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CLIENT ALERT

GENIUS: Treasury Seeks Public Input on Stablecoin Framework Implementation

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The U.S. Department of the Treasury has issued an Advance Notice of Proposed Rulemaking ("**ANPRM**")[1] to gather public input on implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act ("**GENIUS**"). Public comments should be submitted within 30 days of publication.[2]

Enacted on July 18, 2025, GENIUS provides a framework for regulating payment stablecoins[3] and represents the most significant financial services legislation adopted since the 2008 Dodd-Frank Act. GENIUS instructs federal

1 90 Fed. Reg. 45159 (Sept. 19, 2025).

2 *Id.* at 45159.

3 Public Law 119-27, § 1 (July 18, 2025); see § 2(22) (defining "payment stablecoin").
For more information on GENIUS, see J. Christopher Giancarlo, Kari S. Larsen, A. Kristina Littman, Chelsea Pizzola, Jenna Fattah and Leanne Aban, The GENIUS Act: A New Pathway for Stablecoin Issuance (July 24, 2025) available here.

agencies and state regulators to draft rules that foster stablecoin innovation while protecting consumers, preserving financial stability, and mitigating potential illicit finance risks.[4]

The ANPRM follows Treasury's request for comment ("**RFC**") on August 18, 2025, relating to security enforcement methods, techniques, and strategies to detect illicit finance related to digital assets pursuant to Section 9 of GENIUS.[5] Both comment windows expire in mid-October: the RFC window closes on October 17, 2025 and the ANPRM window closes on October 20, 2025.[6]

This alert highlights certain significant questions posed by Treasury over three of Treasury's six key categories (Stablecoin Issuers and Service Providers, Illicit Finance, and Foreign Payment Stablecoin Regimes), and examines key considerations and implementation challenges that industry participants may wish to address in comment submissions.

I. Stablecoin Issuers and Service Providers

GENIUS establishes three pathways for entities to become permitted payment stablecoin issuers ("PPSIs"): (1) subsidiaries of insured depository institutions approved by federal regulators, (2) federal qualified nonbank or uninsured national bank payment stablecoin issuers approved by the OCC, or (3) state-qualified payment stablecoin issuers operating under state regulatory frameworks certified as "substantially similar" to federal requirements.[7] Treasury's questions in this category focus on operational clarity, compliance frameworks, and the boundaries between permissible and prohibited activities.

Safe Harbor Provisions and Transition Considerations

Section 3(a) provides that "it shall be unlawful for any person other than a permitted payment stablecoin issuer to issue a payment stablecoin in the United States."[8] Section 3(b)(1) provides that, beginning three years after enactment (July 18, 2028), "it shall be unlawful for a digital asset service provider to offer or sell a payment stablecoin to a person in the United States unless the stablecoin is issued by a PPSI."[9]

Question 2: "Should Treasury issue regulations providing for safe harbors from Section 3(a)? If so, what factors should Treasury consider in adopting these regulations? Would it be better to observe the operation of Section 3(a) for a period of time before considering safe harbors, or are safe harbors necessary as soon as Section 3(a) becomes operational?"[10]

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4 90 Fed. Reg. at 45159.

5 *Id.* at 45160 (citing Request for Comment on Innovative Methods To Detect Illicit Activity Involving Digital Assets, 90 FR 40148 (Aug. 18, 2025)).

6 *Id.* at 45160; Press Release, Treasury Seeks Public Comment on Implementation of the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act (Sept. 18, 2025) https://home.treasury.gov/news/press-releases/sb0254.

7 *Id.* § 2(15).

8 *Id.* § 3(a).

9 *Id.* § 3(b)(1); 90 Fed. Reg. at 45161.

10 90 Fed. Reg. at 45160.

Treasury should consider implementing safe harbor provisions that provide legal certainty during the transition period while maintaining the consumer protection objectives of GENIUS. The statute permits Treasury to issue regulations providing safe harbors that are "(i) consistent with the purposes of the GENIUS Act; (ii) limited in scope; and (iii) apply to a de minimis volume of transactions, as determined by Treasury."[11] Treasury may also provide limited safe harbors if it "determines that unusual and exigent circumstances exist."[12]

Treasury should consider establishing a grandfathering period for existing stablecoin users to restructure accounting and collateral arrangements without triggering compliance violations.

Any safe harbor should include a clear definition of "de minimis volume" to provide operational guidance for market participants seeking safe harbor protection.

Additionally, Treasury should consider establishing criteria for emergency safe harbor eligibility during market stress events and developing voluntary compliance programs with penalty mitigation for good-faith efforts to achieve compliance.

Digital Asset Service Provider ("DASP") Definitions and Scope

Question 4: "Is the scope of the term 'digital asset service provider' sufficiently clear as defined in the GENIUS Act? If not, what additional clarification should be provided?"[13]

GENIUS defines "digital asset service provider" as a person that, for compensation or profit, engages in the business in the United States of exchanging digital assets for monetary value, exchanging digital assets for other digital assets, transferring digital assets to a third party, acting as a digital asset custodian, or participating in financial services relating to digital asset issuance.[14]

While the definition excludes certain activities such as "developing, operating, or engaging in the business of validating transactions or operating a distributed ledger,"[15] the boundaries between trading activities and customer-facing provision of services remain unclear.

Market participants that may fall within the DASP definition may wish to encourage Treasury to provide additional guidance on whether proprietary trading and liquidity provision activities trigger DASP obligations, particularly where a market participant is trading solely for its own account and has no contractual obligation to execute any particular trade with a counterparty (and thus would not seem to be providing a "service"). Treasury could consider an exclusion from the term "exchanging" for such proprietary trading, similar to the carve-out from the same definition in Illinois's recently enacted digital asset legislation for "buying, selling, or trading digital assets for a person's own account in a principal capacity."[16] Notably, the GENIUS Act's exclusion from the DASP definition for "participating

11 *Id.* § 3(c)(1).
12 *d.* § 3(c)(2).
13 *Id.* at 45161.
14 GENIUS, § 2(7)(A).
15 GENIUS, § 2(7)(B)(iv).
16 Digital Assets and Consumer Protection Act (SB1797) (enacted into law Aug. 18, 2025).

in a liquidity pool or similar mechanism for the provision of liquidity for peer-to-peer transactions"[17] reflects a policy intent to exclude market participants who provide liquidity without engaging in customer-facing services, as proprietary traders do. A similar analogy can be drawn to the European Commission's interpretation of the Markets in Crypto-Assets ("**MiCA**") regulation, concluding that principal trading firms trading for their own account without a client relationship are not required to register as "crypto-asset service providers" under MiCA.[18]

Accounting

Section 3(g) provides that non-PPSI stablecoins shall not be: "(i) treated as cash or as a cash equivalent for accounting purposes; (ii) eligible as cash or as a cash equivalent margin and collateral for certain regulated entities; or (iii) acceptable as a settlement asset to facilitate certain wholesale payments."[19]

Question 6: "How should payment stablecoins not issued by a PPSI be treated for accounting purposes under Section 3(g)(1)?"[20]

Treasury should consider how this "negative treatment" provision could create the need for immediate portfolio restructuring requirements across financial services. The provision creates a negative presumption rather than providing affirmative guidance on proper treatment, forcing market participants to develop alternative accounting frameworks. Treasury should provide clear guidance on appropriate accounting treatment to prevent inconsistent application and potential market disruption.

Treasury should also clarify that non-PPSI stablecoins may be used for margin or collateral purposes, consistent with guidance from applicable agencies. For example, a broker-dealer should be able to accept non-PPSI stablecoins as margin for securities transactions, but the U.S. Securities and Exchange Commission might require the broker-dealer to apply an appropriate haircut to the stablecoin.

The regulatory framework should also address fraud prevention and double-counting risks that may arise during the transition period when both PPSI and non-PPSI stablecoins may circulate simultaneously. Treasury should consider establishing reporting requirements and verification mechanisms to ensure proper accounting treatment and prevent market manipulation.

Reserves

Section 4(a)(1)(C) requires a PPSI to "publish the monthly composition of the issuer's reserves, containing (i) the total number of outstanding payment stablecoins issued by the issuer, and (ii) the amount and composition of its reserves, including the average tenor and geographic location of custody of each category of reserve instruments."[21] Section 18(a)(3) requires a foreign payment stablecoin issuer ("**FPSI**") to "hold reserves in a U.S. financial institution

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17 GENIUS, § 2(7)(B)(iii).

18 *European Securities and Markets Authority, Questions and Answers,* Sept. 30, 2024) https://www.esma.europa.eu/publications-data/questions-answers/2293.

19 GENIUS, § 3(g).

20 *Id.*

21 *Id.* § 4(a)(1)(C); 90 Fed. Reg. at 45161.

sufficient to meet liquidity demands of U.S. customers, unless otherwise permitted under a reciprocal arrangement."[22] Section 4(a)(2) prohibits rehypothecation, stating reserves "may not be pledged, rehypothecated, or reused by the permitted payment stablecoin issuer."[23]

Question 11: "How will FPSIs determine the liquidity demands of U.S. customers in such a way that will be sufficient to maintain compliance with the obligation to hold reserves in U.S. financial institutions as set forth in Section 18(a)(3)?"[24]

Question 12: "Are any regulations necessary to clarify requirements related to the holding of reserve assets? In particular, is additional clarity necessary regarding the extent to which reserve assets are required to, or should, be held in custody?"[25]

Treasury should consider how the reserve requirements will significantly affect Treasury securities demand, as each dollar of stablecoin issuance requires backing with eligible assets including "Treasury bills, notes, or bonds" with specific maturity constraints. [26] The regulatory framework should address how custody arrangements address multi-signature blockchain wallets and smart contract-based reserves.

Treasury should consider establishing guidelines for operational flexibility during reserve rebalancing in market stress situations while maintaining the integrity of the 1:1 backing requirement.[27] Finally, Treasury should provide guidelines for monthly disclosure requirements to ensure uniform reporting that is readily comparable across stablecoin issuers.

Marketing

Section 4(a)(9) prohibits a PPSI from marketing a payment stablecoin so that "a reasonable person would perceive the payment stablecoin to be (i) legal tender, (ii) issued by the United States, or (iii) guaranteed or approved by the government of the United States."[28] Section 4(e)(3) provides that "it shall be unlawful to market a product in the United States as a payment stablecoin unless the product is issued pursuant to the GENIUS Act," with knowing violations punishable by fines "of not more than $500,000 for each such violation."[29]

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22 GENIUS, § 18(a)(3); 90 Fed. Reg. at 45161.

23 GENIUS, § 4(a)(2).

24 *Id.*

25 90 Fed. Reg. at 45161.

26 GENIUS, § 4(a)(1)(A)(iii).

27 Under Section 4(a)(1)(A), the reserves may be comprised of U.S. coins and currency, funds held as demand deposits, treasury bills, notes, or bonds, repurchase agreements and reverse repurchase agreements subject to certain limitations, money market funds invested solely in underlying assets previously described, and any other similarly liquid federal government-issued asset approved by the primary federal payment stablecoin regulator.

28 GENIUS, § 4(a)(9).

29 *Id.* § 4(e)(3).

Question 21: "Are any regulations or guidance necessary to clarify or implement this provision, including how the number of violations will be determined under Section 4(e)(3)(C)?"[30]

Treasury should consider providing model disclosure formats to ensure consistent market interpretation. The anti-deception provisions require careful review of all marketing materials, as even implied suggestions of government backing could trigger violations with substantial penalties. Section 3(f)(1) establishes that knowing participation in violations can result in fines "of not more than $1,000,000 for each violation or imprisonment for not more than five (5) years, or both.[31] Treasury should also consider how enforcement priorities should balance innovation encouragement with consumer protection.

II. Illicit Finance and AML/Sanctions Controls

GENIUS applies comprehensive financial surveillance requirements to stablecoin issuers while requiring unprecedented technical capabilities for real-time transaction monitoring and enforcement. It is perhaps disappointing that Congress did not take the opportunity to consider enhanced privacy protection for users of U.S. dollar stablecoins. Treasury's questions in this area focus on implementation of existing Bank Secrecy Act and sanctions requirements in the context of blockchain-based payment systems. While sanctions prohibitions would apply to U.S. stablecoin issuers (like all U.S. persons) with or without GENIUS, GENIUS comes at a time when Treasury has begun to reconsider the regulatory burden of AML requirements for regulated financial institutions more generally.[32] As such, Treasury may be open to considering comments focused on ways in which burdensome AML requirements may outweigh the benefits.

AML and Sanctions Program Requirements

Section 4(a)(5) of the GENIUS Act subjects PPSIs to "all Federal laws applicable to financial institutions located in the United States relating to economic sanctions, prevention of money laundering, customer identification and due diligence," and directs Treasury to issue implementing regulations, including related to effective programs for AML and sanctions, monitoring and reporting suspicious activity, and technical capabilities and policies and procedures to block, freeze, and reject impermissible transactions.[33]

Question 23: "What should Treasury consider when promulgating regulations implementing Section 4(a)(5), including AML and sanctions programs, monitoring and reporting suspicious activity, and customer identification and due diligence? What, if any, unique features of PPSIs should Treasury consider?"[34]

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30 90 Fed. Reg. at 45161-62.

31 GENIUS, § 3(f)(1).

32 For example, Treasury is seeking feedback on the costs of AML requirements and recently postponed implementation of AML requirements for investment advisers to "ensure efficient regulation that appropriately balances costs and benefits." *See* Survey of the Costs of AML/CFT Compliance, FinCEN, https://www.fincen.gov/survey-costs-amlcft-compliance; Treasury Announces Postponement and Reopening of Investment Adviser Rule, FinCEN (July 21, 2025), https://home.treasury.gov/news/press-releases/sb0201.

33 GENIUS, § 4(a)(5); 90 Fed. Reg. at 45162.

34 90 Fed. Reg. at 45162.

Question 24: "What should Treasury consider when promulgating a regulation implementing Section 4(a)(5)(A)(iv)? How do payment stablecoin issuers anticipate implementing technical capabilities, policies, and procedures to block, freeze, and reject specific or impermissible transactions that violate federal or state laws, rules, or regulations, including transactions involving the secondary market, such as those that involve sanctioned persons or countries?"[35]

Section 4(a)(5)(A)(iv) specifically requires "technical capabilities, policies, and procedures to block, freeze, and reject specific or impermissible transactions that violate Federal or State laws, rules, or regulations."[36]

GENIUS' technical capabilities requirements mirror the sanctions obligations of traditional financial institutions, which often use screening software to review persons involved in a transaction against relevant sanctions lists to determine whether a transaction should be blocked, frozen, or rejected. Whereas traditional financial institutions responsible for holding or transferring funds have established capabilities to comply with these requirements at the transaction or account level, PPSIs will have to consider how these requirements can be implemented at the stablecoin level. Comments focused on unique implementation challenges faced by PPSIs may be worthwhile.

Lawful Order

Section 4(a)(6)(B) provides that "a PPSI may issue payment stablecoins only if the issuer has the technological capability to comply, and will comply, with the terms of any lawful order."[37] GENIUS defines "lawful order" to include any requirement "that requires a person to seize, freeze, burn, or prevent the transfer of payment stablecoins issued by the person" and "specifies the payment stablecoins or accounts subject to blocking with reasonable particularity."[38]

Question 25: "What, if any, regulations or guidance would help clarify the obligations in Section 4(a)(6)(B) to have the technological capability to comply, and to comply, with any lawful order?"[39]

Question 28: "In the economic sanctions context, lawful orders will include sanctions designations. The persons and property subject to blocking will be identified with reasonable particularity by the publication of identifying information for such persons and property on Treasury's Office of Foreign Assets Control's Specially Designated Nationals List. If regulation or guidance is promulgated, what kind of considerations and provisions should it include to clarify the requirement to comply with lawful orders in the economic sanctions context?"[40]

III. Foreign Issuers and Cross-Border Activity

GENIUS establishes a framework for FPSIs to operate in the United States under specific conditions.

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35 90 Fed. Reg. at 45162.

36 GENIUS, § 4(a)(5)(A)(iv).

37 *Id.* § 4(a)(6)(B).

38 *Id.* § 2(16).

39 *Id*.

40 *Id*.

Comparable Regime

Treasury is authorized to "determine whether a foreign regime for the regulation and supervision of payment stablecoins is comparable to the requirements established under the GENIUS Act."[41] Section 18(d)(1)(C) requires "interoperability with U.S.-dollar denominated payment stablecoins issued overseas."[42]

Question 29: "For the purpose of identifying existing foreign payment stablecoin regulatory and supervisory regimes, are there certain characteristics of a 'payment stablecoin' recognized in the market that differ from how this term is defined in the GENIUS Act?"[43]

Question 30: "Are there foreign payment stablecoin regulatory or supervisory regimes, or regimes in development, that may be comparable to the regime established under the GENIUS Act? Are there foreign regimes that are in effect, or in development, that materially differ from the regime under the GENIUS Act?"[44]

Question 32: "As Treasury identifies factors for determining whether a foreign jurisdiction has a regulatory and supervisory regime that is comparable to the requirements established under the GENIUS Act, including standards for issuing payment stablecoins provided in Section 4(a), what specific factors should Treasury consider, including factors that should disqualify a foreign jurisdiction from being determined to be comparable? Are there factors that should be excluded from consideration?"[45]

Treasury should consider how some foreign jurisdictions may not have clear legal definitions for either "payment stablecoin" or "payment stablecoin issuer" or an analogue, creating challenges for comparability assessments. [46] European MiCA regulations and UK stablecoin proposals offer potential comparability templates. Treasury should consider whether to establish mutual recognition agreements with specific jurisdictions, similar to foreign board of trade requirements, and address privacy concerns for cross-border interactions while considering state ramifications and conflicting additional requirements. This would allow existing regimes with conflicting or additional requirements to reach an understanding with the U.S. without changing their internal frameworks.

Technical Interoperability

Question 34: "How should Treasury interpret 'interoperability' in Section 18(d)(1)(C), describing 'interoperability with U.S.-dollar denominated payment stablecoins issued overseas?' What technical, legal, regulatory, or other measures are most relevant for interoperability?"[47]

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41 *Id.* § 18; 90 Fed. Reg. at 45162.
42 GENIUS, § 18(d)(1)(C).
43 90 Fed. Reg. at 45162.
44 90 Fed. Reg. at 45162.
45 *Id.*
46 *Id.* at 45162.
47 *Id.* at 45162-63.

Question 36: "Are any regulations or guidance necessary to clarify the prohibition on offers and sales of payment stablecoins issued by foreign issuers in the United States under Section 3(b)(2) of the GENIUS Act, including the requirement that an FPSI have the 'technological capability' for compliance?"[48]

Treasury should consider and request input on what technical standards should govern cross-border stablecoin interoperability. Current blockchain architectures often lack native interoperability.

IV. Conclusion and Next Steps

This ANPRM reveals comprehensive regulatory ambitions while recognizing technical and operational complexities. The comment period ending October 20, 2025 represents a critical opportunity for industry participants to shape foundational regulations governing the stablecoin market. Meaningful input from the industry across the issuer and service provider, reserves, illicit finance, tax, insurance and economic data considerations will assist Treasury in drafting suitable and sufficient regulations.

The regulatory framework emerging from this process will determine which business models remain viable and what technical capabilities become competitive necessities. Early engagement provides the best opportunity to influence implementation details that will shape the industry for years to come.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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[48] *Id.* at 45163.