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# **THE GENIUS ACT OF 2025 DOES NOT ADEQUATELY PROTECT CONSUMERS WHO USE STABLECOINS TO MAKE PAYMENTS**

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## Introduction

On July 18, 2025, President Trump signed the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) into law.<sup>1</sup> 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 result in its widespread use by consumers. However, the GENIUS Act does not adequately protect consumers. Payment stablecoins are riskier and possibly more expensive than other consumer payment methods. Consequently, consumers need to understand the risks of using payment stablecoins. This report describes the provisions of the GENIUS Act and analyzes its implications for consumers.

Cryptocurrency (crypto) such as bitcoin is a digital asset. Stablecoins are one type of crypto. Payment stablecoins are a separate and distinct form of stablecoin. They can be used to pay for goods and services and make payments overseas.<sup>2</sup> They are not subject to the value volatility of regular crypto because they are redeemable for dollars at a predetermined fixed amount.

In order to purchase payment stablecoins consumers first must choose a crypto exchange or a digital wallet platform. Examples of exchanges and platforms are Coinbase, Kraken, and PayPal. Next consumers have to create and verify an account, including verifying their identity and address. Consumers then designate a bank account or platform 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, Tether, and PayPal. Consumers can either store the stablecoins on the exchange or transfer them to a private wallet.

Several types of companies are already issuing payment stable coins and others are considering issuing them.<sup>3</sup> 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. Furthermore, payment stablecoin issuers claim this new payment method will

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<sup>1</sup> 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>.

<sup>2</sup> Although the Act applies equally 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.

<sup>3</sup> As of September 24, 2025, businesses issuing payment stablecoins include PayPal, Tether, and Circle. Among those considering issuing them are 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](http://www.moonpay.com/learn/cryptocurrency/stablecoins-list); John Adams, *Mastercard’s Lambert: No more ‘no man’s land’ for stablecoins*, AM. BANKER, July 21, 2025.

result in greater financial inclusion by being available for consumers who are unbanked or underbanked and who cannot qualify for credit and debit cards.<sup>4</sup>

Promoters of payment stablecoins point out that the safeguards in the Act make these coins safer than other forms of 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 companies are planning to issue payment stablecoins; others are exploring the possibility of issuing them. These businesses include banks as well as nonbanks such as Visa, Mastercard, PayPal, large tech companies, and retailers such as Walmart and Amazon.<sup>5</sup>

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."<sup>6</sup> In a widely syndicated article, the Associated Press stated that the GENIUS Act "sets initial guardrails and consumer protections for stablecoins."<sup>7</sup>

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 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 for 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 the coins 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 protection for

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<sup>4</sup> Arthur E. Wilmarth, Jr., *The Looming Threat of Uninsured Stablecoins*, George Washington Law School Public Law and Legal Theory Paper, No. 2025-33, pp. 32 – 34, available on [www.ssrn.com](http://www.ssrn.com).

<sup>5</sup> Gina Heeb, AnnaMaria Andratis & Josh Dansey, *Walmart and Amazon Are Exploring Their Own Stablecoins*, WALL STREET JOURNAL, July 28, 2025; Natalie Weyer, *FIS, Circle Partner to Offer Stablecoin Transactions to Financial Institutions*, WALL ST. J., July 28, 2025.

<sup>6</sup> *Trump signs crypto bill*, ATLANTA JOURNAL-CONSTITUTION, July 19, 2025, p. A7.

<sup>7</sup> *AP Washington Report*, THE ASSOCIATED PRESS, July 18, 2025, available on [Westlaw.Com](http://Westlaw.Com).

consumers acting in this online environment despite the many deceptive and often hidden perils they encounter there.

If a bank issuer 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.<sup>8</sup> 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.<sup>9</sup> The Act amended the Bankruptcy Code to give consumers priority over some other claims if the nonbank issuer is in bankruptcy. But that priority 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 weak and have loopholes. Even if issuers fail to comply with the few consumer protections in the Act, consumers are not allowed 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.

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

### **A 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 and subsections of those subsections, and exceptions to those subsections. Crucial definitions can be understood only by referring to other definitions in the Act or reading provisions of other 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 provides a helpful understanding of the issues discussed here. The description of the Act in this section is based largely on the

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<sup>8</sup> 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.

<sup>9</sup> Credit Union deposits are insured by the National Credit Union Administration.

CRS' overview.<sup>10</sup> The comments evaluating the adequacy of the Act's provisions to protect consumers are my own and those of other critics.

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.”

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. Both banks and nonbanks can be approved as issuers. Because payment stablecoins themselves have no inherent value, issuers must maintain reserves. Those reserves contain assets available to pay consumers in real money when holders want to redeem their payment stablecoins.

The bill limits the types of reserves that are permitted. 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.

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. Commentators provide two rationales for this. One is to discourage consumers from using payment stablecoins as an investment.<sup>11</sup> Payment stablecoins are intended to be used to pay for goods and services and overseas remittances, not for speculation. The Genius Act provides consumers limited protection when they use payment stablecoins as a payment instrument. It does not protect them when they use them for investment purposes.

Second, if nonbank payment stablecoin issuers paid interest or other comparable incentives, they would be competing with banks. That would arguably be unfair

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<sup>10</sup> *Stablecoin Legislation: An Overview of S. 1582, GENIUS Act of 2025*. The CRS report is available on [www.congress.gov](http://www.congress.gov). The CRS also published *Key Issues in Stablecoin Legislation in the 119<sup>th</sup> Congress*. It also is available on [www.congress.gov](http://www.congress.gov).

<sup>11</sup> Wilmarth, *op cit.*, p. 60.

competition because banks are saddled with regulatory costs that nonbank payment stablecoin issuers do not have. As a result, nonbank issuers could afford to pay consumers a higher interest rate.<sup>12</sup>

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 lure them away from banks.

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.<sup>13</sup>

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

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 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

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<sup>12</sup> Wilmarth, *op. cit.* pp. 58-63.

<sup>13</sup> *Key Issues in Stablecoin Legislation, op. cit.*

interprets and applies the “substantially similar” standard. Hopefully, the SCRC will approve state rules only if they provide at least as much protection as the federal rules.

However, 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 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 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 being issuers of payment instruments, maintaining an issuer-consumer relationship, and the problems that may 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.”<sup>14</sup>

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.

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 oversight.

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.” The foreign issuer must be registered with the Comptroller of the Currency and the issuer must hold reserves in a United States financial institution “sufficient to meet liquidity demands of United States customers.”

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.<sup>15</sup> 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.<sup>16</sup> As of September 2025, there is a warm relationship between President Trump and El Salvador’s President Nayib Bukele, who has agreed to accept persons deported from the U.S. That relationship could have a bearing on the decision whether El Salvador’s rules are comparable to those in the U.S.

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<sup>14</sup> Claire Williams, *Bankers, consumer activists unite against stablecoin rule*, AM. BANKER, Aug. 14, 2025.

<sup>15</sup> Alexander Osipovich, Vicky Ge Huang & Angus Berwick, *‘Genius Act’ to Punish Stablecoin Giant Tether*, WALL ST. JOURNAL, June 26, 2025.

<sup>16</sup> 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, available on [www.chicagobooth.edu](http://www.chicagobooth.edu).

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. 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 that it failed to disclose an \$850 million loss. In addition, Biden's Treasury and Justice Departments had been investigating Tether for a variety of alleged illegal activities.

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 investing in issuers. 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 "Those 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. 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.

There are several provisions that offer a degree of protection for consumers. One is the requirement that issuers establish and disclose stablecoin redemption procedures. 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.

The Act requires issuers to “publicly disclose the issuer’s redemption policy.” 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.

As discussed in the following section, this crucial redemption provision is woefully inadequate.

Another provision favorable to consumers prohibits the issuer from tying the purchase of payment stablecoins to purchase of another product. The issuer may not 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. This is a significant protection because often sellers in other industries offer a product or service at an attractive price but then 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 service or service.

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.

An example of an issuer using unfair methods to tie-in the purchase of another product is the following:

Mary goes onto a website to purchase payment stablecoins. She chooses which stablecoin to buy, provides all the information requested, and clicks on a purchase button labelled “I Agree.” Immediately, a popup appears on the screen stating: “To get the maximum benefit from your purchase, buy our LOW-COST Financial Management Software.” An “I Agree” button is just below that statement. Near that button in small faint print the site alerts Mary: “This purchase is subject to Terms and Conditions. See below.” At the bottom of the

page there is a list of many items including: Our Mission, Contacts, FAQs, Services, Privacy, and Terms and Conditions. If Mary notices the alert and clicks on Terms and Conditions, she must click on multiple additional links, each encouraging the purchase of another service, before finally reaching the Terms and Conditions.<sup>17</sup>

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.

Issuers may not use “deceptive names.” 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 advertising that payment stablecoins are being insured by the FDIC. The Act 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.

If a bank fails, 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. In contrast, payment stablecoins are not insured by the FDIC or any other government program.

If a nonbank fails and it files a bankruptcy petition, 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 Act does provide them limited relief.

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. Second, if there are not sufficient reserves to fully pay the holders, they are granted a priority over the claims of other unsecured creditors to the remaining assets of the bankrupt.

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<sup>17</sup> See the following Federal Trade Commission guidance on website design *.com Disclosures*, [www.ftc.gov](http://www.ftc.gov). See also note 19.

However, the priority granted holders of payment stablecoins may not provide full reimbursement for their payment stablecoin purchases. There undoubtedly will be other claims to the assets of the bankrupt issuer that will be paid before the holders of payment stablecoins. Secured claims have priority over the unsecured claims of payment stablecoin holders. In addition, there are “super-priority” claims. One example is a creditor who provides unsecured credit to the bankrupt company during the bankruptcy so the company can reorganize or engage in an orderly liquidation.

As a result, despite their priority, holders of payment stablecoins may get paid little or nothing over and above whatever is left in the reserves. Moreover, there are many procedural requirements consumers must satisfy in order to retrieve any amount they are owed. They may have to hire a bankruptcy attorney who is thoroughly familiar with those procedures 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. 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.

As discussed in this section of the report, the Act does contain limited protection for consumers purchasing payment stablecoins. The question is whether the Act provides sufficient protection. The next section seeks to answer that question.

## **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. First, what crucial areas does the Act omit entirely? As explained below, the GENIUS Act omits many rules that are crucial to protect consumers. Second, what are the prospects that the rules in the Act that protect consumers will be enforced? From all indications, the present administration will not provide meaningful enforcement of those few rules that do offer some protection.

### **Inadequate Consumer Protections**

Turning first to major areas of concern where the Act contains no adequate consumer protections.

**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 or others involved in transactions involving payment

stablecoins for violation of the limited protections in the Act. In contrast, almost every state and federal consumer protection statute provides consumers the ability to sue. Laws governing payments such as credit and debit cards authorize the courts to award damages to successful consumers. Courts also can order a business that violates the law to pay the consumer's attorney fees. Without a private right of action consumers are dependent on government agencies to enforce the Act. For the reasons discussed below, it is doubtful there will be meaningful agency enforcement, at least under the present administration.

**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 in the previous section, issuers can impose any fees or conditions they wish. 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.<sup>18</sup>

**Lack of Required Disclosures and Unfair and Deceptive Web Design:** Except for disclosure of redemption procedures, there is no requirement that contract terms be disclosed in a clear and understandable fashion that is easily accessible on an internet platform. Moreover, the 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.<sup>19</sup> 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.

The Electronic Fund Transfer Act (EFTA) is a federal law that governs electronic transfers such as debit cards, ATMs, and preauthorized electronic payments. Under the EFTA, consumers must receive notice of a change of terms at least 21 days before the change takes effect. The GENIUS Act does not include that requirement.

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<sup>18</sup> Christopher J. Waller, *Reflections on a Maturing Stablecoin Market*, Speech, Feb. 12, 2025, available on [www.federalreserve.gov](http://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, the Act's anti-tying rules limit that revenue source.

<sup>19</sup> Staff Report, *Bringing Dark Patterns To Light*, Federal Trade Commission, Sept. 2022, [www.ftc.gov](http://www.ftc.gov). The FTC has investigated several firms for using “dark patterns” to make it difficult for consumers to cancel contracts. Erin Mulvaney & Sean McLain, *Amazon Prime's Tactics on Trial*, WALL ST. JOURNAL, Sept. 22, 2025. 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 but 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, available on [www.ftc.gov](http://www.ftc.gov).

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.

**Possible Preemption of State Laws:** The Act's section on preemption of state law may preclude consumers from successfully asserting a violation of state law. The Act includes a complex and confusing section on preemption. George Washington Law School Professor Arthur Wilmarth believes one part of that provision conflicts with another part.<sup>20</sup> Clarity on this important subject may have to await years of court battles.

**Mandatory Pre-Dispute Arbitration Agreements and Class Action Bans:** 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 agreements. They are pervasive in most consumer financial services contracts.

Arbitration has some advantages over litigation in court. However, 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, 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. 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 cannot be members of a class, each consumer has to hire their own lawyer or represent themselves.

**Unclear Redemption Requirements:** As noted above, the Act requires issuers to establish and disclose their redemption policy. But it does not impose any requirements on that policy except it must provide for "timely redemption," must disclose fees, and give the consumer seven days prior notice before changing the fees. There is no definition of

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<sup>20</sup> Wilmarth, *op. cit.*, p. 81.

“timely.” As Professor Arthur Wilmarth has pointed out, that means there is no “maximum time limit for redemption.”<sup>21</sup> Fees must be disclosed, but Wilmarth notes the Act imposes no maximum amount that can be charged. He recommends a ceiling of 1% of purchases or redemptions. 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.

**No Error Resolution Process Required:** 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. Furthermore, the issuer must investigate its records of the disputed transaction and 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 EFTA does have a limitation in its error resolution requirements. The issuer is permitted to limit its investigation to within its own “four walls.” That means the issuer is not required to reach out to any other party involved in the transfer of funds to determine if they caused the error.

Even if the Act is amended to require the issuer to implement an error resolution procedure, it might limit an issuer’s investigation to its own role in a disputed transaction as the EFTA does for transactions subject to that law. That limitation could 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.”<sup>22</sup>

National Consumer Law Center attorney Carla Sanchez-Adams also addressed the issue of identifying the responsible party in crypto transactions. Specifically, she considered whether the EFTA applies to cryptocurrency. She noted: “Even if the EFTA applies in theory,

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<sup>21</sup> Wilmarth, *op. cit.*, p. 79.

<sup>22</sup> *Key Issues in Stablecoin Legislation, op.cit.*

it may be difficult to find an entity to hold responsible, given the purported decentralized nature of crypto-assets.”<sup>23</sup>

Despite an issuer’s possible difficulty in being able to investigate 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 and willing 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. That is required in the federal laws governing credit and debit cards.

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

**No Customer Service Requirements:** Consumers need accessible and responsive customer service. 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.” 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.

Senator Durbin proposed an amendment to the Act that would have regulated fraud at virtual currency ATMs.<sup>24</sup> 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, called ‘currency kiosk operators’ in the amendment. The amendment provided:

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<sup>23</sup> 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.

<sup>24</sup> *Crypto ATM Fraud Prevention Act of 2025*, S. 710, 119<sup>th</sup> Cong. (2025).

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.

### **Would the Unbanked and Underbanked Benefit?**

Nonbank promoters of payment stablecoins claim one benefit of payment stablecoins will be to increase financial inclusion. Many consumers are unbanked or underbanked because they cannot afford the fees and other costs required to maintain a bank account. 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, payment stablecoins issuers can afford to pass some of the savings on to consumers by offering lower cost services.

Whether issuers will offer lower prices remains to be seen. The Act fails to include any incentives, much less requirements, 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.

In addition, unbanked and underbanked consumers tend to be those with limited income. As a consequence, it is likely that they will not be able to afford to use payment stablecoins. For instance, buying, paying with, and redeeming payment stablecoins are typically done online. But many low-income consumers do not have convenient and reliable access to computer or mobile phone connections. Moreover, they may not be able to afford a computer or mobile phone, regardless of whether a good connection is available. Because of these obstacles, it is far from clear that payment stablecoins will result in financial inclusion.<sup>25</sup>

Consumers without bank accounts will have to rely on a nonbank such as a money transmitter, also known as a Money Services Business, 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. The agencies that regulate money transmitters

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<sup>25</sup> Wilmarth, *op. cit.*, p. 33; Mark E. Budnitz, *New Developments in Payment Systems and Services Affecting Low-Income Consumers: Challenges and Opportunities*, XXX GEORGETOWN J. ON POVERTY LAW & POLICY, 133, p. 141 (2023).

consequently have weaker laws to enforce. Moreover, at least for the immediate future, they may not be aggressive in enforcing those laws because they will be operating in an unfamiliar new crypto environment.

Consumers who can afford a bank account should be very cautious about using payment stablecoins, rather than traditional bank services, to make payments for their purchases. Banks offer advantages that an account with a non-bank payment stablecoin issuer cannot provide. These include FDIC insurance and interest on deposits, a debit card, free ATMs, and checking accounts. Banks also offer the possibility of a credit card or loan if consumers maintain a good credit rating.

### **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.<sup>26</sup>

Senator Durbin’s proposed amendment to the Act 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.

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<sup>26</sup> Jennnifer Leach, *Did Someone Send You to a Bitcoin ATM? It’s a Scam*, FED. TRADE COMM’N (Mar. 7, 2024); Matthieu Fortin, *Fighting Back*, AARP BULL. 1, P. 8 (March/April 2025), available on [www.ftc.gov](http://www.ftc.gov).

## Adequate Enforcement Doubtful

The above discussion considered crucial issues that are not addressed in the Act, exposing consumers to great risk. But what about the limited protections that are included in the Act? Will they 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 who had warned banks that it was risky to engage in crypto transactions.

In August 2025 the Fed ended Biden's supervisory program. This came as no surprise since in April 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.<sup>27</sup>

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

President Trump has often proclaimed that he wants to be known as the "crypto President" and wants the United States to be the "crypto capital of the planet." He strongly promotes crypto. The financial firm in which his family owns a 40% interest plans to issue payment stablecoins. It is in President Trump's self-interest to oppose aggressive enforcement.

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.<sup>28</sup> Therefore, strong enforcement that prevents substantial consumer losses would benefit issuers as well as consumers.

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<sup>27</sup> Nathan Place & Kate Berry, *Employees expect CFPB to terminate all enforcement actions*, AM. BANKER, Sept. 24, 2025.

<sup>28</sup> McKenna, *op. cit.*

## 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. 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, debit cards and preauthorized electronic payments. 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. Consequently, consumers should understand that they are taking considerable risks if they decide to use payment stablecoins.