

Client Alert

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FEBRUARY 18, 2025

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Could Stablecoin Legislation Be Finally Leaving the Stable?

INTRODUCTION

President Trump's new administration has already given clear signals that it will support digital asset innovation and that it is committed to the United States being a leader in cryptocurrency and decentralized finance.ⁱ And Members of Congress from both parties have responded with clear signals that they support this vision, with stablecoinsⁱⁱ being an asset class that many appear to agree should be supported with legislation sooner rather than later. On February 4, 2025, Senator Bill Hagerty (R-TN) introduced the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act, alongside Senate Banking Committee Chairman Tim Scott (R-SC) and Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY).ⁱⁱⁱ The draft bill represents a bipartisan effort to create a federal framework for the issuance, operation, and regulation of stablecoins in the United States. The legislation arises against the backdrop of enhanced federal interest in establishing a new regulatory framework for cryptocurrencies and represents a likely shift from an era of enforcement under the Biden administration that created barriers to digital asset adoption and use to a rules-based approach under the Trump administration that is far more supportive of digital assets.

Hagerty's bill is among several similar proposals, including a draft bill from the House Financial Services Committee Republicans (the STABLE Act of 2025)^{iv}, introduced on February 6th, and payment stablecoin legislation unveiled by the Committee's Ranking Member Maxine Waters (D-CA) on February 10th.^v The three bills are substantively similar, with Waters's proposed legislation being the most comprehensively restrictive of issuer activities. While Waters's proposed legislation more heavily regulates payment stablecoin issuers than the GENIUS or STABLE Acts, the bill is a significant pivot from Waters's previous skepticism toward, and even criticism of, cryptocurrencies. This pivot bodes well for ultimate passage of a stablecoin bill in 2025.

The high-degree of overlap between the Senate’s bipartisan bill and the draft House bills—coupled with the White House’s laser focus on this area—may mean some regulatory clarity will come sooner rather than later.

This client alert provides a summary of the key provisions of the GENIUS Act and how they compare with the STABLE Act and Waters’s proposed legislation.

PAYMENT STABLECOIN DEFINED

The GENIUS Act clearly defines a payment stablecoin as a digital asset designed to be used as a means of payment or settlement and whose issuer is required to convert, redeem, or repurchase the asset for a fixed monetary value or represent that the asset will maintain a stable value relative to a fixed monetary value.^{vi} This definition is substantially similar to those in the House drafts.

AUTHORITY TO REGULATE

The GENIUS Act’s legal framework for the issuance of payment stablecoins is modeled after the dual-banking system. This balancing of federal and state regulatory authority is common to all three bills. Federal banking regulators would regulate insured depository institution (“IDI”) stablecoin issuers, while non-bank issuers would either be licensed with the Federal Reserve Board (“Fed”), or the state with Fed oversight, similar to state-chartered bank oversight. Federal regulators have authority to issue orders and regulations to implement the Act. The Fed, Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (“OCC”), and National Credit Union Administration (“NCUA”) must jointly issue any rules for tailoring, reserves, or redemptions, and for establishing capital, liquidity, and risk management requirements for stablecoin issuers.^{vii}

The GENIUS Act provides issuers with an “option” for state-level regulation, notwithstanding the federal regulatory framework, for issuers with total market capitalization of less than \$10 billion, provided that the state-level regime is “substantially similar” to the federal regulatory framework.^{viii} Similarly, the STABLE Act provides issuers that “wish[] to become a State qualified payment stablecoin issuer” with the option to be regulated by a state-level regime if the state-level regime complies with the Act’s standards for the issuance of payment stablecoins.^{ix} In contrast, Waters’s proposed legislation does not provide issuers with the choice to opt into a state-level regulatory regime.

Importantly, the GENIUS and STABLE Acts prevent federal banking agencies, the NCUA, and the U.S. Securities and Exchange Commission (“SEC”) from requiring issuers to include payment stablecoins held in custody as liabilities on their balance sheets.^x Even more notably, the GENIUS and STABLE Acts incorporate specific amendments to “clarify that payment stablecoins are not securities or commodities,”^{xi} thus solidifying that payment stablecoins are to be treated as payment instruments, not investment products.^{xii}

KEY REQUIREMENTS FOR STABLECOIN ISSUERS

Under the GENIUS Act, federal regulators will consider each applicant’s ability to comply with the Act, based on their financial condition and resources, when evaluating applications to issue payment stablecoins for both non-bank and IDI entities.^{xiii} While the STABLE Act does not indicate specific factors for consideration, Waters’s proposed legislation articulates additional factors for federal regulators to consider, including:

- The entity’s ability to maintain reserves backing its stablecoins,
- Financial resources,
- Managerial expertise,
- Governance,

- Benefits to the public, and
- Financial stability.^{xiv}

Waters's proposed bill also uniquely provides for an opportunity for public notice and comment on an entity's application once received.^{xv}

Like other financial institutions, issuers would be subject to the data privacy requirements of Gramm-Leach-Bliley Act ("GLBA") under all three proposed bills.^{xvi} Additionally, issuers would be required to establish one-to-one reserves^{xvii} and would be prohibited from rehypothecating reserves, meaning that they could not use a client's reserves as collateral for their own borrowing or trading.^{xviii}

All three bills stipulate that stablecoin issuers are considered financial institutions under the Bank Secrecy Act.^{xix} Similarly, all three pieces of legislation are consumer protection forward and contain segregation requirements preventing commingling of payment stablecoins, private keys, cash, and other customer property with the issuer's funds.^{xx} The GENIUS Act and Waters's proposed bill explicitly prioritize recovery for customers holding an issuer's payment stablecoins in any insolvency proceeding against the issuer.^{xxi} The STABLE Act does not address this issue.

Both the STABLE and GENIUS Acts would require issuers to establish procedures for "timely" redemption of outstanding payment stablecoins, although neither defines what constitutes a "timely" redemption.^{xxii} The Waters bill takes it a step further and would require issuers to ensure that redemptions are made within a reasonable timeframe, not to exceed one day from when a redemption request is made.^{xxiii}

All three bills limit issuer activities to those that directly support the issuance and redemption of payment stablecoins and prevent issuers from performing other depository functions, such as lending.^{xxiv} However, Waters's bill is more restrictive of issuers' M&A activities and prevents stablecoin issuers from being acquired without approval from the appropriate regulators.^{xxv} Neither the STABLE nor the GENIUS drafts contain provisions requiring regulatory approval for acquisitions of stablecoin issuers.

Waters's legislation is again more restrictive by preventing any person convicted of insider trading, embezzlement, cybercrime, money laundering, terrorism financing, or felony financial fraud from serving as an executive officer or controlling greater than 5% of a stablecoin issuer's shares.^{xxvi} However, there would be a process to apply for a waiver from this prohibition.^{xxvii} Neither the STABLE Act nor the GENIUS Act incorporates such a prohibition. Waters's proposed bill is also the only bill to exclude payment stablecoins from federal deposit insurance and to require issuers and wallets to disclose this information to consumers.^{xxviii}

ENFORCEMENT

All three bills include similar enforcement provisions. The GENIUS Act, STABLE Act, and Waters's bill all permit the Federal regulator to revoke or suspend an issuer's registration based on a determination that the issuer violated the Act or violated a condition of a written agreement with the regulator. While the GENIUS and STABLE Acts contain similar language, the Waters bill omits the "materially" requirement from these sections^{xxix} and also includes an additional avenue for suspension or revocation if the issuer is engaging in unsafe or unsound practices.^{xxx} All three bills permit the Federal regulator to issue a cease-and-desist order or to take affirmative action to correct violations, with Waters's bill also allowing the regulator to take other actions they determine to be appropriate.^{xxxi} The bills also allow the regulator to remove a party from their position at the issuer or prohibit participation for direct or indirect violations of the Act or regulations under the Act.^{xxxii} Waters's bill again highlights the prohibition on individuals convicted of certain crimes from participating.^{xxxiii}

All three bills contain substantially similar civil monetary penalty provisions. Penalties up to \$100,000 per day are allowed for failure to register or obtain approval or for other violations of the Acts. Additional second-tier penalties of up to \$100,000 per day can be imposed for knowingly violating the Act. The penalties are assessed and collected by the Federal regulator and have a six-year statute of limitations.^{xxxiv}

ENDOGENOUSLY COLLATERALIZED STABLECOINS

An endogenously collateralized stablecoin is a digital asset that will be redeemed for a fixed monetary value and relies solely on the value of another digital asset created or maintained by the same originator to maintain the fixed price.^{xxxv} All three bills call for the Treasury to conduct a study and issue a report on endogenously collateralized stablecoins within one year of enactment. The GENIUS Act stands alone in stopping at this point, while both House bills additionally call for a two-year moratorium on the issuance, creation, or organization of an endogenously collateralized stablecoin not in existence on the date of enactment.^{xxxvi}

EXTRATERRITORIALITY

Neither the GENIUS Act nor the STABLE Act addresses extraterritoriality. The Waters bill does and would make it unlawful for any person to offer or sell a payment stablecoin in the U.S., or to a person living in the U.S., unless it is issued by an issuer. The bill imposes a criminal penalty, a fine of no more than \$1,000,000, and imprisonment for not more than five years, for knowingly participating in a violation of this section. The section also contains a safe harbor for foreign-based issuers whose home country requirements are determined by the Fed to be comparable with the requirements under this Act.^{xxxvii}

LOOKING FORWARD

In light of what many see as the prior Administration's regulation by enforcement, participants in the stablecoin market will likely be encouraged by these recent attempts to craft a regulatory framework. While there is still work to be done to secure passage and details in the bills remain under negotiation prior to enactment, the common ground shared between the GENIUS Act, STABLE Act, and Waters's bill (*e.g.*, shared definition of payment stablecoins, consumer protections, dual-banking system framework, enforcement scope, etc.) suggests things may progress quickly. That may be especially true given the Trump Administration has given clear directive to push for more regulatory clarity in this space.

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ⁱ Jesse Hamilton, *Trump's Crypto Czar Sacks Says 'Golden Age' Coming*, COINDESK (Feb. 5, 2025), <https://www.coindesk.com/policy/2025/02/04/trump-s-crypto-czar-sacks-says>.

ⁱⁱ Stablecoins are a cryptocurrency that have their value pegged to another currency, commodity, or financial instrument. Given their pegged value, stablecoins are generally less volatile than other cryptocurrencies and therefore seen as a more user-friendly medium of exchange. See **Stablecoins: Definition, How They Work, and Types**. Congress is likely focusing on stablecoins in the first instance given the size of the market (~\$200 billion) and clear use case (*i.e.*, relative stability in myriad transactions).

ⁱⁱⁱ See *generally* Guiding & Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act of 2025, S. ____, 119th Cong. (2025) ("GENIUS Act").

^{iv} See *generally* Stablecoin Transparency & Accountability for a Better Ledger Economy ("STABLE") Act of 2025, H.R. ____, 119th Cong. (2025) ("STABLE Act").

^v See *generally* H.R. ____, 118th Cong. (2024) ("Waters Bill").

^{vi} GENIUS Act § 2(14).

^{vii} See GENIUS Act §§ 4(a)(4)(A) and (d)(2); STABLE Act §§ 4(a)(4)(A) and (c)(2); see also U.S. House Comm. on Fin. Servs. Ranking Member Maxine Waters Stablecoin Legis. Section-by-Section, U.S. HOUSE OF REPRESENTATIVES, https://democrats-financialservices.house.gov/uploadedfiles/02.10.2025_s_b_s_stablecoinb.pdf.

^{viii} GENIUS Act § 4(b)(1).

^{ix} STABLE Act § 4(b).

^x See GENIUS Act § 13(b)(1); STABLE Act § 12(b)(1).

^{xi} GENIUS Act § 14; STABLE Act § 13.

^{xii} See *Seven Things to Know About the Federal Stablecoin Bill, the GENIUS Act*, COVINGTON (Feb. 7, 2025), <https://www.cov.com/en/news-and-insights/insights/2025/02/seven-things-to-know-about-the-federal-stablecoin-bill-the-genius-act>.

^{xiii} See GENIUS Act § 5(b)–(c).

^{xiv} Waters Bill § 3(b)(4).

^{xv} See Waters Bill § 3(b)(5).

^{xvi} See GENIUS Act §§ 6(a)(1)(B), 7(f); STABLE Act §§ 6(a)(1)(B), 6(a)(1)(E), 7(f); Waters Bill §§ 3(c)(2)(A)(ii), 3(c)(2)(B)(ii), and 3(c)(2)(C)(v).

^{xvii} See GENIUS Act § 4(a)(1)(A); STABLE Act § 4(a)(1)(A); Waters Bill § 3(c)(4)(A).

^{xviii} See GENIUS Act § 4(a)(2); STABLE Act § 4(a)(2); Waters Bill § 3(c)(4)(B).

^{xix} GENIUS Act § 4(a)(5); STABLE Act § 4(a)(5); Waters Bill § 3(d)(1).

^{xx} See GENIUS Act § 8(b)–(c); STABLE Act § 8(b)–(c); Waters Bill § 3(c)(9)(E)(ii)–(iii).

^{xxi} See GENIUS Act § 9(a); Waters Bill § 3(c)(10).

^{xxii} See GENIUS Act § 4(a)(1)(C); STABLE Act § 4(a)(1)(C).

^{xxiii} See Waters Bill § 3(c)(5).

^{xxiv} See GENIUS Act § 4(a)(6); STABLE Act § 4(a)(6); Waters Bill § 3(c)(6).

^{xxv} See Waters Bill § 3(c)(7).

^{xxvi} See Waters Bill § 3(c)(8)(A).

^{xxvii} See Waters Bill § 3(c)(8)(B)(i).

^{xxviii} See Waters Bill § 3(f).

^{xxix} Compare Waters Bill § 5(a)(1)(A)–(B), with GENIUS Act § 6(b)(1)(A)–(B) and STABLE Act § 6(b)(1)(A)–(B).

^{xxx} Waters Bill § 5(a)(1)(C).

^{xxxi} Waters Bill § 5(a)(2); GENIUS Act § 6(b)(2); STABLE Act § 6(b)(2).

^{xxxii} Waters Bill § 5(a)(3); GENIUS Act § 6(b)(3); STABLE Act § 6(b)(3).

^{xxxiii} Waters Bill § 5(a)(3)(C).

^{xxxiv} Waters Bill § 5(b)(1)–(4); GENIUS Act § 6(a)(5)(A)–(D); STABLE Act § 6(a)(5)(A)–(D).

^{xxxv} U.S. House Comm. on Fin. Servs. Ranking Member Maxine Waters Stablecoin Legis. Section-by-Section, U.S. HOUSE OF REPRESENTATIVES, https://democrats-financialservices.house.gov/uploadedfiles/02.10.2025_s_b_s_stablecoinb.pdf; see also Waters Bill § 7(c); STABLE Act § 10(c); GENIUS Act § 11(b).

^{xxxvi} Waters Bill § 7(a); STABLE Act § 10(a).

^{xxxvii} Waters Bill § 10.