

Payment Stablecoins Get "Smart" (or GENIUS-like)

July 31, 2025

Congress recently passed the first significant federal legislation recognizing the apparent enduring presence of payment stablecoins in the US financial and consumer markets. President Donald Trump signed into law on July 18, the Guiding and Establishing National Innovation for US Stablecoins Act or the GENIUS Act[1], which establishes a US state and federal regulatory framework for "payment stablecoins" (i.e., US dollar-backed stablecoins) and their issuers, and also confirms that payment stablecoins are not securities under the federal securities laws or commodities under the Commodity Exchange Act. The GENIUS Act charges state and federal banking regulators with overseeing payment stablecoin issuers.

The GENIUS Act, a hallmark of Congress's and the current administration's efforts to support digital assets, stablecoins and cryptocurrencies, benefited from bipartisan support, passing the Senate by a vote of 68 to 30 and the House of Representatives by a vote of 308 to 122. The law becomes effective on the earlier of (i) 18 months after its passage (January 18, 2027), or (ii) 120 days after final regulations are issued. Regulations implementing the GENIUS Act must be issued within one year of enactment.

What Qualifies As a Payment Stablecoin?

The GENIUS Act generally defines a "payment stablecoin" as a digital asset that is or is designed to be used as a means of payment or settlement, which the issuer:

1. is obligated to convert or repurchase for a fixed monetary value, not including a digital asset denominated in a fixed amount of monetary value; and
2. represents will maintain or “creates a reasonable expectation that it will maintain” a stable value relative to the value of a fixed amount of monetary value.

In short, for purposes of the GENIUS Act, payment stablecoins must be pegged to a defined unit of monetary value (such as the US dollar) and be supported by adequate reserves.

Importantly, the GENIUS Act clarifies the regulatory status of payment stablecoins by amending the federal securities laws and the Commodity Exchange Act (CEA). Specifically, under the GENIUS Act, a payment stablecoin issued by a permitted payment stablecoin issuer (PPSI) is excluded from the definition of a "security" under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 (the 1940 Act), the Investment Advisers Act of 1940 (the Advisers Act), and the Security Investor Protection Act of 1970. Payment stablecoins are also excluded from the definition of "commodity" under the CEA.

As a result of these status determinations by Congress, a PPSI does not need to register as an "investment company" solely because it issues payment stablecoins. However, issuers of other types of stablecoins, such as certain foreign issuers that do not meet the GENIUS Act's requirements, need to consider whether the 1940 Act applies. Additionally, the GENIUS Act has potential implications for investment adviser registration, as payment stablecoins are not securities, so persons providing advice exclusively about such stablecoins would not be considered investment advisers under the Advisers Act.[2]

Similarly, with respect to the authority of the Commodity Futures Trading Commission (CFTC), the GENIUS Act's status determinations mean that futures contracts, swap contracts and other derivatives on permitted payment stablecoins cannot be offered under the CEA, as such instruments require the underlying asset to be classified as a "commodity."

Who Can Issue Payment Stablecoins?

The GENIUS Act establishes a US state and federal regulatory framework for "payment stablecoins" and their issuance in the United States by PPSIs and qualifying foreign issuers. The GENIUS Act provides different paths for three types of PPSIs. The following table outlines the three PPSIs and their pathways:

PPSI	Regulatory Agency that Licenses,[3] Supervises and Examines the PPSI and the Payment Stablecoins
PATH 1: Subsidiary of an insured depository institution	Primary Federal Payment Stablecoin Regulator, which is dependent upon the charter type of the affiliated insured depository institution: • Office of the Comptroller of the Currency (OCC) – national banks and federal savings associations[4]

	• Board of Governors of the Federal Reserve System (FRB) – state-chartered member banks and foreign bank branches, and agencies • Federal Deposit Insurance Corporation (FDIC) – state nonmember banks • National Credit Union Administration (NCUA) – federal- and state-chartered credit unions
PATH 2: Federal qualified payment stablecoin (includes uninsured national banks chartered by the OCC and federal branches of foreign banks)[5]	OCC
PATH 3: State qualified payment stablecoin	A state payment stablecoin regulator (i.e., a state agency that has primary regulatory and supervisory authority in the state over payment stablecoin issuers)

Core Regulatory Requirements for All PPSIs

Reserve Requirements. All PPSIs are required to maintain identifiable reserves backing the issuer's payment stablecoins outstanding on an at least 1:1 basis. These reserves must comprise specified high-quality, liquid assets, including US coins and currency, demand deposits at insured depository institutions, Treasury bills with remaining maturity of 93 days or less, certain repurchase agreements, and government money market funds invested solely in these underlying assets.

Disclosure and Reporting. PPSIs must publicly disclose their redemption policy, establishing clear and conspicuous procedures for the timely redemption of outstanding payment stablecoins and publicly disclose all fees associated with purchasing or redeeming the payment stablecoins. No less than seven days' prior notice to consumers is required before such fees can be changed. Additionally, PPSIs must publish the monthly composition of their reserves on their website, including the total number of outstanding payment stablecoins issued and the amount and composition of the reserves, including the average tenor and geographic location of custody of each category of reserve instruments.

Monthly Certification. A registered public accounting firm must examine this monthly information, and the Chief Executive Officer and Chief Financial Officer of a PPSI must submit a monthly

certification as to the accuracy of the monthly report to either the primary federal payment stablecoin regulator or the state payment stablecoin regulator. Any person who submits a false certification is subject to criminal penalties under federal law.

Additional Regulatory Standards. The primary federal payment stablecoin regulators (i.e., the OCC, FRB and the NCUA), or in the case of state qualified payment stablecoin issuers, the state payment stablecoin regulator, must issue regulations implementing capital requirements, liquidity standards, reserve asset diversification requirements, and operational, compliance, and information technology risk management standards, including Bank Secrecy Act and sanctions compliance standards. These requirements must be tailored to the business model and risk profile of PPSIs and may not exceed sufficient standards to ensure the ongoing operations of PPSIs.

With respect to these regulatory requirements, the OCC, the FRB, the FDIC, and the NCUA are permitted to prescribe standards to tailor or differentiate among issuers on an individual basis or by category, taking into consideration certain defined variables.[6] The same agencies are also required to examine the PPSIs they charter to assess the nature of the licensee's operations and financial condition, as well as the financial, operational and technological risks the PPSI poses to its safety and soundness and the stability of the US financial system.

Permitted and Prohibited Activities

Permitted Activities. PPSI activities are limited to: issuing payment stablecoins; redeeming payment stablecoins; managing related reserves; providing custodial or safekeeping services for payment stablecoins; and undertaking other functions that directly support these core activities. The GENIUS Act provides that it is unlawful to market a product in the United States as a "payment stablecoin" unless the product is issued pursuant to the GENIUS Act.

Prohibited Activities. The GENIUS Act specifically prohibits certain activities by PPSIs. PPSIs may not provide services to a customer on the condition that the customer obtains an additional paid product or service from the PPSI, or any of its subsidiaries, or agrees not to obtain an additional product or service from a competitor. PPSIs and foreign payment stablecoin issuers may not pay the holder of any payment stablecoin "any form of interest or yield" solely in connection with the holding, use, or retention of the payment stablecoin. PPSIs also may not use any combination of terms relating to the US Government in the name of a payment stablecoin or 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 US Government.

Exempt Transactions. The GENIUS Act exempts transactions involving the direct transfer of digital assets between two individuals that do not use an intermediary, transactions involving US residents

that own digital assets in accounts held at the same company both in the United States and abroad, and transactions involving digital wallets that hold digital assets.

Application Process and Special Rules

The GENIUS Act enumerates the factors that a primary federal payment stablecoin regulator must evaluate to issue a PPSI license. Those factors include the points highlighted in "Core Regulatory Requirements for All PPSIs" above. Decisions with respect to applications must be provided to the applicant no later than 120 days after the application is "substantially complete," and the failure to provide a decision on a "complete" application within the 120-day period means that the application is deemed approved.

Public companies (i.e., those required to file reports under the Securities Exchange Act of 1934) that are not predominately engaged in one or more financial activities may not issue a payment stablecoin unless such company receives a unanimous vote from the Stablecoin Certification Review Committee (which is comprised of the US Treasury Secretary, the Chair of the FRB, and the Chair of the FDIC) upon such Committee's finding that certain statutory requirements have been satisfied.

State-Level Regulatory Framework

The GENIUS Act provides a pathway for state-level regulation of payment stablecoin issuers, but with significant limitations and federal oversight. The state-level regime of licensing, examining, and supervising payment stablecoin issuers is only available: (i) to entities with a consolidated total outstanding issuance of not more than $10B (the State Cap); and (ii) in instances where the state-level regulatory regime is "substantially similar" to the federal regulatory framework, with such determination made pursuant to a framework established by the US Treasury Secretary.

Certification Process. The applicable state agency must submit an initial certification to the Stablecoin Certification Review Committee attesting that the applicable state regime meets this required standard. Annual recertifications are also required, although the Stablecoin Certification Review Committee possesses certain rights to deny recertification.

Federal Transition Requirements. To the extent a state qualified payment stablecoin issuer that is an insured depository institution exceeds the State Cap, it must transition to the federal regulatory framework of the primary federal payment stablecoin regulatory framework of the state-chartered depository institution, which framework will be administered jointly by such state payment stablecoin regulator and the primary federal payment stablecoin regulator. Other institutions that exceed the State Cap must transition to the federal regulatory framework administered by the state payment stablecoin regulator and the Comptroller of the Currency.[7]

Federal Oversight Authority. State qualified payment stablecoin regulators may enter into a memorandum of understanding (MOU) with the FRB by which the FRB may "participate" in the supervision, examination and enforcement of the GENIUS Act with respect to state qualified payment stablecoin issuers in such state. Regardless of the existence of an MOU, however, state qualified payment stablecoin regulators and the FRB "shall share" information on an ongoing basis related to state qualified payment stablecoin issuers.

In addition, the FRB may issue orders against a state qualified payment stablecoin issuer or its institution-affiliated party when circumstances that are "unusual and exigent" exist, but only if the FRB has first provided 48 hours' prior written notice to the applicable state payment stablecoin regulator. Similar authority is provided to the Comptroller of the Currency concerning state qualified payment stablecoin issuers that are nonbank entities.

Bank Secrecy Act and AML Requirements

The GENIUS Act designates PPSIs as "financial institutions" under the Bank Secrecy Act (BSA). The BSA imposes recordkeeping and reporting requirements on such entities to deter and detect money laundering, terrorist financing and other illicit financial activities. Financial institutions must report any suspicious activity that might indicate money laundering, tax evasion, or other criminal activity. The BSA also requires that financial institutions adopt an anti-money laundering (AML) program that is reasonably designed to deter and detect money laundering and includes a designated compliance officer, ongoing employee training and independent audits. As part of its AML program, a financial institution must adopt policies and procedures to form a reasonable belief about the true identity of its customers.

The GENIUS Act also provides that the US Treasury Secretary, to the best of their ability, will coordinate with PPSIs before blocking and prohibiting transactions in property and interests in property of a foreign person, although the Secretary has no obligation to notify the PPSI before doing so.

All PPSIs, regardless of the type of charter, are required to submit annual certifications to their associated regulator setting forth an attestation that the PPSI has implemented an AML and economic sanctions program that is reasonably designed to prevent the PPSI from facilitating money laundering.

Foreign Payment Stablecoin Issuers

The GENIUS Act establishes a framework for foreign payment stablecoin issuers to offer payment stablecoins in the United States, subject to specific requirements and regulatory oversight. Foreign payment stablecoin issuers may offer payment stablecoins in the United States if they are subject to

regulation and supervision by a foreign payment stablecoin regulator in a jurisdiction with a regulatory regime that the US Treasury Secretary determines is "comparable" to the US framework established under the GENIUS Act, register with the OCC, hold reserves in a US financial institution sufficient to meet liquidity demands of US customers, and are not domiciled in a country subject to comprehensive US economic sanctions or designated as a jurisdiction of primary money laundering concern.

The US Treasury Secretary may determine whether a foreign jurisdiction has a comparable regulatory regime only upon recommendation from each Stablecoin Certification Review Committee member and must publish a justification for such determinations in the Federal Register. If a foreign payment stablecoin issuer fails to comply with lawful orders, Treasury may designate the issuer as "noncompliant" and, after a 30-day cure period, prohibit digital asset service providers from facilitating secondary trading of such payment stablecoins in the United States. Civil monetary penalties of up to $1,000,000 per violation per day may be imposed on non-compliant foreign payment stablecoin issuers.

Custody Requirements

The GENIUS Act establishes comprehensive custody requirements for entities providing safekeeping services for payment stablecoin reserves, payment stablecoins used as collateral, and private keys used to issue payment stablecoins. Only certain regulated entities may provide custodial or safekeeping services for payment stablecoin reserves and related assets, specifically those subject to supervision or regulation by a primary federal payment stablecoin regulator or other primary financial regulatory agency under the Dodd-Frank Wall Street Reform and Consumer Protection Act, or by a state bank supervisor or state credit union supervisor that makes available to the FRB information that the Board determines necessary and relevant.

Custodians must treat payment stablecoins, private keys, cash and other customer property as belonging to the customer and not as property of the custodian. They must take appropriate steps to protect customer assets from creditor claims. Customer property must be separately accounted for and segregated from the custodian's own assets, though the GENIUS Act provides practical exceptions, including permitting commingling in omnibus accounts at depository institutions and allowing withdrawals necessary for transaction settlement. Customer claims against custodians have priority over other claims with respect to payment stablecoins held by the custodian, unless the customer expressly consents to a different priority arrangement.

Bankruptcy and Insolvency Protections

The GENIUS Act amends the federal bankruptcy code to provide enhanced protections for payment stablecoin holders in the event of issuer insolvency. In any insolvency proceeding of a PPSI, the

claim of a person holding payment stablecoins issued by the PPSI has priority, on a ratable basis with the claims of other persons holding such payment stablecoins, over the claims of the PPSI and any other holder of claims against the permitted payment stablecoin issuer, with respect to required payment stablecoin reserves.

The GENIUS Act also provides that required payment stablecoin reserves are excluded from the bankruptcy estate of the issuer, and that the automatic stay does not prevent the redemption of payment stablecoins from payment stablecoin reserves required to be maintained under the GENIUS Act. US bankruptcy courts are required to use their best efforts to enter a final order to begin distributions to payment stablecoin holders not later than 14 days after the required hearing, provided there are payment stablecoin reserves available for distribution on a ratable basis to similarly situated payment stablecoin holders.

Transitional Provisions

Notably, through July 2028, digital asset service providers may continue to offer payment stablecoins that are not issued by PPSIs. However, payment stablecoins that are issued by entities other than PPSIs may not be treated as cash or a cash equivalent for accounting purposes, may not be acceptable as a settlement asset to facilitate wholesale payments between banking organizations, and are not eligible as cash or cash equivalent margin and collateral for futures commission merchants, derivatives clearing organizations, broker-dealers, registered clearing agencies, swap dealers and security-based swap dealers.

Market Impact and Next Steps

While the GENIUS Act provides a prescriptive framework that permits PPSIs to issue payment stablecoins, myriad issues remain in terms of widespread adoption, particularly in the consumer "use case." For example, Automated Clearing House (ACH) and credit card payments have established guardrails and related protections for consumers who believe transactions have been impermissibly posted to their bank or credit card account. Also, credit card associations have adopted fulsome, protective measures that allow consumers to "chargeback" transactions for which there is a permissible basis or claim. The nascent nature of payment stablecoins means these protective features have not yet been developed, let alone codified and marketed to consumers in a way that supports the use of payment stablecoins as an alternative to debit cards, credit cards, or ACH bank account debits.

That said, once these types of infrastructure components are built to scale and other features of the movement to this type of payment system processing are developed, whereby merchants and consumers can feel adequately protected, the use of payment stablecoins represents a continuing, and possible existential, threat to the US banking industry. While the GENIUS Act's prohibitions on

tying and the payment of interest or yield in connection with payment stablecoin holdings provides some degree of relief to US banks, the effect the GENIUS Act has on the broad spectrum of consumer and commercial financial markets is not yet realized (and likely will not be realized until PPSIs convince their respective markets of the "use case").

The GENIUS Act's ultimate impact will be shaped by the implementation process that lies ahead. Regulators must issue final rules by July 18, 2026, creating crucial comment opportunities for industry participants to influence practical requirements around capital, liquidity, and operational standards. Companies should begin evaluating which regulatory pathway best suits their business model (i.e., federal qualification through the OCC, subsidiary approval, or state-level certification). Active participation in the rulemaking process through comment letters and regulatory engagement will be essential to ensure the GENIUS Act framework supports innovation and maintains appropriate consumer protections.

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1 https://www.congress.gov/119/bills/s1582/BILLS-119s1582enr.xml.

2 An investment adviser, as defined in Section 202(a)(11) of the Advisers Act, generally is required to register with the SEC unless the adviser qualifies for an exemption or is prohibited from registering. Section 202(a)(11) defines “investment adviser,” in relevant part, as “any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.”

3 PPSIs that are either a subsidiary of insured depository institutions or a federal qualified payment stablecoin issuer are not subject to state licensing or chartering requirements in connection with activities undertaken in their capacity as a PPSI. The broad scope of this preemption makes it likely that many nonbanks will seek to obtain a federal qualified payment stablecoin issuer license from the OCC to leverage 50 state, unified operations offered from a single platform.

4 Federal savings associations do not need to satisfy the “qualified thrift lender” test with respect to reserves that are held pursuant to the GENIUS Act.

5 This would include uninsured trust banks. Several crypto companies have applications pending with the OCC to obtain this type of charter. This includes Ripple National Trust Bank (the public portion of the application is available at https://occ.gov/topics/charters-and-licensing/digital-assets-licensing-applications/ripple-national-trust-bank.pdf).

6 These variables include capital structure, business model risk profile, complexity, financial activities, size and any other risk-related factors the banking agency determines appropriate.

7 Note that the GENIUS Act includes a presumptive waiver from these requirements for entities that were licensed and supervised to engage in digital asset or payment stablecoin activities before the 90-day period ending on the date of enactment of the GENIUS Act, although such presumption can be defeated if certain factors are met.

CONTACTS

For more information or assistance with comment letters, please contact your Katten attorney or any of the following Corporate or Financial Markets and Funds attorneys.



Daniel J. Davis
+1.202.625.3644
daniel.davis@katten.com



Michael S. Didiuk
+1.212.940.6677
michael.didiuk@katten.com



Christina J. Grigorian
+1.202.625.3541
christina.grigorian@katten.com



Brian J. Poronsky
+1.312.902.5611
brian.poronsky@katten.com



Nicholas Gervasi
+1.212.940.8562
nicholas.gervasi@katten.com



Alexander C. Kim
+1.212.940.6535
alexander.kim@katten.com

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