OCC PROPOSES COMPREHENSIVE RULES TO IMPLEMENT THE GENIUS ACT THAT CARRY SUBSTANTIAL MARKET IMPLICATIONS

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US Policy and Regulatory Alert

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With the passage of the Guiding and Establishing National Innovation for US Stablecoins Act (the GENIUS Act or the Act) on 18 July 2025, Congress established a federal regulatory framework for payment stablecoins. The Act creates a bespoke supervisory regime for a category of digital assets widely regarded as one of the most commercially viable applications of distributed ledger technology.

The Office of the Comptroller of the Currency (the OCC) has recently issued a comprehensive notice of proposed rulemaking (the NPRM) to implement major portions of the Act within its jurisdiction. In parallel, the Federal Deposit Insurance Corporation and the National Credit Union Administration have issued more limited proposals addressing stablecoin issuance through subsidiaries of state nonmember banks and federally insured credit unions, respectively.

As you may recall, the GENIUS Act establishes a new kind of regulated entity, the Permitted Payment Stablecoin Issuer (PPSI), which is empowered to issue, convert, redeem, and custody payment stablecoins (and related activities), under either federal or state supervision. The NPRM covers the OCC's full supervisory lifecycle, from application and approval as a PPSI, to capital and reserve requirements, to ongoing supervision and enforcement of PPSIs. While many provisions are noncontroversial or closely track the statutory text, the NPRM also contains meaningful clarifications and interpretive positions that, if finalized, will significantly shape the stablecoin market. This client alert highlights key clarifications and identifies several important questions the NPRM leaves unresolved.

(For a detailed summary of the GENIUS Act itself, please see our prior analysis.)

KEY CLARIFICATIONS THE NPRM PROVIDES

May PPSIs Engage in Money Transmission–Like Activities Without Having to Obtain State Money Transmitter Licenses?

Apparently, yes.

While not addressed explicitly in the NPRM, the Act clearly indicates that the activities permitted by PPSIs are extensive and such PPSIs are not limited from engaging in payment stablecoin activities:

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> "*Nothing in subparagraph (A) shall limit a permitted payment stablecoin issuer from engaging in payment stablecoin activities or digital asset service provider activities specified by this Act, and activities incidental thereto, that are authorized by the primary Federal payment stablecoin regulator or the State payment stablecoin regulator, as applicable, consistent with all other Federal and State laws[.]*" [1]

And certainly, when the OCC addressed "prohibited activities," it did not take the opportunity to suggest that PPSIs would be prevented from performing money transmission services.

Moreover, the NPRM makes it clear that federally qualified PPSIs are subject solely to regulation by the OCC:

> "*Section 4(b)(1) of the GENIUS Act (12 U.S.C. 5903(b)(1)) states that, notwithstanding certain Federal law addressing preemption standards for OCC-regulated institutions, and certain State laws, a Federal qualified payment stablecoin issuer 'shall be licensed, regulated, examined, and supervised exclusively by the Comptroller.' This provision provides the OCC with the exclusive authority to exercise visitorial powers with respect to Federal qualified payment stablecoin issuers, consistent with the agency's authority in 12 U.S.C. 484.*" [2]

Finally, the NPRM also makes clear that PPSIs may "hold and transact in payment stablecoins as principal or agent." This clarification is significant. While the Act contemplates issuance and redemption of stablecoins, it does not expressly address whether issuers may act in an intermediary capacity for customers. The OCC even confirms that PPSIs may transact as principal or agent in connection with payment stablecoins, including redeeming payment stablecoins issued by a third party. This language effectively acknowledges that PPSIs may engage in activities functionally similar to money transmission, including the ability to process payments and facilitate transfers beyond simple minting and redemption.

What Additional Activities May PPSIs Undertake?

The NPRM also clarifies that PPSIs may: (1) assess fees in connection with the purchase or redemption of payment stablecoins; and (2) pay transaction fees necessary to facilitate transfers on distributed ledger networks (e.g., blockchain "gas" fees).[3]

This confirmation is important for both business model viability and consumer protection. Without express authority to assess or pay transaction-related fees, issuers could face technological and regulatory frictions.

The OCC further clarifies that issuers may hold nonpayment stablecoin crypto-assets for the limited purpose of facilitating payment of transaction fees. This is a practical accommodation, as many distributed ledger networks require native tokens to effectuate transactions.

What Assets May Qualify as Reserve Assets?

The GENIUS Act requires PPSIs to maintain identifiable reserves backing outstanding payment stablecoins on at least a 1:1 basis. The statute limits permissible reserve assets primarily to highly liquid instruments such as US currency, certain deposits, short-term US Treasury securities, and specified repurchase agreements. The Act also

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permits “money” to qualify as a reserve asset, defined broadly to include mediums of exchange authorized or adopted by domestic or foreign governments.

The NPRM introduces an important clarification: the OCC proposes that it will publicly confirm whether a particular medium of exchange qualifies as “money” for purposes of the Act. This interpretive gatekeeping function is material because reserve assets may not be readily identifiable as a form of "money" (e.g., certain assets designated by intergovernmental organizations).

May Subsidiaries of Uninsured State Banks Issue Payment Stablecoins?

Yes.

Section 16(d) of the GENIUS Act permits subsidiaries of uninsured state-chartered banks to issue payment stablecoins under the federal framework. Some industry participants advocated for narrowing or eliminating this authority.

The NPRM does not limit or modify this statutory authorization. The OCC's proposal therefore preserves the ability of subsidiaries of uninsured state banks to operate as PPSIs, subject to applicable federal oversight.

May Issuers Pay Interest or Yield on Payment Stablecoins?

Generally, no.

The NPRM expressly prohibits a PPSI from paying interest or yield to holders of a payment stablecoin “whether in cash, tokens, or other consideration” solely in connection with the holding, use, or retention of that stablecoin. Given the speculation that partnerships with third-party retailers or hospitality companies could be used to provide rewards or loyalty points to payment stablecoin holders, the NPRM also includes a presumption that prohibited yield would arise with certain third-party relationships. The proposal therefore includes an anti-evasion presumption in cases where:

> *“the permitted payment stablecoin issuer has a contract, agreement, or other arrangement with an affiliate or a related third party to pay interest or yield to the affiliate or related third party; and the affiliate or related third party (or affiliate of such related third party) has a contract, agreement, or other arrangement to pay interest or yield (whether in cash, tokens, or other consideration) to a holder of any payment stablecoin issued by the permitted stablecoin issuer solely in connection with the holding, use, or retention of such payment stablecoin.”* [4]

This presumption reflects regulatory concern that yield could be indirectly provided through affiliated structures. The NPRM clarifies, however, that the prohibition does not extend to: (1) merchant discounts for payments made in stablecoins; or (2) profit-sharing arrangements with a partner, for example, in a white-label or commercial partnership context.

The anti-yield provision is among the most consequential elements of the NPRM, reinforcing the statutory distinction between payment stablecoins and deposit-like or investment products that do offer interest.

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KEY QUESTIONS THE NPRM RAISES

Reserve Asset Diversification Standards

The Act requires the OCC to establish reserve diversification and concentration standards, including limits on deposit concentration at particular institutions. The NPRM presents two alternative approaches:

Option A

A principles-based standard with an optional quantitative safe harbor; or

Option B

A fully quantitative, mandatory diversification framework.

The OCC suggests that a principles-based approach may better accommodate evolving market conditions. However, purely quantitative limits may provide greater predictability and supervisory consistency. The choice between these approaches could significantly affect treasury management strategies for issuers.

State Law Preemption Boundaries

The Act expressly preempts "any State requirement for a charter, license, or other authorization to do business" with respect to a Federal qualified payment stablecoin issuer or certain subsidiaries. At the same time, it preserves state consumer protection laws. However, the NPRM declines to codify additional clarifications regarding preemption, stating that the statutory provisions are self-executing.

This leaves unresolved important questions:

- Where is the boundary between preempted licensing requirements and permissible state consumer protection enforcement?
- Could state unfair or deceptive practices laws be used to indirectly regulate stablecoin practices?
- How will conflicts between state enforcement and exclusive federal supervision be resolved?

Given the dual banking system and history of federal-state tension in financial services regulation, this area is likely to generate industry comment and potential litigation.

Decentralized Finance

The Act restricts digital asset service providers from offering or facilitating the use of noncompliant payment stablecoins to persons in the United States. However, neither the statute nor the NPRM meaningfully addresses how these obligations would apply to decentralized protocols that operate without a centralized intermediary.

Many decentralized exchanges (DEXs) and other decentralized finance (DeFi) protocols facilitate peer-to-peer trading, lending, or liquidity provision involving stablecoins through smart contracts deployed on public blockchains. In these systems, transactions may occur automatically through code rather than through a traditional intermediary that can perform compliance functions such as geofencing, customer identification, or transaction monitoring.

The NPRM does not clarify whether the operators, developers, governance participants, or front-end interface providers associated with such protocols could be considered "digital asset service providers" for purposes of the

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Act. It is therefore unclear who, if anyone, would bear responsibility for restricting access to noncompliant payment stablecoins by US persons participating in DEX and DeFi transactions.

CONCLUSION

The OCC's NPRM represents a comprehensive implementation of the GENIUS Act within the OCC's supervisory perimeter. While much of the proposal closely follows the statute, several clarifications—particularly regarding permissible activities, reserve asset interpretation, anti-yield enforcement, and diversification standards—carry substantial market implications.

The NPRM includes more than 200 questions for public comment. The OCC has requested feedback from stakeholders, and the comment period is currently scheduled to close on 1 May 2026.

Market participants, including banks, fintech issuers, custodians, and digital asset service providers, should carefully evaluate both the clarifications provided and the ambiguities that remain. The final rule will shape not only compliance frameworks but also competitive positioning within the emerging US stablecoin regime.

FOOTNOTES

[1] Section 4(a)(7)(B) of the Act (12 U.S.C. 5903(a)(7)(B)).

[2] NPRM at p. 7.

[3] NPRM at p. 354.

[4] NPRM at p. 354.

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