDIC, NCUA or state payment stablecoin regulator, as applicable.

Finally, Section 11(h) requires the primary Federal payment stablecoin regulators to undertake a study regarding potential insolvency proceedings of PPSI, in particular as to potential gaps in the law. The report on such study would be due within 3 years after enactment of the Act.

10. Consumer Protection Provisions

PPSIs are subject to a number of disclosure requirements and other obligations with respect to its customers, including consumers. For example, all PPSIs must disclose their "redemption policy" meaning that they must establish clear and conspicuous procedures regarding how and how quickly a holder of a permitted payment stablecoin may redeem the stablecoin for cash. In addition, the PPSI must clearly and conspicuously disclose all fees associated with purchasing or redeeming the payment stablecoins and must also publish every month a disclosure on their website regarding the PPSI's reserves.

Also, the Act includes certain anti-tying provisions to protect consumers.[43] PPSIs may not provide services to a customer and condition that they must obtain "an additional paid product or service" from the PPSI or its subsidiaries. PPSIs may also not act in a manner that prohibits, nor may they design their payment stablecoins such that the design effectively prohibits customers from obtaining additional products or services from competitors. To this end, the FRB is permitted to issue regulations as may be necessary to further prescribe how PPSIs achieve compliance with these provisions.

Finally, PPSIs must not use "deceptive names" that involve any combination of terms relating to the U.S. Government, including "United States" in the name of a payment stablecoin.[44] PPSIs must also take care to not "market a payment stablecoin in such a way that a reasonable person would perceive the payment stablecoin to be [legal tender, issued by the United States, or guaranteed or approved" by the United States.[45]

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[43] Act § 4(a)(8).

[44] Act § 4(a)(9).

[45] It would be permissible for a PPSI to use abbreviations directly relating to the currency to which a payment stablecoin is pegged, such as "USD".

11. Non-Payment Stablecoins.

The Secretary of the Treasury must provide a report to Congress within one year of enactment that studies non-payment stablecoins, including so-called endogenously collateralized stablecoins ("***ECS***"). An ESC is a digital asset 1) "the originator of which has represented will be converted, redeemed, or repurchased for a fixed amount of monetary value" and 2) that solely relies on the value of another digital asset by the same originator to maintain the fixed price.[46]

The report, which must have input from the Federal payment stablecoin regulators, the SEC and the CFTC must address at least the following: 1) the categories of non-payment stablecoins that exist; 2) the participants in those stablecoins; 3) the utilization of non-payment stablecoins; 4) the nature of reserves; 5) types of algorithms being employed; 6) governance structure, including any decentralized structure; 7) the nature of public promotion and advertising; and 8) the clarity and availability of consumer notices disclosures.

12. Implementation.

The "Act, and the amendments made by this Act, shall take effect on the ***earlier*** of -- (1) the date that is 18 months after the date of enactment of this Act; or (2) the date that is 120 days after the date on which the primary Federal payment stablecoin regulators issue any final regulations implementing this Act."[47]

The timeline for when it becomes unlawful for digital asset service providers to offer or sell a payment stablecoin that was not issued by a PPSI is three years after the date of enactment, also known as the Grace Period. This likely means in the summer of 2028, assuming that the Act is enacted in the summer of 2025.

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[46] Act § 14.

[47] Act § 20.

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