

# The Banking Law Journal

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Victoria Prussen Spears

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# The GENIUS Act: A Framework for U.S. Stablecoin Issuance

*By Chuck Daly, Joel D. Feinberg, Kristin S. Teager, David E. Teitelbaum, Lilya Tessler, Thomas G. Ward, Jay G. Baris and Kristen E. Kane\**

*In this article, the authors outline key provisions of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, known as the GENIUS Act.*

The Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) is the first major crypto legislation in the United States. The GENIUS Act creates licensing and regulatory requirements for domestic payment stablecoin issuers and standards for participation in the U.S. payment stablecoin market by foreign stablecoin issuers. It also provides requirements for the custody and safekeeping of certain payment stablecoin-related assets. This article outlines key provisions of the GENIUS Act.

## **PAYMENT STABLECOIN DEFINITION**

The GENIUS Act defines a payment stablecoin as a digital asset that is designed to be used as a means of payment or settlement that the issuer is obligated to convert, redeem, or repurchase for fixed monetary value and that the issuer represents will maintain, or creates the reasonable expectation that it will maintain, a stable value. The term does not include a digital asset that is a national currency, a deposit, or a security under federal securities laws. Payment stablecoins are not federally insured.

A digital asset is defined in the GENIUS Act as any digital representation of value that is recorded on a cryptographically secured distributed ledger. “Distributed ledger” is defined in turn as technology in which data is shared across a network that creates a public digital ledger of verified transactions or information among network participants, and cryptography is used to link the data to maintain the integrity of the public ledger and execute other functions.

## **PERMITTED PAYMENT STABLECOIN ISSUERS**

The GENIUS Act provides that only a permitted payment stablecoin issuer may issue a payment stablecoin in the United States, with limited exceptions. A permitted payment stablecoin issuer is a person formed in the United States that is a subsidiary of an insured depository institution and that has been

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approved to issue payment stablecoins, a federal qualified payment stablecoin issuer, or a state-qualified payment stablecoin issuer.

- A subsidiary of an insured depository institution may issue payment stablecoins after receiving approval from the insured depository institution's appropriate federal banking agency.
- A federal qualified payment stablecoin issuer may be a nonbank entity, an uninsured national bank, or a federal branch of a foreign bank and must be approved by the Office of the Comptroller of the Currency (OCC) to issue payment stablecoins.
- A state-qualified payment stablecoin issuer is an entity established under the laws of a state that has been approved by a state payment stablecoin regulator to issue payment stablecoins and is not an uninsured national bank, federal branch, insured depository institution, or a subsidiary of any of the foregoing.

Notably, a public company that is not predominantly engaged in one or more financial activities and its wholly or majority-owned subsidiaries or affiliates may not issue a payment stablecoin unless the public company obtains a unanimous vote of the Stablecoin Certification Review Committee finding that the company will not pose a material risk to the safety and soundness of the U.S. banking system, the financial stability of the United States, or the Deposit Insurance Fund and that the public company will comply with data use limitations regarding nonpublic personal information obtained from stablecoin transaction data. The Stablecoin Certification Review Committee consists of the Secretary of the Treasury, the Chair of the Board of Governors of the Federal Reserve System, and the Chair of the Federal Deposit Insurance Corporation. "Financial activities" has the meaning given in Section 4(k) of the Bank Holding Company Act and includes activities of a digital asset service provider, permitted payment stablecoin issuer, and certain other cryptocurrency activities.

The GENIUS Act prohibits permitted payment stablecoin issuers and foreign payment stablecoin issuers from paying interest or yield in any form to the holder of a payment stablecoin in connection with the holding, use, or retention of the payment stablecoin.

A payment stablecoin that is not issued by a permitted payment stablecoin issuer shall not be treated as cash or as a cash equivalent for accounting purposes and shall not be eligible as cash or as a cash equivalent margin and collateral for futures commission merchants, derivative clearing organizations, broker-dealers, registered clearing agencies, and swap dealers. Such stablecoins also shall not be acceptable as settlement assets to facilitate wholesale payments between banking organizations or by a payment infrastructure to facilitate exchange and settlement among banking organizations.

## **REGULATORY FRAMEWORK FOR PERMITTED PAYMENT STABLECOIN ISSUERS**

The OCC is the regulator of federal qualified payment stablecoin issuers, while the appropriate federal banking agency of an insured depository institution is the regulator of a payment stablecoin issuer that is a subsidiary of an insured depository institution.

A state-qualified payment stablecoin issuer with less than \$10 billion in payment stablecoins outstanding can opt to be regulated only at the state level if federal authorities determine that the appropriate state stablecoin regulator operates a regulatory regime that is “substantially similar” to the federal regime. This requires certification through a process administered by the Stablecoin Certification Review Committee.

A state-qualified payment stablecoin issuer is subject to federal oversight if it has reached or passed the \$10 billion threshold and has not received a waiver from the applicable federal regulator (or it is under the threshold but the state stablecoin regulator does not satisfy the “substantially similar” standard). It will be supervised jointly by the state payment stablecoin regulator and either the appropriate federal banking agency, if the issuer is a state-chartered depository institution, or the OCC.

The GENIUS Act does not address the issue of whether permitted payment stablecoin issuers will have access to Federal Reserve accounts.

## **REQUIREMENTS FOR PERMITTED PAYMENT STABLECOIN ISSUERS**

### **Activity Limitations**

A payment stablecoin issuer may only issue and redeem payment stablecoins, manage related reserves (including purchasing, selling, and holding reserve assets or providing custodial services for reserve assets), provide custodial or safekeeping services for payment stablecoins or private keys of payment stablecoins and reserve assets, and undertake other functions that directly support any of these activities. With the approval of its federal or state regulator, a permitted payment stablecoin issuer may also exchange digital assets for monetary value or other digital assets, transfer digital assets to a third party, act as a digital asset custodian, participate in financial services relating to digital asset issuance, and engage in authorized incidental activities.

### **Reserve Asset Composition**

A permitted payment stablecoin issuer must maintain identifiable reserves backing outstanding payment stablecoins on at least a one-to-one basis. Reserves may comprise coins and currency or money standing to the credit of

an account with a Federal Reserve Bank; demand deposits held at banks and credit unions; short-dated Treasury bills, notes, or bonds; money received under certain collateralized overnight repurchase agreements and overnight reverse repurchase agreements; certain money market funds; or the tokenized form of any of these assets. Permitted payment stablecoin issuers must publish monthly reports on reserve asset composition that must be examined by a registered public accounting firm. Additionally, reserves are subject to rehypothecation restrictions.

### **Other Requirements**

The GENIUS Act imposes regulatory requirements on permitted payment stablecoin issuers regarding capital, liquidity, risk management, marketing, anti-typing, audits/reporting, anti-money laundering, and economic sanctions compliance. It also establishes bankruptcy rules for permitted payment stablecoin issuers.

### **FOREIGN STABLECOIN ISSUERS**

A stablecoin issued by a foreign issuer may be offered or sold in the United States if the issuer is subject to a regulatory and supervisory regime that the Secretary of the Treasury determines is comparable to the regime established under the GENIUS Act, the issuer is registered with the OCC, the issuer holds reserves in a U.S. financial institution sufficient to meet liquidity demands of U.S. customers, and the foreign country in which the issuer is domiciled and regulated is not subject to comprehensive economic sanctions by the United States or in a jurisdiction that the Secretary has deemed to be of primary money laundering concern. Foreign payment stablecoin issuers are subject to reporting, supervision, and examination requirements and must consent to U.S. jurisdiction relating to the enforcement of the GENIUS Act.

### **PROHIBITIONS ON CERTAIN OFFERS OR SALES**

A digital asset service provider may not offer or sell a payment stablecoin to a person in the United States unless the payment stablecoin is issued by a permitted payment stablecoin issuer or a foreign payment stablecoin issuer that meets the requirements outlined above. The GENIUS Act also prohibits offering, selling, or otherwise making available in the United States a payment stablecoin issued by a foreign payment stablecoin issuer unless that issuer has the technological capability to comply and will comply with the terms of any lawful order and any reciprocal arrangements implemented by the Treasury pursuant to the GENIUS Act.

### **EXEMPTIONS FROM ISSUANCE, OFFER, AND SALE PROVISIONS**

The GENIUS Act provisions governing the issuance, offer and sale of payment stablecoins do not apply to any transaction involving the receipt of

digital assets by an individual between accounts owned by the individual in the United States and abroad that are offered by the same parent company, any transaction by means of a software or hardware wallet that facilitates an individual's own custody of digital assets, or the direct transfer of digital assets between two individuals acting on their own behalf and for their own lawful purposes without an intermediary.

### **CUSTODY OF PAYMENT STABLECOINS**

A person may engage in the business of providing custodial or safekeeping services for payment stablecoin reserves, payment stablecoins used as collateral, or private keys used to issue payment stablecoins only if the person is subject to federal or state supervision as outlined in the GENIUS Act. Detailed restrictions and requirements apply to such services, including with respect to accounting and segregation.

### **TREATMENT OF BANK ACTIVITIES**

The bill does not affect the ability of banks and other depository institutions or trust companies to engage in activities that are otherwise permissible for such entities under applicable laws, including issuing digital assets that represent deposits, using a distributed ledger for internal books/records or for intrabank transfers, or providing custodial services for payment stablecoins, private keys for payment stablecoins, or stablecoin reserves. The OCC has permitted other stablecoin-related activities through its interpretive letters.

### **SECURITIES LAW IMPLICATIONS**

The GENIUS Act provides that certain payment stablecoins are not "securities" as defined in the federal securities laws. Specifically, the law excludes a "payment stablecoin" issued by a "permitted payment stablecoin issuer" from the definition of a "security" contained in the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940 (the Advisers Act), and the Securities Investor Protection Act of 1970. Similarly, the law excludes these stablecoins from the definition of a "commodity" under the Commodity Exchange Act.

A payment stablecoin does not include an asset that otherwise meets the definition of a security under the federal securities laws. To avoid any ambiguity as to whether a particular digital asset qualifies as a payment stablecoin, the GENIUS Act provides that no "bond, note evidence of indebtedness or investment contract" issued by a permitted payment stablecoin issuer qualifies as a security solely by virtue of satisfying the definition of a stablecoin, consistent with the amended definition of a security.

The GENIUS Act clarifies the investment company status of stablecoin issuers. Specifically, a permitted stablecoin issuer is not required to register

under the Investment Company Act of 1940 solely because it issues payment stablecoins. Issuers of other stablecoins, including those foreign stablecoin issuers that do not meet the law's requirements, may be subject to the requirements of the Investment Company Act.

The GENIUS Act also clarifies the status of persons that provide advice only concerning payment stablecoins. By excluding certain payment stablecoins from the definition of a security, a person providing advice about payment stablecoins issued by permitted stablecoin issuers would not fall within the definition of an investment adviser under the Advisers Act for that reason alone. If an investment adviser provides investment advice with respect to other assets, in addition to payment stablecoins, that meet the definition of security, the investment adviser may still have obligations under the Advisers Act. The application of the Advisers Act to the investment activities in payment stablecoins for an adviser registered with the Securities and Exchange Commission (SEC) would need to be reviewed in the context of the adviser's specific activities, specifically the treatment of payment stablecoins as cash equivalents for financial reporting and safeguarding purposes under existing provisions of the Advisers Act.

## **SECURITIES MARKET IMPLICATIONS**

SEC Chairman Paul Atkins and SEC Commissioner Hester Peirce each issued statements praising the passage of the GENIUS Act. As Chairman Atkins noted, "Payment stablecoins will play a significant role in the securities industry moving forward." SEC staff guidance issued in May 2025 paved the way for SEC-registered broker-dealers to provide custody of stablecoins for customers, but both Chairman Atkins and Commissioner Peirce have requested that SEC staff and market participants consider whether additional guidance or rulemaking is necessary, in light of the GENIUS Act. Broker-dealers may be digital asset service providers under the new law, and such broker-dealers will need to incorporate GENIUS Act requirements into their compliance programs along with any additional applicable requirements promulgated by the SEC and the Financial Industry Regulatory Authority.

## **TIMING CONSIDERATIONS**

The effective date of the GENIUS Act is the earlier of January 18, 2027, or the date that is 120 days after the date on which the federal banking regulators issue implementing regulations. Until the effective date, any person may issue payment stablecoins in the United States, and any person may offer or sell any payment stablecoin in the United States. Beginning on the effective date, the restrictions on who may issue a payment stablecoin in the United States apply. From the effective date to July 18, 2028, a person may still offer or sell any

payment stablecoin in the United States, which would allow the offer and sale of payment stablecoins that were issued before the effective date by entities that are not allowed to issue stablecoins after the effective date. Beginning on July 18, 2028, the restrictions on offering and selling payment stablecoins in the United States apply.