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THE GENIUS ACT AT SIX MONTHS: PROPOSED FEDERAL STABLECOIN REGULATIONS STILL FALL SHORT ON CONSUMER PROTECTION

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I. Introduction

Consumers increasingly are being urged to make payments using stablecoins. This form of cryptocurrency is already being promoted by services such as Venmo, PayPal, Apple Pay, and Google Pay, and likely will be issued by banks, fintechs, bank card companies, and major retailers.

As discussed in this report, consumers using payment stablecoins do not have the legal protection they have when using other payment methods. Consequently, they face new risks and costs. Consumers should carefully consider both the costs and benefits before deciding whether to engage in payment stablecoin transactions.

Major developments are occurring almost weekly. Consumers should check the websites of consumer education and advocacy organizations for the latest updates.

Stablecoin activity has been growing rapidly on a global basis. U.S. dollar-backed stablecoins supported by reserve assets reached more than \$260 billion in the third quarter of 2025, with Tether's USDT accounting for more than one half of the total, and Circle's USDC showing the fastest growth since the end of 2020.¹ In addition, monthly transactions have risen to more than \$1 trillion, about 10 times the volume at year-end 2020. While stablecoins can reduce the costs of cross-border remittances and multinational corporate cash management, this type of activity appears to be limited.

On July 18, 2025, President Trump signed the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) into law.² The Act establishes a regulatory framework authorizing banks and even nonbanks to issue a new cryptocurrency cash substitute called payment stablecoins. The Act provides payment stablecoins a legal imprimatur that may facilitate its widespread use by consumers.

Unfortunately, the GENIUS Act does not adequately protect consumers. Consequently, consumers need to understand the risks of using payment stablecoins. This report describes many of the provisions in the GENIUS Act, analyzes its implications for consumers, and recommends amendments to the Act and regulatory rules to protect

¹ Nellie Lang, *Stablecoins: Issues for regulators as they implement GENIUS Act*, BROOKINGS INSTITUTION, October 21, 2025. www.brookings.edu. Tether and Circle account for 99% of stablecoin activity. According to Bank of Israel Governor Amir Yaron, that concentration “amplifies systemic vulnerabilities and raises the stakes for regulatory clarity.” Oliver Knight, *Israel's Central Bank Signals Improved Stablecoin Oversight as Digital Shekel Plans Advance*, Coindesk, Dec. 1, 2025. www.coindesk.com. “Stablecoins have become like the common coin of this digital realm.” Telis Demos, *A Winter for Stablecoins Would Signal Crypto Deep Freeze*, WALL STREET JOURNAL, Feb. 14, 2026, at B12. Vicky Ge Huang, *Circle Internet's Profit Surges on Demand for Stablecoin*, WALL STREET JOURNAL, Feb. 26, 2026, at B11.

² Public Law 119-27; 139 Stat. 419 (2025); 12 U.S.C. 5901 *et seq.* The text of the GENIUS Act is available at <https://www.govtrack.us/congress/bills/119/s1582/text>.

consumers in the future. Several regulatory agencies have published proposed regulations. To a limited extent one agencies' proposals provide some needed clarity to the often vague and confusing language of the Act. Whether the regulations will provide consumers with any protection beyond the bare-bones guardrails contained in the Act will be unknown until final regulations are issued. In addition, some stakeholders are urging Congress to amend the Act and a separate bill pending in Congress may directly affect the Act.

Cryptocurrency (crypto) such as bitcoin is a digital asset. Stablecoins are one type of crypto. "Payment stablecoins" are sold by an issuer authorized by a government agency pursuant to the Act. They can be used to pay for goods and services and make payments overseas.³ They are not subject to the value volatility of regular crypto because they are redeemable for dollars at a predetermined fixed amount.

There are various ways for consumers to purchase payment stablecoins. In one scenario, consumers first choose a crypto exchange or a digital wallet. Examples of exchanges and digital wallets are Coinbase, Kraken, and PayPal. Next consumers create an account and verify their identity and address. Consumers then designate a bank account or digital wallet that enables payments through services such as PayPal, Apple Pay, or Google Pay. Having done that, consumers have the option of buying several different stablecoins such as USD Coin and Tether. Consumers can either store the stablecoins on an exchange or transfer them to a private wallet.

Businesses issuing payment stablecoins hype their benefits, hoping the coins will be widely adopted by consumers who are attracted by the allure of crypto and have a fear of missing out on the latest high tech development in financial services. New applications are being developed continually including the integration of payment stablecoins, artificial intelligence and agentic e-commerce.⁴ Furthermore, payment stablecoin issuers claim this new payment method will result in greater financial inclusion by being available for consumers who are unbanked or underbanked and who cannot qualify for credit and debit cards.⁵

³ Although the Act applies to both retail domestic payments and overseas "peer-to-peer" payments, the focus of this report is on the former. The report does not consider matters that are pertinent for consumers making overseas payments.

⁴ "Most people don't realize that stablecoins as a form of programmable money are really thought to be the engines of agentic commerce and agentic payments." Justin Bachman, *Stablecoins carry consumer risk: panel*, PAYMENTS DIVE.COM, Nov. 18, 2025 (quoting attorney Alexandra Steinberg Barrage). Agentic are autonomous computer systems that can shop and purchase goods for consumers without human intervention.

⁵ Arthur E. Wilmarth, Jr., *The Looming Threat of Uninsured Nonbank Stablecoins*, 50 Delaware Journal of Corporate Law 3, 49-51 (2025).

Promoters of payment stablecoins point out that the safeguards in the Act make these coins safer than other forms or crypto. For example, issuers of payment stablecoins must be approved and regulated by government agencies. The agencies are responsible for making sure issuers maintain reserves of safe assets sufficient to pay consumers back if they want to redeem their payment stablecoins for real money.

Already, many types of companies are planning to issue payment stablecoins; others are exploring the possibility of issuing them.⁶ These businesses include banks as well as nonbanks such as Visa, Mastercard, PayPal, large tech companies, and retailers such as Walmart and Amazon.⁷ North Dakota is in the process of implementing plans to roll out stablecoins.⁸

The White House and members of Congress are supporting the issuers' efforts to gain consumer acceptance. The committee that steered the Act through the Senate announced: "At its core, the Genius Act is a consumer protection bill." Even some major media appear to be on board. The Atlanta Journal-Constitution described the GENIUS Act as setting "consumer protections for stablecoins."⁹ In a widely syndicated article, the Associated Press stated that the GENIUS Act "sets initial guardrails and consumer protections for stablecoins."¹⁰

The truth is very different. The GENIUS Act is absolutely *not* a consumer protection law. To the contrary, it is designed primarily to give a congressional and presidential stamp of approval to companies promoting payment stablecoins. The Act entirely omits many of the

⁶ As of September 24, 2025, businesses issuing payment stablecoins included Tether and Circle. Among those considering issuing them were Bank of America, Citigroup, JPMorganChase, Amazon, and Walmart. Corey Barchat, *Stablecoins: The Ultimate List (23 Stablecoins to know in 2025)*, MOONPAY, Aug 5, 2025, www.moonpay.com/learn/cryptocurrency/stablecoins-list. See John Adams, *Mastercard's Lambert: No more 'no man's land' for stablecoins*, AMERICAN BANKER, July 21, 2025.

⁷ Gina Heeb, AnnaMaria Andratís & Josh Dansey, *Walmart and Amazon Are Exploring Their Own Stablecoins*, WALL ST. JOURNAL, July 28, 2025; Natalie Weyer, *FIS, Circle Partner to Offer Stablecoin Transactions to Financial Institutions*, WALL STREET JOURNAL, July 28, 2025. www.wsj.com.

⁸ "The Bank of North Dakota, a state-operated bank and depository institution for state funds, will issue the Roughrider coin, using Fiserv's digital asset platform." John Adams, *North Dakota plans to issue its own stablecoin*, AMERICAN BANKER, Oct. 8, 2025. In contrast, the Wyoming Stable Token Act provides that the Wyoming Stable Token Commission may issue Wyoming stable tokens, may enter into contracts for the services of financial institutions, and select financial institutions to manage the stable tokens. Wyo. Stat. Ann. §40-31-105. Wyoming's state stablecoins "do not involve issuing new money but instead represent a tokenized version of existing bank accounts." Adams, *id.* For a comparison of stablecoins and digital tokens, see Julie Muhn, *Tokenized Deposits vs. Stablecoins: What's the Difference and Why It Matters*, FINOVATE, July 2, 2025, <https://finovate.com/tokenized-deposits-vs-stablecoins-whats-the-difference-and-why-it-matters/>. See also *What to know about stablecoins*, JP MORGAN, Sept 4, 2025. www.jpmorgan.com.

⁹ *Trump signs crypto bill*, ATLANTA JOURNAL-CONSTITUTION, July 19, 2025, at A7.

¹⁰ *AP Washington Report*, THE ASSOCIATED PRESS, July 18, 2025, available on westlaw.com.

fundamental consumer protections of federal payment law governing credit and debit cards. For example, there is no protection for unauthorized transfers. There is no mandated procedure requiring issuers to investigate and resolve errors. There are no specific provisions ensuring the security of issuers' systems or consumer privacy.

It is crucial that consumers can redeem their payment stablecoins since stablecoins themselves have no inherent value. However, the Act omits any requirements to ensure a fair, inexpensive and prompt redemption procedure. Consumers transact business using payment stablecoins in an online environment. The Act includes no requirements specifically designed to protect consumers acting online despite the many deceptive and hidden perils they encounter there.

If a bank issuing payment stablecoins fails, laws provide for regulators to take control of the bank and manage the bank's affairs. Those laws do not apply to nonbanks. Nonbank crypto companies have gone bankrupt, resulting in huge losses for holders of their crypto.¹¹ Under the Act, when a nonbank issuer fails and goes into bankruptcy, the treatment of its assets, including its payment stablecoin reserves, are subject to the provisions of the Bankruptcy Code. The reserves are not protected by FDIC insurance or anything comparable.¹² The Act amended the Bankruptcy Code to give consumers what appears to be limited relief. But in reality, there are major obstacles. Most importantly, the Bankruptcy Code does not guarantee that the bankrupt issuer will have enough assets to fully pay consumers.

The Act imposes some requirements on issuers. But they are limited, weak and have loopholes. Even if issuers fail to comply with the few consumer protections in the Act, consumers are not authorized to sue the issuer for violating the Act. They must depend on government agencies to protect them. There is every indication that those agencies will not aggressively enforce the Act for at least the next several years, if ever.

The Act leaves several major issues unclear such as the applicability of federal consumer protection statutes, the preemption of state consumer laws, and the liability of affiliates of the issuer and third parties playing direct and indirect roles in payment stablecoin transactions.

Because of the Act's many major deficiencies, consumers face substantial risks if they use payment stablecoins.

¹¹ Among the crypto companies that have been or are presently in bankruptcy are FTX, BlockFi, and Genesis. Amin Ayan, *Crypto Execs Launch \$200M SPAC Bid with Nasdaq Listing Under 'BIXIU,'* CRYPTONEWS, Aug 29, 2025.

¹² Credit Union deposits are insured by the National Credit Union Administration.

II. Summary of Major Provisions of the GENIUS Act

The GENIUS Act for the first time establishes a regulatory framework for payment stablecoins. The following is a summary of the major provisions of the Act. The Act itself is very complex, full of subsections, subsections of those subsections, and exceptions to those subsections. Important terms are not defined. Crucial definitions can be understood only by referring to other definitions in the Act or understanding provisions of other complicated statutes. A deep dive into that complexity is beyond the scope of this report. Instead, this section provides only a general summary of the Act and focuses on its failure to adequately protect consumers.

The Congressional Research Service (CRS) has published an overview of the Act. The CRS report includes definitions and a summary that provide a helpful understanding of the issues discussed here. The description of the Act in this section is based largely on the CRS' overview.¹³ The comments evaluating the adequacy of the Act's provisions to protect consumers are my own and those of other critics.

The Act refers to consumers and others who purchase payment stablecoins as "holders." Surprisingly, the Act includes no definition of that term.

Although many different types of companies directly participate in consumers' purchases and use of payment stablecoins, the Act explicitly governs only the conduct of the issuer of payment stablecoins. Consequently, the Act's definition of "issuer" is crucial. It determines who must comply with the Act, and who need not. The Act defines a "Payment Stablecoin Issuer" as a "person formed in the United States" that is the subsidiary of an insured depository institution, a Federal qualified issuer, or a State qualified issuer that is approved or qualified under the Act to be a payment stable issuer.¹⁴ The Act specifies the activities an issuer can engage in.¹⁵ As discussed below, regulators can authorize both banks and nonbanks to be issuers subject to the Act.

¹³ *Stablecoin Legislation: An Overview of S. 1582, GENIUS Act of 2025*. The CRS report is available at www.congress.gov. The CRS also published *Key Issues in Stablecoin Legislation in the 119th Congress*. It also is available on www.congress.gov.

¹⁴ The Act defines the term "Payment Stablecoin Issuer" as "a person formed in the United States that is—(A) a subsidiary of an insured depository institution that has been approved to issue payment stablecoins under [the Act]; (B) a Federal qualified payment stablecoin issuer; or (C) a State qualified payment stablecoin issuer." GENIUS Act § 2(23). The Act defines "person" as "an individual, partnership, company, corporation, association, trust, estate, cooperative organization, or other business entity, incorporated or unincorporated." GENIUS Act § 2(24).

¹⁵ GENIUS Act § 4(a)(7) provides: "(7) LIMITATION ON PAYMENT STABLECOIN ACTIVITIES.—(A) IN GENERAL.—A permitted payment stablecoin issuer may only—(i) issue payment stablecoins; (ii) redeem payment stablecoins; (iii) manage related reserves, including purchasing, selling, and holding reserve assets or providing custodial services for reserve assets, consistent with State and Federal law; (iv) provide custodial or

Despite the Act explicitly subjecting only issuers to its requirements, banks have raised the question of whether the only businesses subject to the Act are those who come strictly within the definition of “issuer.” As discussed below, the Act prohibits issuers from paying interest or “yield” to holders of payment stablecoins.¹⁶ In a letter to the Treasury Department, a bank trade group contended that regulations on interest or yield should apply, not only to those who come within the definition of issuer, but also to third party exchanges and affiliates of the issuer.¹⁷ In direct opposition, Coinbase, a crypto exchange, urged Treasury to apply the prohibition solely to issuers and no one else involved in stablecoin transactions.¹⁸

If Treasury and other regulators are amenable to extending the interest prohibition to affiliates and third parties, the question arises whether the regulators will also subject them to other prohibitions and requirements in the Act. This dispute presents an issue that directly affects the protection of consumers under the Act. Consumers will benefit if Treasury interprets the Act to cover affiliates and third parties to other requirements where appropriate. The Act will be far less protective if regulators determine that nothing in the Act applies to affiliates and third parties.

Another source of confusion is the relationship between issuers and businesses involved in payment stablecoin transactions known as Digital Asset Service Providers. The Act defines them and describes their activities.¹⁹

In a letter to Treasury, the Conference of State Bank Supervisors complained that the scope of the term “Digital Asset Service Provider” “is not sufficiently clear.” The Conference acknowledged that under the Act issuers may engage in the activities of a Digital Asset

safekeeping services for payment stablecoins, required reserves, or private keys of payment stablecoins, consistent with this Act; and (v) undertake other activities that directly support any of the activities described in clauses (i) through (iv).”

¹⁶ See *infra* at pp. 9-12.

¹⁷ Ebrima Santos Sanneh, *Banks, consumer groups push back against stablecoin yield*, AMERICAN BANKER, Nov. 11, 2025.

¹⁸ *Id.* The reference to letters to the Treasury Department referred to here and below are in response to questions from Treasury in *GENIUS Act Implementation*, Proposed Rules, DEPARTMENT OF THE TREASURY, 90 Federal Register 45159 (Sept. 19, 2025)

¹⁹ GENIUS Act § 2(7). A Digital Asset Service Provider is a person that engages in the business of “(i) exchanging digital assets for monetary value; (ii) exchanging digital assets for other digital assets; (iii) transferring digital assets to a third party; (iv) acting as a digital asset custodian; or (v) participating in financial services relating to digital asset issuance...” Several months after passage of the GENIUS Act the Senate Banking Committee proposed changes to the definition of Digital Asset Service Provider. Aislinn Keely, *Sen. Crypto Bill Tees Up DeFi, Stablecoin Yield For Key Hearing*, LAW360, Jan. 13, 2026.

Service Provider but recommended that federal regulators authorize issuers to do so only on a limited case-by-case basis after a careful review of the issuer.²⁰

To summarize, only issuers are subject to the Act's requirements. An issuer, however, may also be authorized to conduct business as a Digital Asset Service Provider. That may confuse consumers who do not understand in what capacity the company is acting when the consumer has a problem and needs to contact the company responsible. Whether the company is liable for violating the Act depends on whether the company is acting as an issuer. If it is acting in some other capacity, the company nevertheless may be liable, but it would be liable under another law, not the GENIUS Act. This issue is discussed below in relation to the liability of third parties and affiliates.²¹

The Act defines payment stablecoins “as a digital asset issued for payment or settlement and redeemable at a predetermined fixed amount (e.g., \$1). Issuers [are] required to hold at least one dollar of permitted reserves for every one dollar of stablecoins issued.”²²

The Act requires companies to obtain authorization from an agency designated in the Act before issuing payment stablecoins. Which agency authorizes an issuer depends on the type of business that requests authorization.²³ Both banks and nonbanks can be approved as issuers. Because payment stablecoins themselves have no inherent value, issuers must maintain reserves. Those reserves must contain assets available to pay consumers in real money when holders want to redeem their payment stablecoins.

The Act limits the types of reserves that are permitted.²⁴ Federal and state regulators are required to issue rules on reserves to provide additional guidance for payment stablecoin issuers. There are limits to how issuers can use reserve assets. Federal and state regulators are required to issue capital, liquidity, and risk management rules for federal and state payment stablecoin issuers. However, the Act exempts payment stablecoin issuers from the capital standards applied to traditional banks.

²⁰ Brandon Milhorn, *GENIUS Act Implementation*, Letter to the U.S. Department of the Treasury, CONFERENCE OF STATE BANK SUPERVISORS, Nov. 4, 2025, at 3 (hereafter cited as Conference Letter).

²¹ See *infra* at pp. 36-38.

²² GENIUS Act § 2(22). “Every stablecoin is an IOU. They are a digital voucher, waiting to be redeemed.” Kirill Gertman, *A fragmented landscape of bespoke stablecoins will serve nobody*, AMERICAN BANKER, Jan. 5, 2026.

²³ The federal agencies include the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. See also *infra* pp. 11-12.

²⁴ One of the “key underlying assets” in typical reserves are short-term Treasuries. The authors of one study question the presumption that reserves of short-term Treasuries pose little risk that, in times of market stress, they cannot be sold or monetized at their market value. Sayee Srinivasan & Yakai Wang, *Are payment stablecoins too risky to be used for payment?* ABA BANKING JOURNAL, Feb 16, 2026. <https://bankingjournal.aba.com>.

Issuers must prepare periodic reports of outstanding stablecoins and the composition of reserve assets. The reports must be certified by executives and "examined" by registered public accounting firms. Issuers with more than \$50 billion in stablecoins outstanding are required to submit audited annual financial statements. Issuers with less than that amount are not required to submit audited financial statements, arguably making those issuers less reliable.

Issuers are prohibited from paying "interest or yield" to stablecoin holders. That prohibition has engendered a major controversy between banks and nonbanks. The regulators' resolution of this controversy will directly affect consumers. If regulators interpret the prohibition as applying only to issuers and none of the other parties involved in payment stablecoin transactions, consumers arguably will have more opportunities to benefit from companies offering yield or interest. However, other factors, such as the Act's omission of legal protection, may be more important to consumers than the attractive interest rates or rewards offered by some companies.

Commentators provide two rationales for the prohibition. One is to discourage consumers from using payment stablecoins as an investment.²⁵ Payment stablecoins are intended to be used to pay for goods, services and overseas remittances, not for speculation or as a long-term store of value.²⁶ The GENIUS Act provides consumers limited protection when they use payment stablecoins as a payment instrument. It does not protect them when they use payment stablecoins for investment purposes.

A second justification for prohibiting interest or yield is that if nonbank payment stablecoin issuers paid interest or other comparable incentives, they would be competing with banks. Arguably, that would amount to unfair competition because banks are saddled with regulatory costs such as capital requirements and the burdens of supervision and examinations. In addition, they have the cost of mandatory deposit insurance that nonbank payment stablecoin issuers do not have. As a result, nonbank issuers could afford to pay consumers a higher interest rate than banks.²⁷

Banks have expressed concern that, despite the ban on interest or yield, nonbanks such as Walmart or Amazon may be able to figure out a way to offer incentives to consumers and

²⁵ Wilmarth, *supra* note 5, at 86.

²⁶ Am. Bankers Assoc., Consumer Bankers Assoc., Financial Services Forum, Bank Policy Institute, and The Clearinghouse, *GENIUS Act Implementation*, Letter to the U.S. Department of the Treasury, Nov. 4, 2025, at 3 (hereafter Bankers Assoc. Letter).

²⁷ Wilmarth, *supra* note 5, at 87-88.

lure them away from banks.²⁸ Indeed, “crypto firms say the text [of the Act] leaves room for certain interest-bearing arrangements.”²⁹

Congress is considering a companion law to the GENIUS Act, called the Clarity Act. Several months after passage of the GENIUS Act the Senate Banking Committee offered to include in the Clarity Act a bipartisan compromise related to the interest controversy. The committee proposed “prohibiting crypto firms from paying interest ‘solely in connection with the holding of a payment stablecoin,’ but allowing interest payments to incentivize transactions or other active uses” of stablecoins.³⁰ Banks worry that would allow rewards from membership or incentive programs. The Independent Community Bankers of America want “a full prohibition” of rewards.³¹

Bank groups fear non-banks offering rewards will result in consumers withdrawing their money from business and consumer bank accounts. Banks use the money from those accounts to make loans. Banks contend that if money is withdrawn from those accounts to buy payment stablecoins, they would be forced to reduce lending. That would hurt the economies of local communities because households and businesses in those communities depend on that source of loans. In addition, those loans and bank deposits “are a key transmission channel for monetary policy.”³²

The cryptocurrency exchange Coinbase withdrew its support for the draft bill, claiming prohibiting rewards would allow “banks to ban their competition.”³³ As a consequence of this storm of opposition, the Senate Committee cancelled a scheduled markup of the draft bill.³⁴

In order to ensure that others involved in payment stablecoin transactions besides issuers cannot get around the prohibition on paying interest or yield, several bank trade

²⁸ “Many retailers envision branded stablecoins as a new loyalty currency that can be used for purchases, rewards and even discounts.” Andrew C. Glass & Gregory N. Blase, *Lawyers Weigh in as Congress Spurs Stablecoin Rush*, PAYMENTS.COM, Oct. 31, 2025. www.pymnts.com. “PayPal may offer you the ability to participate in the...rewards program...” *PayPal Cryptocurrency Terms and Conditions*, visited February 16, 2026 (hereafter cited as PayPal Agreement). https://paypal.com/us/legalhub/paypal/cryptocurrencies-tnc?locale.x=en_US. Stablecoins “directly transmit liquidity shocks to the banking system resulting in...diminished lending.” Michael Junho Lee & Donny Tou, *Stable Disintermediation*, Staff Report. FEDERAL RESERVE BANK OF NEW YORK, Feb. 2026.

²⁹ Keely, *supra* note 19.

³⁰ *Id.*

³¹ Claire Williams, *A banker’s guide to the Senate crypto drama*, AMERICAN BANKER, Jan. 14, 2026.

³² Nellie Liang, *Essential features for a safe and trusted payment stablecoin*, BROOKINGS INSTITUTION, May 8, 2025. www.brookings.edu. Liang also asserts “Allowing for interest payments could lead issuers to compete on offered yield rather than on payment innovations.” *Id.*

³³ *Id.*

³⁴ The proposed bill contains several other issues in addition to amendments to the GENIUS Act including provisions related to decentralized finance and securities. Keely, *supra* note 19.

associations have urged Treasury to take the position that the prohibition on paying interest or yield applies to affiliates and third parties as well as issuers.³⁵

Coinbase argued in its letter to Treasury that the Act clearly applies the interest or yield prohibition solely to issuers and not to anyone else.³⁶ It contended that extending the prohibition to affiliates and third parties, would “hurt consumers by stripping market-based incentives that lower payment costs, spur merchant acceptance, and help new users adopt safer, regulated U.S. stablecoins.”³⁷ One commentator opined that “the likes of Coinbase... while not strictly stablecoin issuers, are central enough to the stablecoin ecosystem that they may as well be. Coinbase, for instance, has revenue-sharing agreements with Circle... which issues prominent stablecoin USDC.”³⁸

This issue arose again with the Senate Banking Committee’s consideration of amendments to the GENIUS Act. The American Bankers Association urged that the prohibition of interest apply to “digital asset exchanges, brokers, dealers, and other affiliates” as well as issuers.³⁹

In late February, 2026 the Office of the Comptroller of the Currency (OCC) published proposed regulations pursuant to the GENIUS Act that includes an extensive discussion of the interest or yield issue.⁴⁰ To briefly summarize, the regulations would prohibit issuers from offering interest or yield, but this would be only a presumption; the issuer would be permitted to present evidence to rebut that presumption.⁴¹ Whether the Act’s prohibition is

³⁵ Bankers Assoc. Letter, *supra* note 26. The Conference of State Bank Supervisors has also recommended that Treasury apply the prohibition to affiliates and third parties. Conference Letter, *supra* note 20 at 5.

³⁶ Sanneh, *supra* note 17.

³⁷ *Id.*

³⁸ Jordan Atkins, *Banks: GENIUS Act must be interpreted as outlawing stablecoin yield*, COINGEEK, Nov. 11, 2025. Circle obtains “a big chunk of the revenue from Circle’s stablecoin. That allows Coinbase to offer some holders of the stablecoin 3.5% rewards.” Amrith Ramkumar, Dylan Tokar & Gina Heeb, *The Crypto CEO Who’s Become Enemy No. 1 on Wall Street*, WALL STREET JOURNAL, Jan. 31 - Feb. 1, 2026, at B1, B5. According to Coinbase’s CEO, Brian Armstrong, “Ultimately we want to be a bank replacement for people....We want to become a super app and provide all types of financial services.” *Id.*

³⁹ Williams, *supra* note 31.

⁴⁰ *Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency*, 91 Federal Register 10202, March 2, 2026, at 10212. Hereafter cited as OCC Regs. The OCC is the primary regulator of banks chartered under the National Bank Act and federal savings associations chartered under the Home Owners Loan Act of 1933. See the following articles discussing the OCC’s proposed regulations. Ebrima Santos Sanneh, *OCC’s GENIUS implementation draft rule keeps yield on the table*, AMERICAN BANKER, March 5, 2026; Jon Hill & Aislinn Keely, *OCC Unveils Landmark Stablecoin Rule Proposal*, LAW360, Feb. 25, 2026.

⁴¹ The OCC regarded as relevant factors whether there is a “close nexus to the issuer’s payments and payments to the payment stablecoin holder as well as [whether there is a] close contractual or control relationship between the issuer and [related third parties].” OCC Regs, *id.* That “would make it highly likely that the issuer’s payments of yield or interest would be made to the holder through an intermediary or an

strictly enforced will depend on how the OCC applies the factors it regards as relevant and responds to an issuer's rebuttal. Consumers need clarity.

Hopefully, either Congress or the regulators will settle this issue clearly and definitively so consumers will know which parties are authorized to offer interest or yield and consumers can take that into account when making decisions about entering into payment stablecoin transactions. Consumers should carefully consider the risks and lack of legal protections in the law and not be unduly influenced by the lure of interest or yield.

Issuers are subject to the Bank Secrecy Act (BSA) and must implement Anti Money Laundering (AML) procedures. The CRS has expressed its doubts as to the ability of issuers to effectively comply with the BSA and AML.

It is unclear, however, how issuers could address their BSA/AML monitoring responsibilities once stablecoins are off-ramped to pseudonymous public blockchains, which are not subject to issuer controls. This could lead to scenarios in which stablecoins could be used for illicit purposes that issuers are unable to monitor—potentially posing reputational and other risks to issuers.⁴²

As the above quote shows, the CRS believes reputational risk is an important consideration. For many years the Federal Reserve told banks it considered reputational risk to be important. However, in June 2025, the Fed announced it would no longer consider reputational risk as part of its supervisory responsibilities.⁴³

Payment stablecoins can be issued by banks and credit unions. Generally, nonbanks also can issue payment stablecoins if they are financial institutions. However, as an example of one of the many important exceptions in the Act, nonbanks that are not financial firms, such as Walmart and Amazon, also can issue payment stablecoins if approved to do so by the Stablecoin Certification Review Committee (SCRC). The committee is composed of the Treasury Secretary and chairs of the Federal Reserve and the Federal Deposit Insurance Corporation. The Committee must find that the nonbank that is not a financial institution

attempt to evade the GENIUS Act's prohibition on interest and yield payments. Nonetheless, the OCC would permit the issuer to rebut the presumption given the issuer provides sufficient evidence to the contrary. Specifically, a permitted payment stablecoin issuer may rebut the presumption by submitting written materials that, in the OCC's judgment, demonstrate that the contract, agreement, or other arrangement is not prohibited under paragraph (c)(4) [of the proposed regulation] and is not an attempt to evade the prohibition." *Id.*, at 10212.

⁴² *Key Issues in Stablecoin Legislation*, *supra* note 13.

⁴³ Press Release, *Federal Reserve Board announces that reputational risk will no longer be a component of examination programs in its supervision of banks*, June 23, 2025. www.federalreserve.gov.

does not pose risks to the banking or financial system and will comply with certain requirements.

Banks and nonbanks that want to be payment stablecoin issuers must apply for permission to the applicable federal banking regulator. Nonbanks with fewer than \$10 billion in outstanding payment stablecoins have the option of obtaining permission from state regulators as long as the state's regulatory rules are "substantially similar" to its federal counterpart as determined by the SCRC.

Whether or not consumers should trust a nonbank that is subject to a state regulatory agency may depend on how the SCRC interprets and applies the "substantially similar" standard. Hopefully, the SCRC will approve state rules only if they provide at least as much consumer protection as the federal rules.

Equally important as the rules on the books is the state agency's ability and willingness to supervise issuers and take enforcement action when necessary. This may pose a formidable challenge for state agencies. They likely lack the resources to perform these new functions. Current staff in most state agencies have no experience supervising payment stablecoin issuers since they have never done it before. Additional staff may need to be hired and trained for this new task. Since this is a responsibility created for the first time by the Act, state budgets do not provide funding to hire and train staff for this purpose.

The Act gives state agencies time to prepare by providing that the Act does not take effect for 18 months after enactment or 120 days after federal banking regulators issue final rules. However, it is doubtful that state legislatures can be depended upon to appropriate the funds the agencies will need, given the states' limited revenue sources and many other urgent needs. The Act is no help; it provides no funding for the states; it doesn't even require the federal agencies to provide non-financial assistance.

If an application to be an issuer is denied, the denial must be justified and the applicant can appeal the decision. However, if an application is not acted on within 120 days, the application is deemed approved. In a major deficiency, the Act does not require issuers to disclose that important fact to consumers. Therefore, consumers likely will assume that the application was approved only after full agency vetting even if it was automatically approved only because the agency did not act within 120 days.

Most consumers trust traditional banks to manage their payments when using checks and debit cards because banks are subject to laws that protect consumers and the banks are subject to supervision and enforcement actions. However, for reasons discussed in the following section, the Act has so many serious deficiencies that consumers should be very cautious about using payment stablecoins even if they are issued by traditional banks.

Using payment stablecoins issued by nonbanks is even more risky. Many non-banks have no experience issuing payment instruments, maintaining an issuer-consumer relationship, and dealing promptly and reasonably when problems arise.

One provision related to state-regulated issuers has been strongly criticized by both the banking industry and consumer advocates. That section relates to state-chartered special purpose depository institutions with a stablecoin subsidiary. The Act permits them to operate in states other than those where they are chartered without the approval of each host state's bank regulator. The Act allows them to expand throughout the country. In August 2025, several banking groups and consumer organizations asked members of the Senate Banking Committee to rescind that section of the Act. They claimed that the provision will result in "substantially less oversight," "undermines state sovereignty," and "weakens vital consumer protections."⁴⁴

The Act does not seem to require that nonbanks regulated by the states rather than federal agencies clearly disclose that fact to consumers prior to consumers engaging in payment stablecoin transactions with them. This is important information that consumers should have. Given the novelty and complexity of the payment stablecoin marketplace, even relatively well-informed and sophisticated consumers may believe there is federal oversight of issuers regulated by state agencies.

The Act imposes many responsibilities on regulatory agencies. They must examine the issuer's finances, risk management systems, and safety and soundness. Issuers must file reports. Regulators are authorized to conduct examinations. They are empowered to bring enforcement actions. These include ordering the issuer to stop issuing payment stablecoins if the issuer violates the Act or an agency requirement. The Act also provides for state regulators to have supervision and enforcement powers over nonbanks that choose to be subject to state rather than federal regulators.

The Act permits foreign institutions to issue payment stablecoins, but they must comply with various requirements. For example, the foreign issuer must be subject to regulation and supervision by a foreign payment stablecoin regulator that has a regulatory and supervisory regime that is "comparable to the regulatory and supervisory regime established under this Act."⁴⁵ The foreign issuer must be registered with the Comptroller of

⁴⁴ Claire Williams, *Bankers, consumer activists unite against stablecoin rule*, AMERICAN BANKER, Aug. 14, 2025.

⁴⁵ GENIUS Act § 18(a)(3).

the Currency and the issuer must hold reserves in a United States financial institution “sufficient to meet liquidity demands of United States customers.”⁴⁶

Tether may be able to take advantage of that provision. It is the largest issuer of payment stablecoins and is popular among people making international payments.⁴⁷ In 2025 it moved its headquarters to El Salvador where it obtained a license to provide crypto services. El Salvador has enacted stablecoin regulations which may pass muster as being comparable to the rules established in the U.S.⁴⁸ There has been a warm relationship between President Trump and El Salvador’s President Nayib Bukele, who has agreed to accept persons deported from the U.S.⁴⁹ That relationship could have a bearing on the decision whether El Salvador’s rules are comparable to those in the U.S.

Tether’s business connections in the U.S. also may help it gain approval. Tether has earned billions of dollars in interest from its investment in Treasury bills that back its stablecoins. Cantor Fitzgerald holds most of Tether’s Treasury portfolio.⁵⁰ Tether and Cantor Fitzgerald have joined with Softbank to buy \$3.6 billion of bitcoin.⁵¹ Immediately before becoming Secretary of Labor, Howard Lutnick was the CEO of Cantor Fitzgerald. The firm is now managed by his sons.

Possibly working against Tether’s approval may be a settlement with the New York Attorney General. The Attorney General alleged that Tether failed to disclose an \$850 million loss.⁵² In addition, Biden’s Treasury and Justice Departments had been investigating Tether for a variety of alleged illegal activities.⁵³

Persons who have been convicted of certain financial crimes are not permitted to be officers or directors of issuers. But being convicted of non-financial crimes apparently is no bar. Moreover, the Act does not prohibit persons convicted of financial crimes from

⁴⁶ Unfortunately, this requirement is subject to an exception. It does not apply if the Secretary of the Treasury has entered into a reciprocal arrangement with a comparable regulatory regime. GENIUS Act §§18(a)3) & (d). Whether the exception allows foreign issuers to avoid adequate liquidity requirements will depend on how strictly the Treasury Secretary applies the “comparable regulatory regime” standard.

⁴⁷ Alexander Osipovich, Vicky Ge Huang & Angus Berwick, ‘Genius Act’ to Punish Stablecoin Giant Tether, WALL STREET JOURNAL, June 26, 2025, at B1.

⁴⁸ El Salvador has “a mixed record with regulatory compliance and state and federal law enforcement.” Francine McKenna, *In Stablecoins We Trust?* CHICAGO BOOTH EDUCATION REVIEW, Aug. 5, 2025. www.chicagobooth.edu.

⁴⁹ Osipovich, *supra* note 47.

⁵⁰ *Id.*

⁵¹ Arasu Kannagi Basil, & Tommy Reggiori Wilkes, *Cantor teams up with Tether, Softbank for \$3.5 billion crypto venture*, REUTERS, April 23, 2025. www.reuters.com.

⁵² Osipovich, *supra* note 47.

⁵³ *Id.*

investing in issuers.⁵⁴ Also not excluded are persons who have been subject to civil penalties by agencies such as the Securities and Exchange Commission.

In addition to excluding some convicted criminals, the Act prohibits members of Congress from issuing payment stablecoins. It provides that “nothing in the Act shall be construed...to limit or prevent the continued application of applicable ethical statutes and regulations administered by the Office of Government Ethics, or the ethics rules of the Senate and the House of Representatives....” The Act also provides that “existing Office of Government Ethics laws and the ethics rules of the Senate and the House of Representatives prohibit any member of Congress or senior executive branch official from issuing a payment stablecoin during their time in public service.”

The CRS concluded that “[t]hose rules generally apply only to officials with conflicts of interest, and some appear not to apply to a President.” This is an important qualification because President Trump and two of his sons own a major financial interest in World Liberty Financial, a company that issues payment stablecoins.⁵⁵ If the CRS is correct, President Trump may not be covered by the Act’s conflict of interest prohibitions.

In response to the weak conflict of interest provisions in the GENIUS Act, several Democratic senators introduced S. 1668, the “End Crypto Corruption Act of 2025.” Among other things, it prohibits the President, Vice-President, members of Congress and others from “any issuance, sponsorship, or endorsement of a crypto currency,...[or] stablecoin....” It is doubtful the bill will pass the Senate. In addition, Democrats want the draft bill containing proposed amendments to the GENIUS Act to include ethics restrictions.⁵⁶

One provision in the Act favorable to consumers prohibits the issuer from tying the purchase of payment stablecoins to the purchase of another product. The issuer may not

⁵⁴ The founder of Binance, the world’s largest crypto exchange, Changpeng Zhao, was convicted after pleading guilty to violating the Bank Secrecy Act. “Binance has been one of the main drivers of the growth of World Liberty’s dollar-pegged cryptocurrency, called USDL...World Liberty has said that Zhao is friends with Zach Witkoff, a World Liberty co-founder...” In October 2025, President Trump pardoned Zhao. Rebecca Balhaus, Josh Dawsey, Patricia Kowsmann & Angus Berwick, *President Pardons Convicted Binance Founder*, WALL STREET JOURNAL, Oct. 24, 2025, at A1, A4. See also Angus Berwick, Patricia Kowsmann & Rebecca Ballhaus, *Before Pardon, Crypto Titan Boosted Trump Company*, WALL STREET JOURNAL, Oct. 31, 2025, at A1.

⁵⁵ One of World Liberty Financial’s entities has applied for a national trust bank license to issue its stablecoins. Vicky Ge Huang, *Trump Venture Seeks License*, WALL STREET JOURNAL, Jan. 8, 2026, at A2. Senator Elizabeth Warren pointed out that the charter application was subject to approval by the Comptroller of the Currency, Jonathan Gould, who was appointed by President Trump. Gould would be issuing rules and directly supervising and enforcing the laws to which World Financial is subject. Rae Ann Varona, *OCC Won’t Delay Family-Tied Bank Charter Review*, LAW360, Jan. 23, 2026. The president can remove the Comptroller “upon reasons to be communicated by him to the Senate.” 12 U.S.C. § 2.

⁵⁶ Amrith Ramkumar & Vicky Ge Huang, *Banks and Crypto Firms Clash Over Tokens That Pay More Than Deposits*, WALL STREET JOURNAL, Jan. 15, 2026, at B1, B5.

provide “services to a customer on the condition that the customer obtain an additional paid product or service” from the issuer or any of its subsidiaries.⁵⁷ This is a significant protection because often sellers in other industries offer a product or service at an attractive price but also require the customer to purchase another product or service at a higher price than the customer could obtain from a different seller. In light of its prevalence in the consumer marketplace, it is probable that some payment stablecoin issuers also would engage in this unfair practice if not for the prohibition in the Act. The Truth In Lending Act has a comparable provision prohibiting credit card issuers from requiring consumers to buy another property or services.⁵⁸

Issuers, however, may get around this prohibition by not explicitly “conditioning” the purchase of payment stablecoins to the purchase of other products and services. Instead, they may use unfair or deceptive means to obtain the consumer’s consent to buy another product or service. Therefore, the Act should have explicitly stated that the issuer may not use unfair or deceptive means to obtain the consumer’s consent to buy another product or service.

Examples of issuers using arguably unfair methods to tie-in the purchase of another product are the following:

Mary goes onto the website of PaymentStableCoinsRUS to purchase payment stablecoins. Before she clicks on the button labelled “Add to shopping cart,” a pop-up appears on the screen saying: “Using payment stablecoins is a new, convenient, superior, low-cost way to pay for goods and services. But you may not understand how it is different from paying with a credit or debit card. To get the maximum benefit from your purchase, we strongly recommend that you also purchase our award-winning PaymentStableCoinsRUS Financial Management Program to get the most value from using our product. Click the ‘I want this benefit’ button to subscribe to this service for only \$9.99 a month.”

Joe goes to the website of GeniusPayments.com. When he gets to the page where he can purchase payment stablecoins, one section of the screen says: “I agree to purchase the Genius Financial Management Program for the one-time-only price of \$9.99 per month.” Next to that statement is a square box with a checkmark on it. Below that is a notice in small type that says: “If you do not want to purchase the

⁵⁷ GENIUS Act § 4(a)(8)(A).

⁵⁸ 15 U.S.C. § 1666g, 12 C.F.R. § 1026.12(f).

Genius Financial Management Program, click on the box to remove the checkmark and cancel your purchase of this Program.”⁵⁹

In addition to prohibiting the issuer from requiring the purchase of another item, the issuer cannot require the customer to agree “to not obtain an additional product or service from a competitor.” This is a necessary prohibition to make the anti-tying provision effective.

The above summary provides a broad picture of the legal framework established by the GENIUS Act. The next section discusses the many ways in which the Act fails to protect consumers.

III. The GENIUS Act Does Not Adequately Protect Consumers

In considering whether the GENIUS Act protects consumers, it is helpful to examine the Act from two perspectives. This section first discusses those essential consumer protections that the Act omits entirely. This section then explains why it is doubtful the present administration will vigorously enforce the few consumer protections that are in the Act. This is a major concern because consumers cannot sue issuers who violate the Act and must rely on regulators to protect them. Whether future administrations will enforce the Act is impossible to know.

A. Inadequate Consumer Protection

By failing to address several crucial issues, the GENIUS Act fails to adequately protect consumers.

No Private Right of Action: A major deficiency of the Act is the failure to provide consumers with a private right of action. As a result, consumers have no right to sue payment stablecoin issuers for violation of the limited protections in the Act. In contrast, almost every state and federal consumer protection statute grants consumers the ability to sue.⁶⁰ Laws governing payments such as credit and debit cards authorize courts to award damages to successful consumers. Courts also can order a business that violates the law to pay the consumer’s costs and attorney fees. Without a private right of action consumers are dependent on government agencies to enforce the Act. For the reasons discussed

⁵⁹ See generally *dotcomDisclosures, How to Make Effective Disclosures in Digital Advertising*, FEDERAL TRADE COMMISSION, March 2013. www.ftc.gov.

⁶⁰ Notable exceptions are the Federal Trade Commission Act and the Consumer Financial Protection Act that authorize only government agencies, not individuals, to bring enforcement actions.

below in section III.B, it is doubtful there will be meaningful agency enforcement, at least under the present administration.⁶¹

Congress should amend the Act to require issuers to clearly and conspicuously disclose to consumers prior to purchasing payment stablecoins that they have no right to sue issuers for violation of the Act prior to purchasing payment stablecoins.

Although the GENIUS Act does not grant consumers a private right of action, consumers may have legal rights under contract law or statutes other than the GENIUS Act. An example of the latter are state laws prohibiting unfair and deceptive acts and practices. These laws do not preclude consumers from suing in court. However, as discussed below it is unclear whether federal consumer protection laws apply and whether the Act preempts state law.

Unclear Whether Federal Consumer Protection Laws Apply: Despite the Act’s failure to provide consumers with a private right of action, they nevertheless have important tools if other federal laws apply to payment stablecoin transactions. One major law is the Electronic Fund Transfer Act (EFTA).⁶² The EFTA is a federal law that governs preauthorized electronic payments and transfers using debit cards and ATMs. Another law that could be useful to consumers is the Consumer Financial Protection Act’s prohibition of unfair, deceptive and abusive acts and practices.⁶³ Consumers also would benefit if the Consumer Financial Protection Bureau has enforcement authority over payment stablecoin transactions.

Unfortunately, the Act is unclear on this major issue. The Act does include the following: “RULE OF CONSTRUCTION — Nothing in this Act may be construed to modify or otherwise affect any right or remedy under any Federal consumer financial law, including 12 U.S.C. 5515 and 15 U.S.C. 41 et seq.”⁶⁴ On its face, that section would seem to allow consumers to take advantage of the EFTA and the Consumer Financial Protection Act.

⁶¹ *Infra* pp. 44-46.

⁶² 15 U.S.C. §§ 1693 *et seq.* “Even if the EFTA applies in theory, it may be difficult to find an entity to hold responsible, given the purported decentralized nature of crypto-assets.” Carla Sanchez-Adams, *Consumer Remedies for Electronic Fund Transfers Under the Electronic Fund Transfer Act*, 2024 ADVANCED CONSUMER & COM. L. 15-11, STATE BAR OF TEXAS (2024), available on Westlaw. Days before President Trump’s 2025 Inauguration, the Consumer Financial Protection Bureau issued a proposed interpretive rule that would have made stablecoins and other digital payment mechanisms subject to the EFTA. In May, 2025, the CFPB rescinded that proposal. Ethan Ostroff, Carlin McCrory & Jason Cover, *How Payments Law Landscape Will Evolve In 2026*, LAW360, Jan. 22, 2026.

⁶³ 12 U.S.C. § 5531(a).

⁶⁴ GENIUS Act § 6(c).

Georgetown Law School Professor Arthur Wilmarth argues that “a purchase or redemption of a stablecoin by a ‘consumer’ should be treated as a ‘consumer financial product or service’ subject to the CFP Act [Consumer Financial Protection Act] as well as the CFPB’s [Consumer Financial Protection Bureau’s] administrative responsibilities under the CFP Act.”⁶⁵ However, it is unclear what Congress intended because the Act’s specific references are to sections that have little to no relationship to the laws most applicable to consumer protection.⁶⁶

Moreover, Professor Wilmarth acknowledges that “it is likely that stablecoin issuers and the crypto industry would challenge any attempt to apply the CFP Act to such transactions” and the Trump Administration would support the industry.⁶⁷

This is an issue of concern to banks as well as consumers. In its letter to Treasury, the bank trade associations note that the Act “does not address the application of the EFTA...to payment stablecoin transfers. This resulting uncertainty poses risk of confusion for consumers, financial institutions and courts.”⁶⁸ The associations note that unless “federal policymakers” take action, the issue will be decided by judicial cases, but that may result in conflicting decisions.

Congress should resolve this issue by amending the Act to explicitly say that federal consumer law applies. The amendment also should add “including but not limited to” and specifically name laws such as the EFTA and CFP Act. Even better would be if Congress amended the CFP Act to grant consumers a private right of action in the CFP Act so they are not dependent on the CFPB.

The next best action would be for federal agencies to issue regulations that make it unmistakably clear that laws protecting consumers apply. The regulations should

⁶⁵ Wilmarth, *supra* note 5 at 117. *But see infra* at p. 44 discussing the dismantling of the CFPB under the Trump administration.

⁶⁶ Section 5515 of the United States Code relates to the supervision of “very large” banks, savings and loan associations, and credit unions. Section 41 provides that all acts of Congress apply to Guam. Section 42 provides that acts of Congress apply to states, the District of Columbia, Puerto Rico, and U.S. territories and possessions. Section 43 specifies the procedure for deciding if Federal law pre-empts state law. *See also* Wilmarth, *supra* note 5, at 117.

⁶⁷ *Id.*

⁶⁸ Bankers Assoc. Letter, *supra* note 25, at 33. There are apparently no cases discussing the applicability of the EFTA to stablecoins as of the date of this report and few cases involving cryptocurrency in general. In *Rider v. Uphold HQ*, 657 F.Supp.3d 491 (S.D.N.Y. 2023) the court held that, although the EFTA does not define the term “funds,” crypto comes within the ordinary meaning of funds under the EFTA. In *Yuille v. Uphold HQ*, 686 F.Supp.3d 323 (S.D.N.Y. 2023) the court found that the EFTA can apply to crypto transactions even though crypto did not exist when the EFTA was enacted and later amendments did not mention crypto. However, the court rejected the plaintiff’s EFTA claim because he did not plead that he had the type of “account” required by the EFTA.

specifically name the EFTA and the Consumer Financial Protection Act. However, it is likely parties whose economic interests are not furthered by those regulations will challenge them, contending that the agencies lack clear authority in the Act to impose those regulations.

No Limit on Fees for Acquiring and Redeeming Payment Stablecoins: There are no rules or even standards in the Act to govern the agreements between issuers and consumers. Therefore, with the exception of the anti-tying prohibition discussed above,⁶⁹ issuers can impose any fees or conditions to which consumers agree. It is very likely they will charge fees. As Fed Governor Christopher Waller has pointed out, charging fees for acquiring and redeeming payment stablecoins is one of the few sources of revenue for issuers.⁷⁰ What is uncertain is whether issuers will compete with each other by offering low fees.

Unclear Redemption Requirements: Consumers' ability to redeem their payment stablecoins is one of the Act's most important protections. Without a satisfactory redemption mechanism, consumers risk losing all the funds they used to purchase their payment stablecoins.⁷¹ The Act's crucial redemption provision is woefully inadequate.

The Act requires issuers to "publicly disclose the issuer's redemption policy."⁷² That policy must "establish clear and conspicuous procedures for timely redemption of outstanding payment stablecoins...." The issuer also must "publicly, clearly, and conspicuously disclose in plain language all fees associated with purchasing or redeeming the payment stablecoins, provided that such fees can only be changed upon not less than 7 days' prior notice to consumers...." The issuer is required to "publish the monthly composition of the issuer's reserves" on its website.

There is no definition of "timely." As Professor Arthur Wilmarth has pointed out, that means there is no "maximum time limit for redemption."⁷³

⁶⁹ See *supra* at pp.16-18.

⁷⁰ Christopher J. Waller, *Reflections on a Maturing Stablecoin Market*, Speech, Feb. 12, 2025, available on www.federalreserve.gov. Another source of revenue is the interest the reserves earn on the limited types of investments permitted under the Act. That revenue is uncertain as it depends on the prevailing rate of interest. A third source is the issuer's ability to persuade consumers to buy other products and services despite competition from others. As discussed above at pp. 16-18, the Act's anti-tying rules limit that revenue source.

⁷¹ "Every stablecoin is an IOU. They are a digital voucher, waiting to be redeemed. That redeemability is the key question, and the biggest risk." Gertman, *supra* note 22.

⁷² GENIUS Act § 4(a)(1)(B).

⁷³ Wilmarth, *supra* note 5, at 111.

Fees must be disclosed, but Professor Wilmarth notes the Act imposes no maximum amount that can be charged. He recommends a ceiling of 1% of purchases or redemptions. The Act should be amended to set a ceiling on the amount of fees.

Requiring the issuer to provide the consumer seven days prior notice of the issuer's intention to change fees is much shorter than the 21 days' notice the EFTA requires for a change of any terms.⁷⁴

Congresswoman Maxine Waters proposed a bipartisan payment stablecoin bill that ensured consumers far greater redemption rights. Under her bill, the issuer would be required to establish a process in which consumers could redeem their payment stablecoins no "longer than one day after the redemption request."⁷⁵ The Act should be amended to set a short deadline by which issuers must redeem consumers' payment stablecoins.

In 2022, the New York Department of Financial Services issued a "Virtual Currency Guidance" that applies to entities licensed in New York that issue "U.S.-Backed Stablecoins."⁷⁶ The Guidance provides issuers a choice: They can either "clearly disclose the meaning of 'redemption' and the required timing of 'timely redemption...'" Alternatively, they can adopt specific default terms provided in the Guidance. One of those default terms provides that "'Timely' redemption means redemption not more than two full business days...after the business day on which the issuer receives" a redemption order from the consumer.

Regulatory agencies have published proposed regulations pursuant to the GENIUS Act and asking for public comment as they are required to do. The regulators could have used this as an opportunity to propose specific language informing how issuers should apply the Act's vague and general standards. That would have spared issuers the need to guess what redemption procedures to implement and what specific terms to include in their contracts that would satisfy the regulators. Issuing rules that were fair to consumers would have given consumers confidence that payment stablecoins were a safe and reliable payment instrument.

⁷⁴ 15 U.S.C. § 1693c(b).

⁷⁵ Maxine Waters, *Untitled Discussion Draft*, 118th Cong., 2d session. https://democrats-financialservices.house.gov/uploadedfiles/02.10.2025_s_b_s_stablecoinb.pdf. The bill was never introduced because negotiations over the bill were unsuccessful and the Republicans introduced their own proposal. Aislinn Keely, *House Mulls Stablecoin Draft As Senate Bill Heads To Vote*, LAW360, March 11, 2025.

⁷⁶ *Virtual Currency Guidance*, NEW YORK DEPARTMENT OF FINANCIAL SERVICES, June 8, 2022. www.dfs.ny.gov.

Unfortunately, those proposed regulations are deficient in major respects.

In December, 2025, the FDIC issued a notice of proposed rulemaking on requirements for approving the issuance of payment stablecoins by subsidiaries of depository institutions that are supervised by the FDIC.⁷⁷ The FDIC set May 18, 2026 as the date by which comments from the public must be submitted. The FDIC’s proposal merely repeats the standards in the Act verbatim.⁷⁸ It provides absolutely no clarification or guidance on how it will decide whether an applicant’s redemption policy meets the standards specified in the Act.

In February, 2026, the National Credit Union Administration (NCUA) issued a notice of proposed rulemaking titled “Investments in and Licensing of Permitted Payment Stablecoin Issuers.”⁷⁹ The NCUA set April 13, 2026 as the date by which comments from the public must be submitted. The NCUA’s proposed regulations are seriously deficient in the same respects as the FDIC’s proposed redemption regulations.

In sharp contrast, later in February, 2026 the OCC issued proposed regulations that provided needed clarity on a few matters and filled in serious gaps in the Act. Comments are due by May 1, 2026. While far better than the other agencies’ proposals, nevertheless the OCC’s proposed regulations are inadequate.⁸⁰

The OCC’s proposed regulation requires issuers to disclose several items to consumers. These include the name of the issuer, that the issuer is obligated to redeem payment stablecoins for a fixed amount, the link to a monthly reserve composition report, and “[a]ll fees associated with purchasing or redeeming payment stablecoins.”⁸¹

⁷⁷ Notice of proposed rulemaking, *Approval Requirements for issuance of Payment Stablecoins by Subsidiaries of FDIC-Supervised Insured Depository Institutions*, 90 Fed. Reg. 59409-1, Dec. 19, 2025, at 59411. The FDIC is the primary federal regulator of banks that are chartered by the states that do not join the Federal Reserve System. The Treasury Department issued its proposal in September 2025. Instead of proposing regulations, it is merely a request for information, posing scores of questions rather than proposing anything. *Id.* at note 18.

⁷⁸ *Id.* The Supreme Court has erected various obstacles to the authority of regulatory agencies to issue regulations. See e.g., *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (abandonment of *Chevron* doctrine – deference to agency regulations); *West Virginia v. EPA*, 597 U.S. 697 (2022) (agency authority restricted by major questions doctrine). An analysis of the impact of these cases on regulations under the GENIUS Act is beyond the scope of this report).

⁷⁹ *Investments in and Licensing of Permitted Payment Stablecoin Issuers*, 91 Fed. Reg. 6531-01, Feb. 12, 2026. Under the proposed rule, the NCUA would authorize the issuance of payment stablecoins through NCUA-licensed subsidiaries.

⁸⁰ OCC Regs, *supra* note 40, at 10220-10221 (discussion of redemption proposal), at 10290-10291 (text of proposal, § 15.12).

⁸¹ *Id.* at 10291.

The proposed OCC regulations provide that the issuer must “publicly, clearly and conspicuously disclose [these items] in plain language and in a format that is readily noticeable to customers, readily understandable by customers, and segregated from other information.”⁸²

The OCC explained that the requirement that these disclosures be segregated is needed to ensure that other information the issuer provides does not “obscure the importance of these disclosures.”⁸³

In addition, these disclosures are “particularly important” where the issuer sells “more than one brand of payment stablecoins either directly or through an affiliate....these disclosures are necessary to prevent confusion and ensure....holders understand who has the ultimate obligation to redeem their payment stablecoin.”⁸⁴

It is notable that the proposed regulations acknowledge the importance of the “format” in which the disclosures are made. As discussed below, since the disclosures will be made online, web design features such as format are crucial.⁸⁵ However, the regulations should have included much more detail in order to accomplish the regulations’ stated goal that the format be “readily noticeable to customers ... [and] readily understandable by customers.”

The Act requires issuers to provide “clear and conspicuous procedures for timely redemption.”⁸⁶ The OCC’s proposal defines “timely” to require redemption “no later than two business days following the date of the requested redemption.” This is “an outer limit.”⁸⁷ The OCC believes the two-day timeframe is both sufficiently responsive to holders “while also ensuring that issuers can appropriately manage liquidity demands.” The two-day rule is similar to that of the New York Department of Financial Services, described above.

However, the OCC impliedly acknowledged there may be a “run” on an issuer. Therefore, the OCC also proposed that “the period for timely redemption is extended to seven calendar days if ...[an] issuer faces redemption demands in excess of 10 percent of its

⁸² *Id.* The OCC regulations also require “that the issuer must redeem any number greater than or equal to one payment stablecoin, subject to appropriate customer screening and onboarding.” *Id.* at 10291. Explained at *id.* 10220.

⁸³ *Id.* at 10221.

⁸⁴ *Id.*

⁸⁵ *Infra* at pp. 29-30.

⁸⁶ OCC Regs, *supra* note 40 at 10291.

⁸⁷ *Id.* at 10220.

outstanding issuance value in a single 24-hour period.”⁸⁸ This seven-day extension is “non-discretionary” and an issuer can make redemptions sooner only if the OCC approves.⁸⁹

The OCC proposes to give itself discretion to extend the two-day redemption requirement even longer and for additional reasons.⁹⁰ The OCC would be able to extend the redemption deadline if it determines that the “issuer poses a threat to safety and soundness, financial stability, or such extension is otherwise in the public interest.” There is no time limit to this extension, and “in the public interest” is not defined.

Requiring a two-day redemption requirement is a major win for consumers. However, the seven-day extension is a stark reminder that there is a real possibility that there could be a run on redemptions.⁹¹ Moreover, despite the Act’s reserve requirements that are designed to ensure adequacy and liquidity, the OCC added the seven-day extension because it recognizes that issuers may indeed be unable to meet consumers’ requests for timely redemption.

It is unfortunate that the OCC does not define “business days” in its proposal. Issuers may prominently use the two-business-day guarantee in their marketing. But different consumers may have different understandings of what constitutes a “business day” and this will lead to confusion.

For example, many banks are open for at least part of Saturday. Consumers may reasonably believe only Sunday and national holidays are not business days. Online fintechs do business 24/7. Arguably, every day is a business day. The regulations should specify whether two-business days excludes Saturdays, Sundays, and/or national holidays. Issuers should be required to disclose what is meant by two-business-days to prospective customers.⁹²

⁸⁸ *Id.* at 10291.

⁸⁹ “These provisions are intended to facilitate the orderly liquidation of sufficient reserve assets in the event of a spike in redemption requests and would help ensure financial stability by lowering the potential price impact of a sudden liquidation of reserve assets.” *Id.* at 10220-10221.

⁹⁰ *Id.* at 10291. The OCC regulations require the issuer to “publicly disclose its redemption policy and include....(3) A statement explaining the scenarios under which the redemption period may be extended....” *Id.* at 10290-10291.

⁹¹ S&P Global Markets believes “run-risk” is a concern: “even with liquid reserves, large redemptions could trigger rapid T-bill sales...” John Adams, *The heavy tech lift behind stablecoin banking*, AMERICAN BANKER, Dec. 5, 2025.

⁹² The Truth In Lending Act defines “business day” in a manner that requires consumers to try to figure out for themselves what constitutes a business day for their particular creditor. Under Regulation Z, “Business day means a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions.” 12 C.F.R. § 1026.2(a)(6). The Electronic Fund Transfer Act has the same definition. 15 U.S.C. § 903(5). 12 C.F.R. § 1005.2(d). It would be better if the payment stablecoin regulations adopted a

The regulations require that the disclosures be included in “any customer agreements that [the issuer] provides.”⁹³ However, nowhere do the regulations require that the issuer provide its customers an agreement. That requirement seems to be implicit in the regulations, but should be made explicit in the regulations to eliminate any doubt. Furthermore, the regulations should require providing the disclosures when the consumer enters into a contract for purchase of payment stablecoins as the EFTA requires.⁹⁴

The proposed regulations also require that “if there are any changes in the fees associated with purchasing or redeeming payment stablecoins,” the issuer must update the disclosures of those fees, and include the disclosures of “any updates...in any customer agreement that it provides.”⁹⁵ They also must “provide customers at least seven calendar days’ prior notice of the change, including by securely delivering the notice to current customers.” The regulations should provide examples of ways issuers can securely deliver the notice.

While providing needed clarity and filling in some gaps in the Act, the OCC’s proposed redemption regulations are nevertheless seriously deficient in many respects, including the following.

There is no definition of “conspicuous.” The Act requires establishment of “conspicuous” procedures and a “conspicuous” disclosure of all fees. There is no definition of “conspicuous” in the Act or the OCC’s proposed regulations. The regulations should provide one that takes into account that the disclosures will likely be on the issuer’s website.⁹⁶

The proposed OCC regulations require redemption within two business days. The regulations also should require a notice that alerts consumers that if they anticipate ever needing quicker redemption, they should consider other alternatives such as issuers with a

definition that applied the term the same to all issuers. Regulation Z defines “business day” in a manner that is the same for all creditors and consumers for purposes of rescission. *Id.*

⁹³ OCC Regs, *supra* note 40 at 10291.

⁹⁴ The Electronic Fund Transfer Act requires disclosures “at the time the consumer contracts for an electronic fund transfer service.” 15 U.S.C. § 1693c(a).

⁹⁵ OCC Regs, *supra* note 40, at 10291.

⁹⁶ See *infra* pp. 29-30. The Federal Trade Commission has published a document to assist advertisers make clear and conspicuous online disclosures that comply with the Federal Trade Commission Act and the FTC’s regulations. That document provides a discussion that can be easily adapted to apply to payment stablecoin regulations. See *dotcomDisclosures, How to Make Effective Disclosures in Digital Advertising*, *supra* note 59. The sponsors of the Uniform Commercial Code published amendments to accommodate emerging technologies. Pursuant to that objective, they amended the definition of “conspicuous” and in a Comment discussed factors that are relevant to whether a term in an online agreement is conspicuous. UNIFORM COMMERCIAL CODE AMENDMENTS (2022), Official Comment to § 1-201(b)(10), at 10-11. www.uniformlaws.org.

more favorable redemption period or using another type of payment device. Hopefully, in order to attract customers issuers will compete with one another by offering guaranteed redemption deadlines more quickly than the two-day requirement and more promptly than their rivals.

Finally, what is a “clear and conspicuous” procedure? Can the issuer require the consumer to take many steps before redeeming the payment stablecoins? Can the issuer require consumers to notify the issuer in writing of their intention to redeem, or is oral notice acceptable? Can the issuer design a website that makes it difficult and burdensome for consumers to request redemption of their payment stablecoins? For example, can the issuer require consumers to provide copious amounts of information when making a redemption request, far beyond what is necessary to process the request. Can the issuer’s website require consumers to click through a long chain of links, each link marketing different products, in order to reach the website page enabling consumers to effectuate their redemption request?⁹⁷ Can the issuer require consumers to scroll all the way down to the bottom of a page in order to find an important disclosure?⁹⁸

The timing of fee disclosures also is important. It would seriously undermine the Act’s most important protection if the disclosures were not required to be made at a meaningful time prior to when consumers are committed to purchase payment stablecoins.⁹⁹

In order to facilitate compliance with other consumer statutes, regulators have published Model Forms.¹⁰⁰ Doing so for issuers of payment stablecoins would be useful for issuers; they would not have the burden of having to draft their own forms. If they used the regulators’ forms, they could be confident they comply with the law. Consumers also would benefit. If many issuers use those model forms, consumers could more easily compare fees and make a more informed decision on which issuer, if any, to choose for their purchases.

The FDIC and the NCUA should withdraw their proposed regulations and reissue revised proposals that mirror those of the OCC. If they do not, consumers will confront very

⁹⁷ “Disclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink.” *dotcomDisclosures*, *id.* at 10.

⁹⁸ “Requiring consumers to scroll in order to view a disclosure may be problematic...because consumers who don’t scroll enough (and in the right direction) may miss important qualifying information and be misled.” *Id.* at 8-9.

⁹⁹ The Truth In Lending Act requires a credit card issuer to make important disclosures before the opening of an account. 15 U.S.C. § 1637(a). Regulations issued pursuant to The Electronic Fund Transfer Act require financial institutions to make initial disclosures “at the time a consumer contracts for an electronic fund transfer or before the first electronic fund transfer is made....” 12 C.F.R. § 1005.7.

¹⁰⁰ See for example, Truth In Lending Act, Reg. Z, Appendix G, Open-End Model Forms and Clauses, 12 C.F.R. pt. 1026; Fair Credit Reporting Act, Appendix C, FCRA Model Forms, 12 C.F.R. § 1022.1.

different terms and conditions, depending on which institution they use to engage in payment stablecoin transactions.

It would be even better if the OCC revised its proposal, incorporating the recommendations explained above and for the other agencies to revise theirs accordingly.

However, there is only so much regulations can do to protect consumers. To adequately protect consumers, Congress should amend the Act. For example, consumers should be given 21 days prior notice of changes to important information such as redemption fees.¹⁰¹ In addition, the Act should place a limit on the amount of redemption fees that can be charged.¹⁰² There should be a mandated error resolution procedure so consumers can report and initiate an investigation by the issuer if they do not receive their redemption in the correct amount or within two business days. Consumers should be able to go to court to get back money they have tried unsuccessfully to redeem. This is especially crucial for low-income consumers who may be in desperate need of the money.

A Fragmented Marketplace May Result in Many Costly Redemptions: The disclosures and procedures for consumers to redeem payment stablecoins are critical due to the current fragmentation of the stablecoin payment ecosystem and the difficulty of achieving interoperability.

It is likely that many companies will apply for authorization to issue payment stablecoins. Indications are that they may represent several very different types of businesses from traditional banks, to fintechs, to online retailers.¹⁰³

As a result of fragmentation there is the possibility that businesses may not accept payment stablecoins issued by many different issuers. This is in sharp contrast to the current payment marketplace in which most companies accept bank debit cards and VISA and Mastercard credit cards. Many also accept Discover and American Express.

¹⁰¹ See, e.g., the EFTA, 15 U.S.C. § 1693c(b).

¹⁰² See *supra* pp. 21-22.

¹⁰³ As of September 24, 2025, businesses issuing payment stablecoins included Tether and Circle. Among those considering issuing payment stablecoins were Bank of America, Citigroup, JPMorganChase, Amazon, and Walmart. Barchat, *supra* note 6. *Stablecoins: The Ultimate List (23 Stablecoins to know in 2025)*, MOONPAY, Aug 5, 2025, www.moonpay.com/learn/cryptocurrency/stablecoins-list. Apple, Google and Meta are “exploring stablecoin integration into their platforms.” *What the GENIUS Act means for stablecoin issuers and banks*, GRANTHORNTON, Nov. 3, 2025. www.grantthornton.com. The line between traditional banks and online cryptocurrency firms is becoming blurred and may eventually dissolve. Kraken Financial, a unit of the Kraken crypto exchange, has been approved by the Federal Reserve to have access to the Fed’s core payment systems such as Fedwire, “a critical interbank payment system....” “Bank groups criticized the approval. The banking industry [argues crypto firms] have insufficient protections against money laundering and aren’t as strictly regulated as banks.” Alexander Osipovich, *Fed Gives Kraken Access to Payments System*, WALL STREET JOURNAL, March 5, 2026, at B1, B10.

Kirill Gertman, CEO and founder of a stablecoin payments platform, illustrates the fragmented payment stablecoin ecosystem by providing the example of a buynow/paylater company that issues its own payment stablecoin. He wonders whether consumers will have to make their payments to the company using the stablecoins that the company has issued.”¹⁰⁴

Assume the consumer wants to use the payment stablecoin issued by the buynow/paylater company to pay for goods purchased from the consumer’s supermarket. Unfortunately, the supermarket accepts only payment stablecoins issued by its affiliated issuer. Unless the consumer has enough money to buy payment stablecoins from the affiliate, the consumer will have to exchange the payment stablecoins purchased from the buynow/paylater’s issuer for payment stablecoins issued by the supermarket’s affiliated issuer.

If a user wants to exchange one stablecoin for another stablecoin, and insufficient liquidity exists for that pair, they are forced to redeem to fiat dollars first, and then convert. When that process is necessary, the utility of the stablecoin is immediately undermined.¹⁰⁵

Every time consumers need to buy new payment stablecoins or exchange the payment stablecoins they purchased from one issuer for stablecoins issued by another issuer, they will have to pay an additional fee.

Gertman fears fragmentation of the stablecoin payment system will create “walled gardens” that will result in “a systemic risk for the industry.” System interoperability could alleviate that problem, but he says there are “considerable technical and logistical hurdles that need to be cleared.” Moreover, he asks: “will there be enough liquidity to make interoperability even possible?”¹⁰⁶

Clear and Accessible Internet Disclosures Not Required; Unfair and Deceptive Web Design Not Prohibited: Except for disclosure of redemption procedures, the Act does not require that contract terms be disclosed in a clear and understandable fashion that is easily accessible on an internet platform. In contrast, the Truth In Lending Act requires internet credit card solicitations to contain disclosures that are made “clearly and

¹⁰⁴ Gertman, *supra* note 22.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* Ingenico has announced plans to provide a degree of interoperability for merchants who use its android payment terminals and WalletConnect, a protocol that connects digital wallets to applications. Those merchants will accept five digital stablecoins. Joey Pizzolato, *Ingenico bets on stablecoin payments*, AMERICAN BANKER, Jan. 19, 2026.

conspicuously.”¹⁰⁷ The disclosures must be easily accessible “in close proximity to the solicitation” and “updated regularly.”

The GENIUS Act does not prohibit issuers from using web design techniques such as “dark patterns” that make it difficult for consumers to navigate the issuer’s website.¹⁰⁸ In addition, the Act does not prohibit using unfair and deceptive techniques to obtain the consumer’s agreement. An example of a fair method of having the consumer agree is “click-wrap.” Examples of unfair and arguably deceptive techniques are “sign-in-wrap” or “browse-wrap.”¹⁰⁹

Like other web-based companies, issuers may resort to “contract mania” in which agreements fill page after page with technical and legal jargon. These website obstacles make it hard for consumers to find relevant information and make knowledgeable and intelligent decisions.

Regulations should address these online abuses.

Possible Preemption of State Laws: There are two issues related to whether the Act preempts state consumer protection laws.

The first issue is whether the Act addresses preemption. Section 7(f)(4) provides that “nothing in this chapter shall preempt state consumer protection laws, including common law, and the remedies available thereunder.” This is potentially a valuable benefit, although the courts may undermine its application. Courts may find that state consumer laws do not apply to payment stablecoin transactions since they use terminology that does not easily translate in disputes involving issuers and holders of payment stablecoins. Common law principles were developed over centuries in a person-to-person and paper-based environment that is very different from the remote on-line one in which payment stablecoins transactions occur.

¹⁰⁷ 15 U.S.C. § 1637(c)(7).

¹⁰⁸ Staff Report, *Bringing Dark Patterns To Light*, FEDERAL TRADE COMMISSION, Sept. 2022, www.ftc.gov. The FTC has investigated several firms using “dark patterns” that make it difficult for consumers to cancel contracts. Erin Mulvaney & Sean McLain, *Amazon Prime’s Tactics on Trial*, WALL STREET JOURNAL, Sept. 22, 2025, at B1. On Sept. 25, 2025, Amazon settled a lawsuit brought by the FTC for \$2.5 billion. The FTC alleged Amazon used deceptive methods to enroll consumers in its subscription service and made it very difficult to cancel their subscription. *FTC Secures Historic \$2.5 Billion Settlement Against Amazon*, Press Release, FEDERAL TRADE COMMISSION, Sept. 25, 2025. www.ftc.gov.

¹⁰⁹ David H. Seligman & Karla Gilbride, CONSUMER AND WORKER ARBITRATION PROVISIONS, NATIONAL CONSUMER LAW CENTER (9th ed. 2024), at 84-86.

Moreover, this clear statement is qualified by exceptions stated in the Act and qualifications in OCC's proposed regulations.¹¹⁰

The second issue arises when the consumer lives in one state and the issuer has a charter from another state: Whose state law applies when a dispute arises? Does the law of the state where the issuer is chartered preempt the law of the consumer's state? Put another way, if the consumer lives in a state with strong consumer protection law, can that consumer take advantage of that favorable law? Alternatively, is the consumer stuck with the less favorable law of the state where the issuer is chartered?

The Act has a complex and confusing answer to those questions. The Act authorizes each state to charter, supervise, and regulate issuers who have a maximum of \$10 billion of outstanding payment stablecoins.¹¹¹ The Act calls them "State qualified payment stablecoin issuers." One subsection of the Act provides that the laws of the consumer's state apply to the activities of the state qualified issuer, but only to the same extent as those state laws would apply to the activities of a *Federal* qualified issuer.¹¹² Professor Wilmarth believes that subsection conflicts with another subsection.¹¹³ The conflict creates uncertainty about its effect. Nevertheless, he believes that the Act "would evidently grant broad authority to the [Office of the Comptroller of the Currency] to preempt state consumer protection laws that apply to Federal qualified payment stablecoin issuers."¹¹⁴

If state consumer protection law is preempted, only federal consumer protection law remains. However, as discussed above, the Act does not clearly provide that federal consumer protection law applies.¹¹⁵ As a result, consumers may be left only with the very limited rights in the Act, and no private right of action to enforce them.

¹¹⁰ The Act lists the following exception to its statement that it does not preempt state consumer protection laws: "State laws relating to the chartering, licensure, or other authorization to do business" as an issuer. In its proposed regulations the OCC declares that it does not address the effect of the Act on state consumer protection laws because the Act's provision stating that nothing in the Act preempts those laws is "self-executing." OCC Regs, *supra* note 40, at 10203. However, in a footnote, the OCC acknowledges that other federal law such as the National Bank Act and the Home Owners' Loan Act may also be relevant in assessing the applicability of State law, including State consumer protection law..." *Id.* at 10204, footnote 18.

¹¹¹ GENIUS Act § 2.

¹¹² GENIUS Act § 7(f)(1).

¹¹³ Wilmarth, *supra* note 5 at 116. The Conference of State Bank Supervisors told Treasury: "Rulemakings by Treasury and federal regulators implementing the GENIUS Act must recognize [the Act's] limitations on federal preemption and reinforce the importance of state consumer protection laws." Conference Letter, *supra* note 20, at 12.

¹¹⁴ Wilmarth, *id.*, at 115.

¹¹⁵ *Supra* pp.19-21.

Even if agencies issue regulations that clearly state their position on preemption in a manner that eliminates any conflict and ambiguity, one or more affected party may challenge those regulations. Clarity on this important subject may have to await years of court battles with the possibility that there will be a conflict among courts, resulting in endless confusion.

The regulations proposed by the FDIC, NCUA, and OCC do not clarify this important issue. They should revise their proposed regulations and address this. Regulatory agencies that have not yet released proposed regulations should do the same.

Mandatory Pre-Dispute Arbitration Agreements, Class Action Bans and Limitations of Liability: Although the GENIUS Act does not allow consumers to sue for a violation of the Act, they may have grounds to sue the issuer for abridging other state or federal law. However, consumers may not be able to sue in a court of law because nothing in the Act prohibits issuers from employing agreements that require consumers instead to go to arbitration to litigate their grievances. It would not be surprising if payment stablecoin issuers require consumers to consent to arbitration.¹¹⁶ They are pervasive in most consumer financial services contracts.¹¹⁷

Arbitration has some advantages over litigation in court. However, they also may be very detrimental to consumers and the development of the law.¹¹⁸ Arbitrators are not required to follow the law in making their decisions. Arbitration services have their own fees, rules, limits on discovery and other restrictions. Since most arbitration decisions are not made public and arbitrators are not required to provide an explanation for their awards, there is no development of the law case by case unlike in other areas of the law. That type of development is crucial where a controversy involves a new type of payment instrument such as payment stablecoins. As a result of the lack of published decisions, arbitrators cannot learn from each other's experiences as they apply law other than the Act to the various types of circumstances that will arise as consumers encounter problems using payment stablecoins.

Consumer financial services agreements typically prohibit consumers from filing or even participating in class actions, whether a case is litigated in court or arbitration.¹¹⁹ If issuers prohibit class actions in payment stablecoin agreements, another avenue of relief will be closed to consumers who have claims based on laws other than the Act. If consumers

¹¹⁶ However, the PayPal agreement permits either party to sue in small claims court instead of going to arbitration. PayPal Agreement, *supra* note 28.

¹¹⁷ Richard M. Alderman, *Pre-Dispute Mandatory Arbitration in Consumer Contracts: A Call for Reform*, 38 Houston L. Rev. 1237 (2001).

¹¹⁸ Seligman, *supra* note 109 at 10, 12-13, 339, & 390.

¹¹⁹ PayPal Agreement, *supra* note 28.

cannot be members of a class, each consumer has to hire their own lawyer or represent themselves. Typically, the amount of recovery consumers can reasonably expect in most situations will not justify the expense of retaining a lawyer.

Financial institutions' agreements also typically include clauses severely limiting the institution's liability. Payment stablecoin agreements likely will contain these as well.¹²⁰

No Required Error Resolution Procedure: Another major flaw in the Act is the omission of an error resolution process. This is especially concerning because transfers of the consumer's funds using payment stablecoins are instant. As a result, they cannot be reversed; they cannot be undone.

The same is true of payments using a debit card. For that reason, the EFTA grants consumers the right to report alleged errors.¹²¹ When the consumer reports a problem, the financial institution that issued the card must investigate its records of the disputed transaction. It is required to inform consumers of the results of their investigation within a specified period of time. If the issuer cannot meet that deadline, it must recredit the consumer's account the amount in dispute and continue its investigation.

The GENIUS Act puts consumers at serious risk by not requiring a strong error resolution procedure. The Act should be amended to require an investigation procedure comparable to that in the EFTA.

The EFTA does have a limitation in its error resolution requirements. The issuer is permitted to limit its investigation to a "review of its own records...if : (i) The alleged error concerns a transfer to or from a third party; and (ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved."¹²²

For the protection of consumers, the GENIUS Act should be amended to require the issuer to implement an error resolution procedure. It might be reasonable to impose some limits on the scope of the issuer's investigation as the EFTA does. For example, the Act might restrict the required investigation to its own role in a disputed transaction and the role of its affiliates. It also should be required to investigate the conduct of third parties with which it has payment stablecoin agreements. Limiting the scope of the issuer's investigation duties

¹²⁰ *Id.* The PayPal agreement includes the following limitations, among many others: "The PayPal services are provided 'as-is' and without any representation or warranty, whether express, implied or statutory...PayPal cannot ensure that a buyer or seller you are dealing with will actually complete the transaction or is authorized to do so."

¹²¹ 15 U.S.C. § 1693f. Errors can occur for a number of reasons including external and insider malfeasance, natural disasters and technical malfunctions. Human error may also be responsible. An "input error" at a South Korean crypto exchange resulted in \$40 billion of bitcoins being wrongly transferred. Timothy W. Martin & Sooyoung Rhee, *Korea Bitcoin Blunder Doles Out \$40 Billion*, WALL STREET JOURNAL, Feb. 11, 2026, at A1.

¹²² 12 C.F.R. § 1005.11(c)(4).

can be justified by the difficulty an issuer would have looking into the conduct of other parties to the transaction. As noted above, the Congressional Research Service is skeptical that stablecoin issuers could monitor illicit activity of other parties: “monitoring responsibilities once stablecoins are off-ramped to pseudonymous public blockchains...are not subject to issuer controls.”¹²³

Despite an issuer’s possible difficulty in being able to investigate the conduct of some of the other parties to a transaction to determine if they may be responsible for an error, the Act should have included a strong error resolution process. After all, the issuer’s own records may show it is responsible. Furthermore, in some cases the issuer may be able to extend its investigation to third parties.

Periodic Account Statement Not Required: Even a strong error resolution procedure will not help consumers if they do not have access to timely information about activity in their payment stablecoin account. The Act does not require that consumers receive periodic statements of their accounts.¹²⁴ That is required in the federal laws governing credit and debit cards.¹²⁵

Inadequate Security and Privacy Protection: Cyber-attacks and the resulting theft of funds and personally identifying information occur with alarming frequency.¹²⁶ Nevertheless, the Act fails to include specific provisions to ensure that the systems processing payment stablecoin transactions have adequate security and safeguard consumers’ privacy. The Act does more generally require regulatory agencies to examine

¹²³ *Key Issues in Stablecoin Legislation*, *supra* note 13.

¹²⁴ Circle, a payment stablecoin issuer, has recommended that Treasury require “regular reports for consumers written in plain English that can reinforce customer confidence that their assets are safe and backed-up, even if the issuer were to fail.” Sanneh, *supra* note 17.

¹²⁵ 15 U.S.C. § 1637(b); 15 U.S.C. § 1693d(c).

¹²⁶ The hack of Venezuelan stablecoin issuer Kontigo resulted in losses to 1,005 holders totaling about \$341,000. Ben Foldy, *Startup Under Fire for Work in Venezuela*, WALL STREET JOURNAL, Feb. 3, 2026, at B10. Hackers are greatly increasing their capabilities by using artificial intelligence. Sam Schechner & Robert McMillan, *Chinese Hackers Automated Attacks Using Anthropic’s AI*, WALL STREET JOURNAL, Nov. 14, 2025, at A1 (reporting that China’s state-sponsored hackers used AI to automate break-ins of major corporations). “Fraud and cybersecurity events are predicted to worsen in 2026. Worsening hacks and fraud schemes will create greater risks to the financial sector over the coming months.” Frank Gargano, *Systemic risks from cybersecurity, fraud attacks could grow in 2026*, AMERICAN BANKER, Jan. 16, 2026. Microsoft stopped “a massive criminal platform that sold ready-made online hacking kits for budding cybercriminals.” Angus Loten, *Microsoft Helps Take Down a Global Hacking Service*, WALL STREET JOURNAL, March 5, 2026, at B4. See also Robert McMillan, *Anthropic’s AI Hacked Firefox and Found Many Bugs*, WALL STREET JOURNAL, March 10, 2026, at B1; Angus Loten, *Hackers Recruit Unhappy Insiders To Help Attacks*, WALL STREET JOURNAL, Feb 3, 2026, at B4.

the issuer’s risk management systems and safety and soundness.¹²⁷ Hopefully, these agencies will take advantage of their authority to regulate issuers’ risk management and safety to focus specifically on security and privacy. It would have been far better if the Act explicitly required issuers seeking approval from regulators to demonstrate they will employ systems with satisfactory security and privacy safeguards.¹²⁸

No Customer Service Requirements: Consumers need accessible and responsive customer service.¹²⁹ Unfortunately, the Act lacks any requirement in that regard. In sharp contrast, in May 2024 the New York Department of Financial Services issued “Guidance on Customer Service Requirements for Virtual Currency.”¹³⁰ It includes very specific measures that providers of virtual currency must take to ensure consumers receive the customer service they require to manage their funds. Congress could have used the New York guidance as a model for the Act.

United States Senator Richard Durbin proposed an amendment to the Act that would have regulated fraud at virtual currency ATMs.¹³¹ That proposal provides a strong customer service provision that should have been included in the Act. The Durbin amendment applied to the operators of ATMs that the proposal called ‘currency kiosk operators.’ The amendment provided:

CUSTOMER SERVICE HELPLINE—Each virtual currency kiosk operator shall provide live customer service during all hours that the virtual currency kiosk operator accepts virtual currency kiosk transactions, the phone number for which is regularly monitored and displayed in a clear, conspicuous, and easily readable manner upon each virtual currency kiosk.

Senator Durbin’s proposal focused on a serious problem plaguing crypto ATMs. There are thousands of crypto ATMs and scammers have found they can be used to steal large sums from vulnerable consumers. It is reasonable to expect consumers using ATMs to engage in

¹²⁷ For example, GENIUS Act § 4(12)(B)(i)(I) imposes the safety and soundness requirement upon non-financial service public companies. The OCC’s proposed regulations include “flexible standards...based on the nature, scope, and risk of... [an] issuer’s activities.” OCC Regs, *supra* note 40, at 10221.

¹²⁸ Congresswoman Maxine Waters proposed requiring issuers to comply with the Gramm-Leach-Bliley Act, a federal law that requires companies to periodically inform consumers of their policies for sharing information about their customers. Maxine Waters, *supra* note 75.

¹²⁹ Katie Deighton, *More Customers Gripe About Service*, WALL STREET JOURNAL, Dec. 2, 2025, at A10.

¹³⁰ *Guidance on Customer Service Requirements for Virtual Currency*, NEW YORK DEPARTMENT OF FINANCIAL SERVICES, May 30, 2024. www.dfs.ny.gov/industry-guidance/industry-letters/il20240530-cus-serv.-req-and-complains.

¹³¹ *Crypto ATM Fraud Prevention Act of 2025*, S. 710, 119th Cong. (2025).

payment stablecoin transactions will encounter similar problems as well as technical malfunctions in which consumers need reliable customer service.

Several states have passed laws that minimize the financial harm that occur at ATMs. Those laws limit the amount of transactions into which a consumer can engage each day.¹³² That protection also should have been included in the Act.

The Act should be amended to ensure consumers have access to satisfactory customer service. That would not only help consumers, it will also engender their trust so they are more likely to use payment stablecoins. Because most consumers have other attractive alternatives, the industry will not be successful unless many consumers have satisfying experiences using payment stablecoins.

Questionable Affiliate and Third-Party Liability: The focus of the GENIUS Act is primarily on the procedures regulators should employ when deciding whether to permit an applicant to issue payment stablecoins as well as an issuer's responsibilities. To the limited extent that consumers have any rights in the Act, they are rights they have vis-à-vis only the issuer. The Act should be amended to make affiliates and third-parties liable when they participate with the issuer in conduct that violates the Act.

Consumers buying, storing and using payment stablecoins have relationships, either direct or indirect, with several other parties besides the issuer. These potentially include affiliates of the issuer, crypto exchanges, platforms that enable payments, and e-wallets. Some of these third-parties or affiliates with whom consumers have relationships may come within the Act's provisions relating to Digital Asset Service Providers.¹³³ An issuer may be authorized to conduct business as a Digital Asset Provider as well as its business as an issuer.¹³⁴ That is a situation that is likely to confuse the consumer and that directly bears upon liability since only issuers are liable for violations of the Act.

In addition, some third-parties act as sponsors of third party issuers:

[P]ayment stablecoin issuers may issue 'white labeled' payment stablecoins, for which a sponsor brands and markets a payment stablecoin issued by a third-party issuer. Especially as consumers may be largely unaware of the distinction between

¹³² Cameron Fozi, Chloe Rosenberg, & Reeno Hashimoto, *How Fraudsters Use Cryptocurrency A.T.M.s to Target Victims*, NEW YORK TIMES, Nov. 17, 2025.

<https://www.nytimes.com/2025/11/17/technology/fraudsters-cryptocurrency-atms.html>. See also Carolyn Muyskens, *Mass. A.G. Sues Bitcoin Co. For Allegedly Enabling Scams*, LAW360, Feb. 3, 2026 (ATM operator allegedly fails to prevent cryptocurrency scams at its ATMs because it profits from the transactions).

¹³³ See *supra* pp. 7-8.

¹³⁴ See *supra* pp. 7-8.

the sponsor and the issuer, responsible disclosures will be especially important for these types of payment stablecoins.¹³⁵

The involvement of affiliates and third parties including Digital Asset Service Providers and sponsors raises three major concerns. First, the consumer may not understand who the issuer is, as the above example about sponsors illustrates.

PayPal's business arrangement presents another example. Consumers can go to PayPal to purchase payment stablecoins. They may trust PayPal because of its general reputation and the consumers' own satisfactory experiences using PayPal to transfer money in traditional ways. However, PayPal does not issue stablecoins. They are actually issued by Paxos, a company consumers have probably never heard of and know nothing about.¹³⁶ Consumers are subject to Paxos' terms and conditions related to the issuance of payment stablecoins, not PayPal's.¹³⁷ Moreover, PayPal's agreement with consumers states that PayPal may stop supporting Paxos' stablecoins "at any time."¹³⁸

The second concern is that nothing in the Act addresses the liability of these non-issuer parties.¹³⁹ This can make it difficult or impossible for consumers to obtain relief when any of those third parties act in a manner that harms consumers.¹⁴⁰ Examples of harm include

¹³⁵ Bankers Assoc. Letter, *supra* note 26, at 33. "The sponsor may also retain the right to make key decisions about the relevant payment stablecoin, including regarding pricing, target 'use cases,' customer relationships and liquidity and redemption policies. These arrangements can blur the line between the issuer and the sponsor, especially as the sponsor may obtain significant economic benefits, including payments from the issuer, tied to uptake and use of the relevant payment stablecoin." *Id.* at 8.

¹³⁶ "Paxos Trust Company LLC is a regulated financial institution...supervised by the New York Department of Financial Services." www.paxos.com (visited Nov. 20, 2025). In 2025, the New York State Department of Financial Services announced that Paxos would pay a \$26.5 million penalty for failure to conduct sufficient due diligence of Binance, its former partner. Paxos also agreed to invest \$22 million to remedy deficiencies in its anti-money laundering program. Paxos partnered with Binance to market and distribute the Binance USD stablecoin. *Superintendent Adrienne A. Harris Secures \$48 Million Settlement with Paxos Trust Company for Anti-Money Laundering Deficiencies and Diligence Failures with Relation to Binance Partnership*, NEW YORK DEPARTMENT OF FINANCIAL SERVICES, Aug. 7, 2025. www.dfs.ny.gov.

¹³⁷ The blockchain is an integral part of payment stablecoin infrastructure. Paxos' Terms and Conditions state it is not responsible for "any blockchain network's security, functionality, or availability." Paxos may "require a minimum amount for redemption." "Paxos will not charge you fees for redeeming USD Stablecoins." However, the Terms and Conditions also provide: "We reserve the right to change or modify our fee structure or increase any of our fees any time and from time to time. Any such changes, modifications or increases will be effective upon posting on the Platform, in the Paxos User Guide or an updated Pricing Supplement...." Paxos Terms and Conditions. www.paxos.com/terms-and-conditions/stablecoin-terms-conditions. (visited Nov. 13, 2025).

¹³⁸ PayPal Agreement, *supra* note 28.

¹³⁹ Bank trade associations are urging Treasury to require affiliates and third parties to be subject to the Act's prohibition on paying interest or yield. See *supra* p. 7.

¹⁴⁰ Walter Mix at the Berkeley Research Group advises banks considering stablecoin partnerships to examine their "resilience, privacy, third-party risk management and cybersecurity." John Adams, *The heavy tech lift behind stablecoin banking*, AMERICAN BANKER, Dec. 5, 2025.

scammers' unauthorized transfer of the consumer's funds or funds lost due to a cyberattack, company negligence, or a technical malfunction such as an outage.¹⁴¹ Payment stablecoins may be mistakenly transferred to the wrong person or business.

The non-issuer parties may require consumers to agree to contracts that limit their liability, require arbitration, and ban class actions.¹⁴²

Consumers who want to pursue litigation or arbitration against non-issuers will have to hire skillful attorneys. The cases may require extensive discovery to uncover evidence of how the underlying stablecoin infrastructure operates and the conduct of the non-issuer that is responsible for the consumer's loss. However, unlike in a court proceeding, if the case is in arbitration the arbitrator has the discretion to limit discovery more than if the case was before a judge. The cases may take years and be very expensive. The consumer's attorney may have to convince a court or arbitrator to use novel theories or apply traditional causes of action in entirely new circumstances.

The third concern is the risk that issuers and affiliates acting together may unduly restrict consumer choice.

Affiliation of a stablecoin issuer with a commercial firm, such as a big tech firm, could lead to excessive concentration of economic power through advantages in using existing commercial data or by raising the costs of switching from a stablecoin in a 'walled garden' to other payment products.¹⁴³

At a minimum, the Act should be amended to require that issuers disclose to consumers that third-parties, affiliates and sponsors may be involved in their payment stablecoin transactions and the federal law that directly regulates the issuers of payment stablecoins may not apply to other parties involved in payment stablecoin transactions.

It would be even better if the Act is amended to make affiliates and third-parties liable when they participate with the issuer in conduct that violates the Act.

¹⁴¹ In November 2025 the content delivery network company Cloudflare suffered an outage. The company connects the internet user with websites. One of those affected was Coinbase, a crypto exchange. Michelle Chapman, *Cloudflare outage Tuesday caused 'massive digital gridlock' for millions*, ATLANTA JOURNAL-CONSTITUTION, Nov. 19, 2025, at A12.

¹⁴² The PayPal agreement requires arbitration unless one party chooses to sue in small claims court. It bans class actions. PayPal disclaims liability for the conduct of any third-parties even if their links are on PayPal's website. "PayPal does not own or control the cryptocurrency networks...." "PayPal is not responsible...and cannot guarantee the continued functionality, security or availability of any Crypto Asset." PayPal Agreement, *supra* note 28.

¹⁴³ Liang, *supra* note 32.

Payment Stablecoins May Not Benefit the Unbanked and Underbanked: Nonbank promoters of payment stablecoins claim one benefit of payment stablecoins will be to increase financial inclusion.¹⁴⁴ Many consumers are unbanked or underbanked because they cannot afford the fees and other costs required to maintain a bank account.¹⁴⁵

Nonbanks that issue payment stablecoins do not have to bear the costs of FDIC insurance and compliance with substantial regulatory requirements to which banks are subject. Consequently, nonbank payment stablecoins issuers can afford to pass some of the savings on to unbanked and underbanked consumers by offering lower cost services.¹⁴⁶

However, whether issuers actually will offer lower prices remains to be seen. The Act fails to include any incentives, much less requirements, for issuers to do so. It does not impose fee limits on the services an issuer provides. One major example is the lack of any limit on charges when consumers redeem their payment stablecoins.¹⁴⁷

In addition, because unbanked and underbanked consumers tend to be those with limited income, it is likely that they will not be able to afford to use payment stablecoins even if fees are low. For instance, buying, paying with, and redeeming payment stablecoins are online transactions.¹⁴⁸ But many low-income consumers do not have convenient and reliable access to computer internet or mobile phone connections. In fact, Congress failed to renew a broadband subsidy program, leaving only one in operation. And in February, 2026, the FCC proposed making it even more difficult for low-income consumers to qualify for the remaining program.¹⁴⁹ Moreover, low-income consumers may not be able to afford a

¹⁴⁴ Wilmarth, *supra* note 5, at 49-51.

¹⁴⁵ Aaron Klein, *Can fintech improve health?* BROOKINGS INSTITUTION, Sept. 2021, at 20. www.brookings.edu/research/can-fintech-improve-health.

¹⁴⁶ Visa announced a pilot program involving others besides the underbanked and unbanked who might benefit from payment stablecoins. The Visa program is designed for people who work in the gig economy such as freelancers. *Visa Direct Stablecoin Payouts Pilot Speeds Up Access to Funds for Creators & Gig Workers*, Press Release, Nov. 12, 2025. <https://corporate.visa.com>. This service may be attractive for employers who send irregular payments in small amounts. Will McCurdy, *Visa Pilots USDC Payouts for Creators and Gig Workers*, YAHOOFINANCE, Nov. 12, 2025. <https://finance.yahoo.com>

¹⁴⁷ See *supra* p. 21.

¹⁴⁸ The OCC's proposed regulations require issuers to "publicly disclose...how a payment stablecoin holder can redeem a payment stablecoin, including a link to the website(s) where a customer can redeem the payment stablecoin." OCC Regs, *supra* note 40, at 10291. The PayPal Cryptocurrency Agreement provides another example of the need for online access. When PayPal decides to make a change that will "reduce your rights or increase your responsibilities" it will notify the consumer at least 21 days in advance. But it will do so by posting a notice on its Policy Updates website page. PayPal Agreement, *supra* note 28. Consumers may not think to regularly check that page.

¹⁴⁹ Press Release, *FCC Proposes Accountability Reforms to Lifeline Program*, Feb. 18, 2026. www.fcc.gov. Keely Quinlan, *Advocacy groups oppose FCC's proposed changes to Lifeline broadband program*, STATESSCOOP, Feb. 18, 2026. www.StatesScoop.com. Advocacy organizations contend "[T]hese proposals may unnecessarily make it more difficult to qualify, easier to lose services and reduce the number of affordable provider or plan options." *Id.*

computer or mobile phone, regardless of whether a good connection is available.¹⁵⁰ Because of these obstacles, it is far from clear that payment stablecoins will result in financial inclusion.¹⁵¹

Consumers without bank accounts who want to use payment stablecoins will have to rely on nonbanks such as money transmitters, also known as Money Services Businesses, to transfer money to their payment stablecoin accounts. If unbanked consumers want to redeem their payment stablecoins, they will have to rely on nonbanks in order to have a place to which their funds can be transferred. That involves some risk because money transmitters are subject to less protective state laws than banks.¹⁵² The agencies that regulate money transmitters consequently have weaker laws to enforce. Moreover, at least for the immediate future, regulators may not be aggressive in enforcing those laws because they will be operating in an unfamiliar new crypto environment.

Some low-income consumers can afford a bank account, but may be attracted by the lower cost of a non-bank issuer. They should be very cautious about using payment stablecoins rather than traditional bank services such as checking accounts and debit cards to make payments for their purchases. In addition to strong consumer protection laws, banks offer advantages that an account with a non-bank payment stablecoin issuer cannot provide. These include FDIC insurance, interest on deposits, and free ATMs.¹⁵³ Banks also offer the possibility of a credit card or loan if a consumer maintains a good credit rating.

¹⁵⁰ Klein, *supra* note 145, at 27.

¹⁵¹ Wilmarth, *supra* note 5, at 49-51; Mark E. Budnitz, *New Developments in Payment Systems and Services Affecting Low-Income Consumers: Challenges and Opportunities*, XXX GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 133, at 141 (2023).

¹⁵² Money transmitter laws vary substantially from state to state. For example, while most states have at least some regulatory requirements, Montana has no statute regulating the industry. Lauren K. Saunders, Margot Saunders & Carla Sanchez-Adams, CONSUMER BANKING AND PAYMENTS LAW 468, NATIONAL CONSUMER LAW CENTER (7th ed. 2024). In some states, consumers have no private right of action so cannot sue if the money transmitter violates the law. *Id.*, at 470.

¹⁵³ The future vitality of checks has been thrown into doubt by the Federal Reserve. The Fed plays a significant role in check processing. However, in late 2025, its staff issued a “Request for Information and Comment on the Future of the Federal Reserve Banks’ Check Services.” 90 Fed. Reg. 57062-01 (Dec. 9, 2025). While acknowledging that many consumers still use checks and those over 65 “may face challenges shifting to other payment methods,” checks are a growing target for fraud. In addition, check use is steadily declining. *Id.* at 57064. Furthermore, the Fed’s check processing infrastructure needs upgrading and maintenance that will require “significant costs.” *Id.* at 57066. Consequently, the Fed asked for comment on what action the Fed should take. The Fed offered several options including a “substantial wind-down” of its check services. *Id.*

Increasingly, stores refuse to accept cash.¹⁵⁴ Low-income consumers who cannot obtain a debit or credit card may have no choice but to purchase payment stablecoins if no-cash purchases become widespread. As a result, those who most need protection may be stuck with a payment instrument that provides the least protection.

Unauthorized Transfers and Fraudulently Induced Authorized Transfers: The Act fails to provide protection when there is an unauthorized transfer involving payment stablecoins. Such transfers occur frequently when consumers use debit and credit cards. The Truth In Lending Act and the EFTA provide important protection when there are unauthorized transfers. Consumers need comparable protection when they use payment stablecoins.

Another frequent problem occurs when consumers using debit and credit cards are tricked into authorizing transfers. It is reasonable to believe these scams will occur with payment stablecoins as well. In fact, it has already happened to consumers using ATMs that handle regular crypto transactions. Some stores that have “crypto ATMs” on their premises have removed them because customers complained about being defrauded in transactions using those ATMs.¹⁵⁵

Senator Durbin proposed an amendment to the Act that dealt specifically with fraud at ATMs dealing in virtual currency. Among other things, it required disclosures with warnings about common scams involving crypto ATMs and refunds to consumers for fraudulently induced transfers. The Act should have included that amendment as well as a provision specifically offering relief for payment stablecoin consumers who were induced to authorize transfers by the unfair or deceptive practices of others.

Inadequate Deceptive Name Disclosures: Under the GENIUS Act, issuers may not use “deceptive names.”¹⁵⁶ That includes marketing the stablecoin using names that would lead “a reasonable person” to believe that a payment stablecoin is legal tender or is issued by or guaranteed by the U.S. government. The latter presumably would preclude falsely representing that payment stablecoins are being insured by the FDIC or Federal Share Insurance that insure deposits in credit unions.

¹⁵⁴ Because retailers increasingly refuse to accept cash, some cities and states have passed legislation to limit retailers’ ability to do so. Allison Kretovic, *Prohibiting Cashless Retailers and Protecting the Impoverished*, 37 Ga. St. U. Law Rev. 1045 (2021),

¹⁵⁵ Jennnifer Leach, *Did Someone Send You to a Bitcoin ATM? It’s a Scam*, FEDERAL TRADE COMMISSION (Mar. 7, 2024). www.ftc.gov; Matthieu Fortin, *Fighting Back*, AARP BULL. 1, 8 (March/April 2025). See also, Muyskens, *supra* note 132 (Mass. Attorney General sues ATM company for failing to prevent ATM scams).

¹⁵⁶ GENIUS Act § 4(a)(9).

In its proposed regulations, the OCC largely duplicates the Act. But it also is explicit about FDIC deposit insurance and Federal Share Insurance, prohibiting issuers from “[d]irectly or through implication represent[ing] that payment stablecoins are... subject to Federal deposit insurance or Federal share insurance.”¹⁵⁷

Consumers should regard the lack of government insurance as a crucial difference between putting their trust and money in payment stablecoins and keeping their money in an insured deposit. The Act and regulations should have explicitly required a conspicuous disclosure that payment stablecoins are not covered by FDIC insurance or any other government guarantee. The Act also should have provided for substantial penalties for violation of this disclosure requirement.

The issuer may not use any terms relating to the United States government “including ‘United States,’ ‘United States Government,’ and ‘USG’ in the name of a payment stablecoin....” There is a significant exception, however. “Abbreviations directly relating to the currency to which a payment stablecoin is pegged, such as ‘USD,’” are not prohibited. That may confuse consumers into believing the payment stablecoins themselves are officially sanctioned by the U.S. government.

Inadequate Protection When Issuer Is in Bankruptcy: If a bank fails and goes into bankruptcy, government agencies manage the bank’s financial affairs, subject to statutes and regulations. Consumers’ deposits are protected up to a specified amount by FDIC insurance.¹⁵⁸ In contrast, payment stablecoins are not insured by the FDIC or any other government program.

If a nonbank enters into bankruptcy, the Bankruptcy Court takes charge of its financial affairs pursuant to the provisions in the Bankruptcy Code. Although consumers are unsecured creditors and the reserves are not covered by FDIC insurance, the GENIUS Act does provide them limited relief.¹⁵⁹ Unfortunately, in reality that relief may be illusory.

First, the Act amends the Bankruptcy Code to provide a procedure by which holders of payment stablecoins can be paid out of the issuer’s payment stablecoin reserves after a hearing in the Bankruptcy Court. The Act suggests this will be done promptly because it provides that the motion to initiate this procedure “shall be filed on the [bankruptcy]

¹⁵⁷ OCC Regs, *supra* note 40 at 10288.

¹⁵⁸ 12 U.S.C. § 1821(d)(11).

¹⁵⁹ GENIUS Act § 11.

petition date or as soon as practicable thereafter.” However, only the issuer can file the motion. As Professor Levitin explains, if the case is filed as a Chapter 11 reorganization bankruptcy, the debtor-in-possession lender will block the issuer from filing the motion until all of the professionals involved in the case have been paid.¹⁶⁰ If the case is filed as a Chapter 7 liquidation proceeding, the bankruptcy trustee is the one who will file the motion. But the trustee will not do so until the trustee determines how the professionals will be paid.

Second, although the Act states that the holders of payment stablecoins have “priority” over the holders of other claims against the issuer, Professor Levitin points out that since holders are unsecured creditors, actually they are fifth in line of priority. The stark reality is that there is no guarantee the bankrupt issuer will have sufficient assets to pay holders all the money to which they are entitled.

As a result, holders of payment stablecoins may get paid little or nothing. Even if they are paid something, it may not be for quite a while.¹⁶¹ To get anything at all, consumers may have to hire a bankruptcy attorney who is thoroughly familiar with the rules and procedures of the bankruptcy courts and has experience successfully countering the competing claims of other creditors. The cost of an attorney may exceed the amount of any eventual recovery.

The bankruptcy of just one issuer may cause a run on the assets of other issuers.¹⁶² When consumers learn that another issuer has filed for bankruptcy, they may lose trust in their issuers and demand the immediate redemption of their payment stablecoins. That could result in the failure of those issuers if they do not have adequate reserves.

Many of the problems resulting from a nonbank issuer’s bankruptcy could be ameliorated if the Act were amended to require deposit insurance.¹⁶³

Conclusion: As discussed in this section of the report, the Act contains limited protection for consumers purchasing payment stablecoins. However, because it omits crucial

¹⁶⁰ Adam Levitin, *Sorry to Break It to You Geniuses: Under the GENIUS Act the Holders of Stablecoins Actually Have FIFTH Priority in an Issuer Bankruptcy*, CREDIT SLIPS, Dec. 2, 2025. <https://creditslips.org>. Professor Levitin also explains that the Act’s failure to define “holding” or “holder” creates confusion because most stablecoins are held in exchange-controlled wallets. The lack of a definition means it is unclear whether the “holder” is the exchange or the consumer. The answer will determine who has a claim in bankruptcy, who can vote, and who has standing to object to the claims of others. *Id.*

¹⁶¹ “Bankruptcy proceedings for large nonbank financial companies are costly, cumbersome, and lengthy.” Wilmarth, *supra* note 5, at 119.

¹⁶² Levitin, *supra* note 160; Wilmarth, *supra* note 5, at 120; *Key Issues in Stablecoin Legislation*, *supra* note 13.

¹⁶³ Wilmarth would limit issuers to FDIC-insured banks. Wilmarth, *id.*

safeguards, the Act does not provide consumers adequate protection. As a result, consumers must rely on regulators enforcing the Act.

B. Adequate Enforcement Doubtful

The above discussion considered crucial issues that are not addressed in the Act, exposing consumers to great risk. This part examines whether even the limited consumer protections in the Act will be enforced.

Because the Act contains no private right of action, consumers are dependent on federal and state agencies to enforce the few provisions in the Act that offer some amount of consumer protection. The prospects for strong enforcement of these provisions are not encouraging. The Biden administration established a supervisory program that oversaw banks' and fintechs' crypto activities. That was consistent with the approach of the Fed and FDIC. They had warned banks that it was risky to engage in crypto transactions.

The Trump administration has taken many steps to reverse previous enforcement initiatives. For example, in August 2025 the Fed ended Biden's crypto supervisory program.¹⁶⁴ This came as no surprise since in April 2025 it rescinded the requirement that banks consult with the Fed before it engaged in a crypto-related business. Moreover, under the present administration many enforcement and regulatory actions begun in the past have been terminated.¹⁶⁵ The Consumer Financial Protection Bureau has been the main consumer protection enforcement agency since its establishment. The present administration has undertaken various measures with the ultimate goal of terminating the Bureau altogether.¹⁶⁶

¹⁶⁴ Aislinn Keely, *Federal Reserve To End Crypto-Focused Supervisory Program*, LAW360, Aug. 15, 2025.

¹⁶⁵ Ben Protes & Sharon LaFraniere, *S.E.C. Drops Case Against Crypto Exchange*, NEW YORK TIMES, Jan. 25, 2026, National, at 19 (reporting that the SEC dismissed its case against Gemini Trust, a crypto exchange that is run by persons who are major financial supporters of President Trump). Alexander Osipovich & Caitlan Ostroff, *Wild Betting Markets Propel Polymarket's 'Truth Machine,'* WALL STREET JOURNAL, Feb 3, 2026, at A1, A8 (reporting federal prosecutors had terminated its case against Polymarket, a company that was possibly operating as an unlicensed money transmitter and engaging in various illegal conduct; Donald Trump, Jr., is a partner in a venture capital firm that invested in Polymarket); Jessica Corso, *SEC Tosses Biden-Era Case Against Wyoming Crypto Co.*, LAW360, Feb. 3, 2026 (reporting that the SEC dismissed its case, among other reasons, because of "changes in federal policy toward the cryptocurrency industry").

¹⁶⁶ E. Tammy Kim, *Pay later, The gutting of the Consumer Financial Protection Bureau*, THE NEW YORKER, March 16, 2026, at 12; Kate Berry, *CFPB transfers enforcement to DOJ, furloughs some staff*, AMERICAN BANKER, Nov. 20, 2025; Ken Sweet, *Budget director still leads consumer agency*, ATLANTA JOURNAL-CONSTITUTION, November 20, 2025, at A3; Nathan Place & Kate Berry, *Employees expect CFPB to terminate all enforcement actions*, AMERICAN BANKER, Sept. 24, 2025.

Another federal agency protecting consumers is the Federal Trade Commission. In 2021, the Supreme Court held that the FTC does not have the authority to seek monetary relief from the courts; it can ask courts only for injunctive relief.¹⁶⁷ As a result, the courts can no longer order companies violating the FTC Act to pay restitution, with the funds going to injured consumers.¹⁶⁸

The president's closest advisers include David Sacks, his crypto and Artificial Intelligence "czar."¹⁶⁹ Sacks' venture capital firm has invested in many crypto startups.¹⁷⁰ Another adviser on crypto is Commerce Secretary Howard Lutnick, the former chief executive of Cantor Fitzgerald. That firm has invested heavily in Tether, a controversial crypto company.¹⁷¹ Lutnick appointed his two sons to manage Cantor Fitzgerald while he is Commerce Secretary, so the family still has a financial interest in crypto.

President Trump has promised to make the United States the "crypto capital of the world."¹⁷² The Trump family owns a 40% interest in World Liberty Financial.¹⁷³ Steve Witkoff, Trump's Middle East envoy and his son are also founders of World Liberty.¹⁷⁴ World Liberty offers the USD1 payment stablecoin, but is not actually the issuer.¹⁷⁵ World Liberty has applied for a national trust bank charter so it can issue payment stablecoins itself.¹⁷⁶ It is in President Trump's self-interest to oppose aggressive enforcement.

¹⁶⁷ AMG Cap. Mgmt, LLC v. Federal Trade Commission, 141 Sup. Ct. 1341 (2021).

¹⁶⁸ *Id.*, at 1345.

¹⁶⁹ Eric Lipton, MacDavid Yaffe-Bellamy, Bradley Hope, Tripp Mickle & Paul Mozur, *Anatomy of Two Giant Deals: The U.A.E. Got Chips. The Trump Team Got Crypto Riches*, NEW YORK TIMES, Sept. 15, 2025. www.nytimes.com.

¹⁷⁰ Cecelia KangTripp, Mickle Ryan, MacDavid Yaffe-Bellamy & Theodore Shleifer, *Silicon Valley's Man in the White House Is Benefiting Himself and His Friends*, NEW YORK TIMES, Nov. 30, 2025. www.nytimes.com.

¹⁷¹ Osipovich, *supra* note 47.

¹⁷² The White House, *Strengthening American Leadership In Digital Financial Technology*, at 6 (undated). www.whitehouse.gov.

¹⁷³ MK Manovlov, *Trump-linked firm quietly reduces 20% of equity interests in World Financial*, THE BLOCK, June 19, 2025. www.theblock.co. Sheik Tahnoon, the brother of the president of the United Arab Emirates bought a 49% stake in World Liberty Financial. Sam Kessler, Rebecca Ballhaus, Eliot Brown & Angus Berwick, *'Spy Sheik' Bought Secret Stake In Trump Company*, WALL STREET JOURNAL, Feb. 2, 2026, at A1. One of Tahnoon's companies had been trying to buy AI technology from the U.S., but its close ties to Chinese companies led the Biden administration to block the purchase. The Trump administration approved the sale of 500,000 a year of the "most advanced" AI chips. *Id.*

¹⁷⁴ Lipton, *supra* note 169. Sheik Tahnoon, the brother of the president of the United Arab Emirates reportedly paid the Witkoff family at least \$31 million as part of Tahnoon's purchase of 49% of World Liberty Financial. Kessler, *id.* Steve Witkoff's son Zach Witkoff is the head of World Liberty Financial. He is reportedly friends with Binance founder Changpeng Zhao, a convicted felon pardoned by President Trump. Angus Berwick & Eliot Brown, *Trump Official's Sons Cash In on Crypto*, WALL STREET JOURNAL, Feb. 9, 2026, at A1, A10.

¹⁷⁵ <https://worldlibertyfinancial.com/usd1> (visited Dec. 4, 2025). "Bitgo issues USD1....Bitgo processes all initial purchases and redemptions of USD1...." <https://worldlibertyfinancial.com/providers> (visited Dec. 4, 2025).

¹⁷⁶ Aislinn Keely, *Banking Orgs. Silent On Trump Family-Tied Crypto Charter Bid*, LAW360, Feb. 23, 2026.

On the other hand, if consumers who use payment stablecoins encounter major problems that result in substantial financial injury, they may lose their trust in payment stablecoins and stop using them.¹⁷⁷ Therefore, strong enforcement that prevents substantial consumer losses would benefit issuers as well as consumers.

IV. Conclusion

A wide variety of businesses are promoting payment stablecoins and some are already issuing them. They tout its many alleged consumer benefits. They seek to allay consumer fears about using this new payment instrument by assuring consumers that the GENIUS Act contains strong consumer protection.

It is too early to know if consumers will believe this hype and make payment stablecoins a popular choice.¹⁷⁸ What is certain is that the GENIUS Act is not a consumer protection law. It does not contain the basic protections in the laws that govern credit cards, ATMs, and debit cards. For example, there is no protection if there is an unauthorized transfer of funds, no error resolution procedure, and a seriously deficient process for redeeming payment stablecoins. Consumers cannot even sue issuers who violate the Act. There is reason to doubt regulators will vigorously enforce the Act. Consequently, consumers should understand that they are taking considerable risks if they use payment stablecoins.

¹⁷⁷ McKenna, *supra* note 48.

¹⁷⁸ The GENIUS Act may result in lower fees and instant settlement. It may enable “instant, low-cost transactions between consumers, companies and governments.” On the other hand, it may “entrench new forms of regulatory capture or consumer risk.” Glass & Blase, *supra* note 28. “Corey Frayer, director of investor protection at the Consumer Federation of America, questioned why anyone would rely on stablecoins. ‘You give me one real dollar and I give you a fake bank deposit that’s not insured the FDIC and is run by a company that’s more likely to fail because it’s less regulated.’” Dalvin Brown, *Crypto-Based Savings-Account Alternative Has Banks Anxious*, WALL STREET JOURNAL, March 6, 2026, at B1.