Stablecoin Regulatory Framework

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S. 394, Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS Act) of 2025

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Digital Assets, Policy, Legal, Government Relations

Website
https://www.hagerty.senate.gov/wp-content/uploads/2025/02/GENIUS-Act.pdf

Impact Assessment

- The bill requires extensive reserve-asset and limited regulatory standards of all payment stablecoin issuers, also subjecting those that elect federal charters to federal supervision within defined boundaries and to enforcement actions.
- Federal reserve-asset standards for nonbank payment-stablecoin issuers would be generally equivalent to those for bank issuers, with bank regulators limited in the extent to which they could impose prudential standards above and beyond those applicable to payment-stablecoin issuers regardless of charter.
- State charters would need to be largely equivalent to those for federal issuers and available only to relatively small companies. However, state charters would enjoy home-state preemption power, perhaps allowing some arbitrage within state charters seeking least-cost domiciles.
- Regulatory arbitrage with regard to foreign issuers would be blocked.
- It is unclear if nonbank stablecoins could gain access to the U.S. payment system without a bank charter, but this does not appear to be the case.
- Drafting makes it unclear if IDIs could offer stablecoins or if this would need to be done in a subsidiary, which would not have direct payment-system access. Again, this appears to be the case.
- Nonbank stablecoin issuers would be limited in ancillary activities, but it does not appear that this would apply to parent companies, allowing social-media and other tech platforms to deeply proprietary stablecoins.

Overview

The GOP Senate Banking leadership along with a senior Democrat have introduced a sweeping bill establishing a federal regulatory framework for dollar-denominated payment stablecoins, with Chair Scott (R-SC) making it clear that this bill is his top legislative priority at the start of the 119th Congress. The bill would establish a considerably more robust regulatory framework than current law for these instruments, limiting the opportunities for charter arbitrage with the states and foreign regimes. It is unclear if these payment stablecoins would have access to the Federal Reserve payment system, especially if an issuer is not a depository institution. Without payment-system access, payment stablecoins would, if widely adopted, create an alternative payment system that might be more efficient and rapid than current payments only slowly adopting to real-time settlement. This speed and anonymity creates AML and sanctions risk, which the bill seeks to blunt by bringing payment stablecoins under standards that may be comparable to those governing bank payments (drafting here is unclear). It is unclear if stablecoin issuers could be affiliated with commercial, social-media, and other tech-platform companies.

Impact

This bill is the base text from which the U.S. will proceed to advance legislation clarifying stablecoin standards so these digital assets may play a larger role in the U.S. and global financial systems. Early in his term, President Trump issued an executive order that not only reiterated his determination that U.S. digital assets play a far larger U.S. role and achieve global dominance, but also that this be done in part by fast action on a new statutory framework for dollar-denominated stablecoins. Democrats of course played no role in this executive order. However, a federal stablecoin bill was a longstanding objective of the Biden Administration's FSOC[1] and House Democrats joined in the ultimately-unsuccessful efforts to craft a consensus bill in the last Congress. They are likely to do so again this year unless the politics becomes toxic surrounding this measure or digital assets more generally.

The thrust of this bill is to mandate consumer protections to increase the likelihood that payments initiated via stablecoins can be completed with finality as well as the speed and ubiquity stablecoins clearly afford. The most significant way the bill addresses this is via mandatory reserve-asset requirements ensuring that high-quality liquid assets back stablecoin obligations on at least a one-to-one basis. Interestingly, reserve assets may include issuer deposits at a bank, but the asset is counted only to the amount of FDIC insurance (i.e., $250,000). This is likely intended to prevent stablecoins from indirectly benefiting from FDIC insurance and creating any impression that funds held in stablecoins are as safe as those housed in insured deposits.

The bill also gives federal and state regulators additional tools to govern stablecoin risks even though rulemaking is generally confined to safety-and-soundness considerations, not a more expansive set of risks that bank regulators believe may also undermine resilience (e.g., resolvability, liquidity beyond outstanding stablecoin balances).

The bill also limits the extent to which regulatory arbitrage between banks and nonbanks, between federal and state charters, or among nations dictates success in this fast-growing sector. Key safety-and-soundness standards for federally-chartered stablecoin issuers are required to be roughly equivalent to those applicable to banks even as the ability of bank regulators to add additional risk buffers is constrained. State charters are only available to smaller issuers and the rules governing them would also need to be similar to the federal standards which in turn puts banks and nonbanks more or less alike when it comes to stablecoin-specific standards such as those governing reserve assets as well as safety and

[1] See *Client Report* **CRYPTO33**, October 5, 2022.

soundness. Foreign-domiciled stablecoin issuers could not operate in the U.S. unless they meet reciprocity standards ensuring like-kind rules for their issuers compared to those in the U.S.

Indeed, the bill may advantage bank-issued payment stablecoins. While its goal is to facilitate payment stablecoins to take advantage of blockchain speed and efficiency, it does not revise underlying law regarding access to the Federal Reserve's payment system, now limited to depository institutions. Nonbank issuers and those hosed in depository-institution subsidiaries thus would not have access to the Fed payment system and even bank-issued coins might have difficulty doing so if the Fed continues to confine its services to fiat currency. Payment stablecoins would thus either need to develop open and closed payment systems apart from the Fed or, as is the case now, enter and exit the broader payment systems following conversion into or out of dollars. The extent to which separate payment systems affect consumer decisions in areas such as placing deposits and corporate choice based on transaction speed will depend on the pace of market adoption of stablecoins and the role they come to play in the payment system.

The bill addresses a controversy of particular concern to the Biden Administration and Congressional Democrats: the extent to which stablecoins bypass anti-money laundering (AML) and/or sanctions to support illicit finance or nations sanctioned by the United States. The bill does so by requiring that AML sanctions rules apply to stablecoin issuers, but the extent to which these must be comparable to rules governing banks is unclear even though drafting appears to intend this. If these rules are less stringent than those applicable to banks or if regulators waive them for individual entities as the bill would allow, then significant opportunities for regulatory evasion may not be curtailed.

Ever since stablecoins began in 2019 with Facebook's Libra, there has been considerable concern about fair competition if social-media or other tech-platform companies control a payment instrument. This bill addresses this with general activity limits regulators are given considerable discretion to define. As a result, it is unclear if stablecoin issuers could have broad nonbank activities and/or be affiliated with a commercial firm in ways barred for stablecoin issuers housed in depository-institution subsidiaries.

What's Next

S.394 was introduced on February 4 by Sens. Hagerty (R-TN), Scott (R-SC), Lummis (R-WY), and Gillibrand (D-NY). It came in concert with the creation of a bicameral Republican working group including HFSC Chair Hill (R-AR) dedicated to advancing digital-asset measures creating a federal framework consistent with the approach outlined in President Trump's executive order.

A House GOP discussion draft was subsequently released. It differs in key respects from the Senate bill by, for example, allowing a considerably broader scope for state-chartered issuers and FRB dominance of bank stablecoin issuance. Although there is broad determination on both sides of the Capitol and the aisle on enacting a federal stablecoin framework, these substantive differences will again slow, but likely not stall, action.

The bill's effective date would be the earlier of eighteen months after enactment or 120 days after final federal rules are issued. State-regulated depository institutions with market capitalization over $10 billion would need to comply with federal rules 360 days after reaching that threshold. The bill states that the FRB would govern here, but likely means the applicable primary regulator; nonbank issuers crossing the market-cap threshold would also need to comply in 360 days under OCC regulation.

Analysis

A. Definitions

Key definitions in this bill include:

- monetary value, which means currency or deposits denominated in dollars or issued by central banks or an intergovernmental organization approved by various nations. It is unclear what the bill here has in mind;
- nonbanks, which means entities other than depositories. BHCs fall under this nonbank rubric;
- payment stablecoin, which means a digital asset that is designed or is used as a means of payment settlement which the issuer is obligated to convert, redeem, or repurchase in monetary value and represents that it maintains a stable value relative to a fixed amount of monetary value. Instruments in currency or that are instruments issued by a registered investment company are excluded from this definition;
- issuers, defined to include IDI subsidiaries, and federal- or state-regulated nonbanks that also meet the bill's requirements. It is unclear if banks could be issuers, although this appears to be the case.

B. Regulatory Construct

The bill would make it unlawful to offer a payment stablecoin in the United States that does not meet its requirements as judged by new reciprocity standards.

1. Regulators

Stablecoin activities of IDIs and their subsidiaries would come under the authority of the IDI's primary regulator. Qualified nonbank stablecoin issuers that elect a federal charter would come under the OCC, which would also govern stablecoin activities in entities that are not IDIs that currently come under its authority (e.g., trust companies). The bill also lays out an application process for depository institutions to establish stablecoin subsidiaries or nonbanks to be qualified federal issuers.

Qualified nonbank stablecoin issuers electing a state charter would come under the state agency with the primary regulatory and supervisory authority for payment stablecoins. State rules would need to be "substantially similar" to federal rules and a state charter is available only to nonbank issuers with a market capitalization of less than $10 billion. The states would set the standards to judge substantial equivalence, with state regulators allowing for nonbank issuers required also to send a certification to the Treasury one year after enactment laying out why their standard is in fact substantially similar. Annual recertifications would also be mandated, with Treasury authorized to deny certification. When a state's standards are not substantially similar, nonbanks must operate under federal standards or not at all, with nonbanks given the right to challenge adverse findings in the courts.

2. Standards

Issuers would need to match outstanding coin balances on at least a one-to-one basis with reserves comprised of U.S. currency; demand deposits housed at IDIs, regulated foreign banks, and credit unions up to the amount of applicable deposit insurance; U.S. Treasury obligations with maturities of less than ninety days; repos with maturities of less than seven-day maturities collateralized by eligible short-term Treasuries; reverse repos with maturities of less than seven days collateralized by overnight Treasuries subject to certain other restraints; government MMFs; or central-bank reserves.

Reserve assets could not be rehypothecated or pledged except when needed to ensure "reasonable" liquidity via qualifying repo instruments. It would appear that the repo itself and Treasury obligations collateralizing the repo might be double-counted for reserve-asset totals.

All issuers would need to:

- disclose their redemption policy;
- establish timely redemption policies;
- publish a monthly summary of reserve assets and outstanding coins. A registered public accounting firm would also need to certify this report one month after it is issued. The issuer's CEO and CFO would also need to certify each report upon issuance to the applicable federal or state regulator. Knowing certification of false information would be a criminal offense;
- meet capital, interest-rate risk management, and liquidity standards set jointly by primary federal regulators or each applicable state. Capital requirements must be no more than needed to ensure continuing operation, with the bill providing no guidance as to how long operations would need to be sustainable. IRR and liquidity standards could be no more than needed to ensure "financial integrity" with regard to obligations such as redemption. Operational, compliance, IT, AML, and sanctions standards would also apply "consistent with other legal authority." It is unclear if this means that these standards would need to be bank-like. All of these standards could be tailored even for specific issuers; and

- be subject to activity limitations germane to its stablecoin operations and obligations except where additional activities are allowed by the federal or state regulator.

3. Applications

The bill also lays out the criteria by which the appropriate regulator is to review applications to become a federal or state payment-stablecoin issuer. Decisions on these applications are due from federal regulators within 120 days after receiving a complete application. Applications may be declined only if found to present safety-and-soundness concerns raised only by the applicant's financial condition. No other criteria may apply, with regulators required to explain concerns to filers and lay out ways problems could remedied. Applicants would also have various rights under various deadlines to protest denial. If a decision is not rendered according to various deadlines, then it would be considered approved.

Federal status would also be considered conditionally approved upon filing an application for this status, with federal regulators also allowed to grant waivers for continuing state regulation.

All of the rules related to transition are to be issued jointly by federal regulators unless state rules apply. These rules are required 180 days after enactment.

4. Rulemaking

OCC rules governing nonbank issuers could address only financial conditions and compliance with the standards noted above. However, the OCC has broad authority to supervise stablecoin issuers under its jurisdiction along with any subsidiaries. Supervisory actions appear to be more broadly authorized so that the OCC could also assess threats to financial stability. It is given authority under "exigent circumstances" such as threats to a holding company or affiliated bank to intervene, with rules required within 180 days of enactment. OCC enforcement powers are roughly similar to those for banks.

State-chartered stablecoin issuers would come under the regulatory and supervisory authority of the applicable state agency under terms comparable to those governing the OCC. However, state authorities may reach agreements with the Fed for supervisory activities, with the authority also to initiate enforcement actions in exigent circumstances to be detailed in FRB rules due 180 days after enactment.

The FRB and OCC have the power to intervene in stablecoin operations in the event of systemic risk, but it is unclear if intervention could come before a risk occurs. Any entity cited in an exigent-circumstance action by the OCC or Fed would have extensive rights to protest and appeal.

C. Privacy

All stablecoin issuers would come under bank-like privacy restrictions.

D. Preemption

The laws of a state-chartered nonbank issuer would apply wherever it does business, giving this charter one significant advantage generally enjoyed only by federally-chartered banking organizations.

E. Customer Custody Service

Providing custody, safekeeping, or private keys for permitted stablecoin activities is allowed only if the provider:

- is subject to supervision and regulation by a primary federal stablecoin regulator, the SEC, the CFTC, or a state bank or credit union supervisor. State regulators would need to make information available to the FRB as requested; and
- complies with segregation requirements laid out in the bill or other federal standards.

Qualified stablecoin issuers that meet these standards may provide custody and related services. The bill would also bar any issuer's regulator from requiring them to hold custody assets on the balance sheet as the SEC sought to do more generally for custodial institutions.[2] Additional regulatory capital against these assets would also be barred other than with regard to operational risk.

F. Resolution

Stablecoin-issuer customers would have priority over all other claimants in an insolvency.

G. Reciprocity

In collaboration with Treasury, the Fed is to create reciprocal arrangements between the U.S. and foreign regimes with substantially-similar payment-stablecoin frameworks to promote cross-border activity and interoperability in dollar-denominated payment stablecoins.

[2] See **CUSTODY5**, *Financial Services Management*, February 24, 2023.

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