

Clients & Friends Memo

Making Way For Stablecoin—Genius Act Would Amend Bankruptcy Code to Accommodate Certain Crypto Assets

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Congress rarely amends the Bankruptcy Code. Congress first adopted the Bankruptcy Code in 1978. After a series of amendments in the early 1980s to address initial concerns, Congress amended the Code only modestly until the significant amendments under BAPCPA in 2005. Since 2006, amendments have remained rare with most amendments focused on updating deadlines, dollar-amount thresholds and other similar modest changes—before notably adding Subchapter V Small Business Cases to the Bankruptcy Code in 2020.

Even active bankruptcy participants like those reading this article may then be surprised to learn that Congress stands on the verge of passing significant Bankruptcy Code modifications – through an unexpected vehicle: The Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act.

The GENIUS Act: A Brief Overview. The GENIUS Act is one of several Congressional initiatives aimed at regulating the issuance and operation of various crypto assets. The Act focuses on so-called “stablecoins.” Stablecoins are a form of digital asset pegged to the value of a traditional currency or other asset, and typically backed by a cash or cash-like reserve to ensure that the value of the crypto asset remains stable.

Customers typically use stablecoins primarily as a way to navigate the volatility of other cryptocurrencies and as a means of making payments, including international transactions and peer-to-peer digital transfers. Customers also increasingly use them in blockchain-based financial services like lending platforms.

The Act would establish clear federal standards for stablecoin issuers, focusing on the reserves backing the coins, licensing, consumer protection, and stability of the broader market. Cadwalader covered the many aspects of the Act in a prior publication. See [Operation and Structure of the GENIUS ACT of 2025 on Payment Stablecoins.](#)

Key Insolvency Provisions in the GENIUS Act

The GENIUS Act contains key provisions regarding the treatment of payment stablecoins in insolvency proceedings. Section 11 of the Act, titled “Treatment of Payment Stablecoin Issuers in Insolvency Proceedings,” is the primary section addressing these 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 postpetition 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 first priority to the debtor’s unencumbered assets if those reserves are insufficient to fully satisfy their claims.

The Act purports to apply this principle “in any insolvency proceeding of a permitted payment stablecoin issuer 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 permitted payment stablecoin issuer.” Section 11(d) expressly amends section 507 of the Bankruptcy Code to create this priority in bankruptcy. It is unclear how this policy would apply outside the Bankruptcy Code—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 permitted payment stablecoin issuer, from payment stablecoin reserves required to be maintained under section 4 of the GENIUS Act."

However, section 11(c) seeks to create a path for parties to obtain relief from the stay at the outset of permitted payment stablecoin issuer's bankruptcy case. It requires the issuer-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 it creates a path toward redemption from the reserves, 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 a first priority claim over any other claim (including administrative expenses such as attorneys' fees).

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.¹ Exclusion of these reserves could ensure that such reserves are not subject to claims of other creditors (or general administrative costs of the bankruptcy estate) and affirm that the reserves are dedicated solely to redeeming stablecoin claims. However, the language ensuring application of the automatic stay to those reserves, at best creates

¹ 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.")

delay in freeing the reserves from the bankruptcy estate and potentially creates uncertainty around the treatment of the reserves.

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

Finally, section 11(h) of the Act requires the primary Federal payment stablecoin regulators to undertake a study regarding potential insolvency proceedings of permitted stablecoin issuers, 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.

We will continue to track the Act as it moves to the House of Representatives; some speculate it could be signed into law in the coming weeks.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Douglas S. Mintz	+1 202 862 2420	douglas.mintz@cwt.com
Kathryn M. Borgeson	+1 202 862 2384	kathryn.borgeson@cwt.com
Andrew M. Greenberg	+1 212 504 6077	andrew.greenberg@cwt.com
Raymond M. Navaro	+1 212 504 6651	raymond.navaro@cwt.com