

Office of the Comptroller of the Currency
400 7th St., SW
Suite 1E-216
Washington, DC 20219

Attn: Chief Counsel's Office
RIN 1557-AF41

May 1, 2026

Re: Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, Docket ID #: OCC-2025-0372

Dear Office of Chief Counsel:

Americans for Financial Reform Education Fund, the Center for Responsible Lending, the Consumer Federation of America, and Professor Arthur E. Wilmarth, Jr. appreciate the opportunity to comment on the Office of the Comptroller of the Currency (OCC) notice of proposed rulemaking on stablecoins (Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency¹).

Americans for Financial Reform Education Fund (AFREF) is a nonpartisan and nonprofit organization founded by a coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups that works towards a strong, stable, and ethical financial system and is committed to eliminating inequity and systemic racism and fighting for a just and sustainable economy for everyone.

The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting family financial security by eliminating abusive lending practices. Our work on housing finance, consumer credit, and predatory market conduct gives CRL direct interest in ensuring that consumers are protected, especially when new consumer financial products are being regulated for the first time.

The Consumer Federation of America (CFA) is an association of nearly 250 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

¹ Office of the Comptroller of the Currency (OCC). [Notice of Proposed Rulemaking, Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency](#). 91 Fed. Reg. 40. March 2, 2026, at 10202 et seq.

Arthur E. Wilmarth, Jr. (in his personal capacity) is Professor Emeritus of Law at the George Washington University Law School. He was a member of GW Law School's full-time faculty from 1986 to 2020.

Thank you for the opportunity to comment on these important topics. As groups focused on investor and consumer protections, safety and soundness, and financial stability and systemic risk, we have grave concerns about the proposed rule's dangerous shortcomings. The Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act)² directed the OCC to establish standards and regulatory oversight for issuers of payment stablecoins, but the statute's many flaws have been magnified and not remedied by the OCC's proposed rule.

This comment discusses in more detail the GENIUS Act's systemic hazards that are not remedied by the OCC's proposed rule. Section I discusses how the proposed rule fails to adequately address the risks posed by eligible reserve asset classes; Section II addresses the rule's inadequate capital, liquidity, and other requirements; Section III identifies gaps and flaws in the proposed rule's licensing criteria; Section IV raises concerns about how the rule will hamper enforcement actions against non-compliant issuers by state and federal regulators; Section V identifies flaws in the regulation's core customer protection elements, namely, redemption and custody rules; Section VI raises concerns about the rule's failure to affirm the applicability of crucial federal consumer financial protection laws to stablecoin issuers and their customers; Section VII raises concerns about the rule's failure to delineate how and whether certain state consumer protection laws are pre-empted by the regulation and statute; Section VIII critiques the rule's failure to address the unworkable bankruptcy and resolution approaches established by the statute; and Section IX identifies ways in which the regulation fails to address the systemic risks posed by stablecoin runs and issuer insolvency that could lead to the need for ad hoc federal bailouts of issuers.

Both the statute and the rule cover a wide scope of activities conducted by stablecoin issuers as well as responsibilities of state and federal regulators, service providers, and affiliates of stablecoin issuers. This comment does not address every aspect or concern associated with the rule. Nonetheless, we remain concerned about many of aspects of the rule not covered in this comment, including: the treatment of foreign issuers under the rule, including how U.S. regulators determine what constitutes a "substantially similar" foreign regulatory regime; the treatment of non-custodial wallets and wallet providers with respect to custody rules; and the insufficient rigor and credibility of reserve attestations by issuers in comparison to traditional audits and stress tests that many traditional banking entities are required to perform. We have additional concerns about the manifold illicit finance risks associated with the use and operation of stablecoins, a topic that the OCC must consider in this proposed rule in light of the recently issued proposed rule by the Department of the Treasury.

² Pub. L. 119-27. Guiding and Establishing National Innovation for U.S. Stablecoins Act ([GENIUS Act](#)). July 18, 2025.

I. The GENIUS Act allows stablecoin issuers to hold risky asset classes as eligible reserves, and the proposed rule fails to adequately address these risks.

The proposed rule fails to establish reserve requirements that protect stablecoin holders or the financial system from the risks of runs, de-pegging, and financial contagion. The proposal does not effectively limit the use of uninsured bank deposits as reserves; it fails to address counterparty liquidity, credit, and other risks; and it does not address the risks associated with using money market mutual funds and repurchase agreements with private counterparties as reserves.

The OCC's rule sets dangerously weak limits on use of uninsured deposits as reserves, increasing the likelihood of a run triggered by a custodial bank's insolvency.

The GENIUS Act allows issuers to hold uninsured deposits as part of their reserves at federally chartered depository institutions.³ Holding reserves that are uninsured deposits could expose issuers and coin holders to significant risks of de-pegging and contagious runs if the depository institution holding those uninsured deposits experiences severe economic stress or failure. Issuer reserves held in the form of uninsured deposits would effectively be unsecured debt obligations that would be subordinated to the claims of the bank's secured creditors and "super-priority" creditors if the bank failed, instead of being used to meet redemption requests by stablecoin holders.

Stablecoin issuers backed by uninsured reserves at a troubled depository institution would be highly vulnerable to runs. The rumor, prospect, or actual occurrence of the bank's failure would cause a run by stablecoin holders that could destroy the stablecoin's price peg, causing its value to drop and ultimately endanger the issuer's solvency. This, in turn, could negatively impact those crypto platforms and markets where that stablecoin is widely held or used. It also could create a feedback loop that could undermine the stability of the depository institution that held the reserves.

The collapse of Silicon Valley Bank (SVB) in 2023 created such a scenario for Circle, who held \$3.3 billion in uninsured deposits as reserves at SVB. Circle's USDC stablecoin lost its peg and fell to a value of \$0.87 after SVB failed. Federal regulators felt compelled to invoke the "systemic risk exception" in the Federal Deposit Insurance Act in order to rescue the *uninsured deposits* of SVB's account holders — more than \$3 billion of which were reserves for Circle's USDC stablecoin — at a cost of \$18.6 billion. Federal regulators arranged that emergency bailout to prevent SVB's collapse from causing a generalized meltdown in the crypto industry with contagious spillover effects on the broader financial system.⁴

An appropriate response to the risks described above would be to make uninsured deposits ineligible as qualified stablecoin reserve assets and to require stablecoin issuers holding reserves in the form of bank deposits to do so exclusively in the form of insured bank deposits, either by spreading their reserves among multiple insured depository institutions or by providing their own private deposit insurance for reserve funds in excess of the deposit insurance limits. However, the proposed rule does very little to address this risk. It offers two proposed alternatives for the reserve

³ GENIUS Act §4(a)(1)(ii).

⁴ FDIC. "[Special Assessment Pursuant to Systemic Risk Determination.](#)" August 27, 2025.

asset diversification requirements for issuers that are both, to varying degrees, inadequate to address the risks of de-pegging or runs.

The final rule will either implement Option A, a principles-based reserve requirement with a safe harbor for issuers that meet specific quantitative requirements, or Option B, which would establish quantitative requirements mandatory for all issuers.⁵ The OCC should establish strong, mandatory, quantifiable reserve requirements that would require stablecoin issuers to be able to rapidly redeem stablecoin holdings of their customers on demand by holding sufficiently liquid assets to at a minimum redeem a sizable portion of their issued stablecoins — perhaps 25 percent — within one business day and another 50 percent within 5 business days to provide security and confidence to customers and reduce the risk of runs and de-pegging that could undermine financial stability.

The OCC should reject the principles-based Option A that would allow stablecoin issuers to effectively attest that its reserve assets are sufficiently diverse to manage credit, liquidity, interest rate, and price risks and shocks as well as avoiding concentration of reserve assets in a small number of financial institutions. The OCC would then determine whether stablecoin issuers had a reserve strategy that was appropriate to the risk. The proposed Option A notes that less complex stablecoin issuers could satisfy the principles-based requirements with a far lower level of diversification, but it would be “unlikely” (but not impossible) to meet that requirement by “placing all its reserve assets at a single eligible financial institution.” A smaller, less complex issuer could potentially satisfy its reserve requirements with very little diversification of assets or of institutions that could make them far more vulnerable to shocks, de-pegging, and runs.

Allowing larger, more complex stablecoin issuers to establish their own principles-based assessment of an appropriate risk-based reserve diversification strategy is a recipe for disaster. The 2008 financial crisis demonstrated the catastrophic impacts of financial companies with internal risk-modeling strategies that severely underestimated the magnitude and correlation of risks among subprime mortgage-backed securities, collateralized debt obligations, and credit default derivatives swaps. A stablecoin issuer that similarly fails to manage its risks, to diversify its reserve holdings, or to adequately prepare for stresses or shocks could expose customers to substantial losses and create a financial contagion that could spread across the financial system — to the institutions that hold its reserve assets and to those firms interconnected to those institutions.

The proposed Option A does provide a safe harbor with quantifiable requirements that would be presumed to satisfy the reserve requirements. A stablecoin issuer could meet the safe harbor if it demonstrates that at least 10 percent of its reserves assets are liquid enough to be redeemable in any one business day; at least 30 percent of its assets are liquid enough to be redeemed within five business days; and it maintains no more than 40 percent of its reserve assets at one institution (or affiliates); and no more than 50 percent of its “same-day” reserve assets at one financial institution — which effectively means an issuer could arrange custody of the 10 percent portion of the reserve with as few as two institutions.

⁵ 91 Fed. Reg. 40 at 10216.

The quantitative metrics in Option B are a far better approach, but the proposed requirements are not robust enough to provide the security and confidence that customers need and deserve, and they are not strong enough to safeguard the financial system from contagion. The quantitative requirements are essentially the same thresholds as the safe harbor under Option A (with only 40 percent of reserves available to satisfy redemption within 5 business days and no more than 40 percent of reserves at one institution).⁶

The proposed Option B would have an additional but nonetheless insufficient requirement for very large stablecoin issuers to hold a small portion of their reserves in federally insured deposits. Permitted stablecoin issuers with an outstanding issuance value of \$25 billion or more would be required to maintain at least 0.5 percent of its reserve assets every day in the form of insured deposits or insured shares at an insured depository institution, up to a cap of \$500 million (proposed §15.11(d)). The rule goes on to say that “while it may not be practicable to maintain all deposits or shares as insured deposits or insured shares, having some minimum amount of insured deposits or shares will provide an additional measure of security for reserve assets and can promote market and holder confidence about the integrity of the reserve assets” and may “mitigate fears or contagion risks associated with rumors about the health of particular depository institutions.”

This insured deposit reserve requirement is likely far too low to prevent runs, de-pegging, and contagion. At the time of SVB’s collapse, Circle had \$40 billion in reserves.⁷ Roughly \$11 billion of those reserves (more than 25 percent) were held in cash at regulated financial institutions.⁸ That is far higher than the requirement under the proposed rule, which would require 0.5 percent in insured deposits or \$200 million. Circle held \$3.3 billion in *uninsured* deposits at SVB, but if even a small portion (5 percent) of the remaining \$7.7 billion in cash holdings at other financial institutions were insured deposits it would have exceeded the \$200 million insured deposit requirement under the proposed rule. But despite substantial bank deposit reserves (and undoubtedly sufficient insured deposit reserves to meet the proposed rule), Circle did not have sufficient liquid reserves to prevent the de-pegging and run on its USDC stablecoin that nearly devastated its stablecoin holders and imperiled the financial system. The insured deposit threshold established by Option B is woefully inadequate, and when combined with other elements of the rule, appear will not prevent a disastrous scenario similar to SVB from happening again.

The OCC’s proposed requirement that stablecoin issuers hold 0.5 percent of reserves in insured deposits is far too weak to prevent large, complex stablecoins from foundering during economic shocks that harm stablecoin holders and the financial system. Circle unraveled after facing a major destabilizing event despite having far higher reserves in insured deposits. The OCC’s proposed rule tacitly acknowledges this, saying, “In theory, it would be ideal from the perspective of the safety and soundness of the permitted payment stablecoin issuer if permitted payment stablecoin issuers would be able to place all deposits, so they are covered by applicable deposit insurance limits. However, current deposit insurance requirements may make this impossible for larger permitted stablecoin issuers” and goes on to say that spreading out reserves across many insured depository institutions such that each account stays within the deposit insurance threshold could introduce greater operational complexity and risk.⁹

⁶ [91 Fed. Reg. 40](#) at 10219.

⁷ “[Crypto firm Circle reveals \\$3.3 billion exposure to Silicon Valley Bank.](#)” *Reuters*. March 10, 2023.

⁸ Circle. [USDC Reserve Report](#). March 6, 2023.

⁹ [91 Fed. Reg. 40](#) at 10219.

The rule's permissive reserve standards will fail to protect stablecoin holders and the financial system. Option A would allow stablecoin issuers to meet principle-based reserve requirements that lack the necessary quantitative guardrails to forestall runs, de-pegging, or financial contagion. Option B has quantifiable metrics that are too weak to protect customers or the financial system.

The OCC's rule does little to address counterparty and liquidity risks stemming from the use of repurchase agreements as eligible reserve assets.

The GENIUS Act allows stablecoin issues to hold reserves in the form of repurchase and reverse repurchase agreements (repos and reverse repos).¹⁰ This necessarily means that the solvency of stablecoin issuers will be linked to the credit risks of counterparties on the other side of these agreements, which are not sufficiently addressed by the statute or the proposed rule. Private sector counterparties — including hedge funds, proprietary trading firms, and others — are highly leveraged and hold large amounts of illiquid assets; and they do not have access to the Fed discount window loans or other sources of government support. Counterparties that were unable or unwilling to expeditiously liquidate these repurchase or reverse repurchase agreements could leave a stablecoin issuer with inadequate liquidity to redeem stablecoins on demand during periods of stress. The statute grants the stablecoin issuer the sole authority to determine the creditworthiness of its counterparties in reverse repurchase agreements. Runs in the repo markets of 2008 and 2020 have clearly established that repo counterparties and repo markets can be subject to devastating runs. Allowing stablecoin issuers to be exposed to such instability in these markets would create significant risk for issuers, stablecoin holders, and the financial system.

An appropriate response to this risk would have been for Congress to exclude the use of repos or reverse repos as eligible reserve assets unless the counterparties to those agreements were either the Fed or FDIC-insured banks with access to Fed discount window loans. However, the OCC's proposed rule adds little to address the potential counterparty or credit risks. It fails to add additional guardrails to the GENIUS Act's dangerously weak standards, which allow repos to be used as reserves if they have overnight maturity and are backed by Treasury bills with a maturity of 93 days or less. Reverse repos have similar conditions for sale under the rule, and must be collateralized by Treasury bills, notes, or bonds on no longer than an overnight basis, and must be overcollateralized in line with standard market terms. The reverse repos must be tri-party and centrally cleared through an SEC registered clearing agency or bilaterally arranged with a counterparty that the issuer deems adequately creditworthy in the event of market stress.

Yet, none of these requirements address a host of additional market risks associated with these assets. As a recent Massachusetts Institute of Technology study noted, issuers using repos or reverse repos as reserves, backed by Treasury securities as collateral, depend on “executing timely asset sales through broker-dealers whose balance sheets are themselves constrained by leverage rules and liquidity regulations. Episodes of fragility in the Treasury and repo markets show that *even modest surges in selling pressure can overwhelm intermediation capacity*” (emphasis added).¹¹ The OCC should establish additional requirements to minimize the counterparty, credit, and liquidity risks by requiring all repo and reverse repo counterparties to be the Fed or federally insured depository

¹⁰ [GENIUS Act](#) §4(a)(1)(iv) and (v).

¹¹ Dan Aronoff and Neha Narula, et al. (Aronoff, Narula, et al.). “[The Hidden Plumbing of Stablecoins: Financial and Technological Risks in the GENIUS Act Era](#),” *MIT Digital Currency Initiative*. February 2026.

institutions with access to the Fed's discount window to provide adequate assurance that these positions could be easily liquidated in times of stress.

The OCC's proposed rule fails to address the risks associated with the use of Money Market Funds (MMFs) as eligible reserve assets under GENIUS.

The GENIUS Act allows stablecoin issuers to hold shares in money market funds (MMFs) as eligible reserve assets.¹² While the act clearly intends to limit investments to funds with risks materially similar to those of government money market funds, the provisions governing the types of assets an eligible MMF are inconsistent with government money market funds as defined in SEC regulations. Government money market funds under SEC's rule 2a-7 are limited to cash, government securities and fully collateralized repurchase agreements.¹³ The GENIUS Act permits broadening this to include any registered '40 Act fund that has additional underlying assets including demand deposits at banks and share deposits at credit unions as well as bilateral reverse repurchase agreements with a counterparty that the "issuer has determined to be creditworthy." As the proposal notes, the OCC does not plan to adopt all of the requirements set forth for non-government money market funds under 2a-7 requirements that were strengthened after the broad failure of MMFs during the 2008 crisis.¹⁴

MMFs are fundamentally unstable financial instruments vulnerable to investor runs - essentially demand deposits not subject to the suite of critical banking laws and regulations. In 2008 shares in the Reserve Primary Fund (an MMF that held \$785 million in Lehman's commercial paper) "broke the buck", falling below their purported stable valuation.¹⁵ Much like stablecoins that have lost their pegs over the years, though less severely, the Reserve Primary Fund's net asset value fell to 97 cents per share.¹⁶ That triggered a wider panic in the broader money markets, ultimately triggering a Fed and Treasury bailout to stem runs on other funds.¹⁷

The GENIUS act and proposed rule allow a broad swath of MMFs but without all of the rules adopted post-crisis, allowing stablecoin issuers to expose themselves to risks of funds that failed in 2008. Further, the proposed rule narrowly considers interest rate risks to such '40 act funds while dismissing their credit and counterparty risks entirely. Further, the contrasts between the composition of government money market funds and other '40 Act funds cause them to perform differently under market stress.

¹² [GENIUS Act](#) §4(a)(1)(vi).

¹³ 17 CFR § 270.2a-7

¹⁴ Office of the Comptroller of the Currency (OCC). [Notice of Proposed Rulemaking. Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency.](#) 91 Fed. Reg. 40. March 2, 2026 at FN 56.

¹⁵ Kacperczyk, Marcin, and Philipp Schnabl. "When Safe Proved Risky: Commercial Paper during the Financial Crisis of 2007–2009." *Journal of Economic Perspectives*, vol. 24, no. 1, Feb. 2010, pp. 29–50, <https://doi.org/10.1257/jep.24.1.29>. Accessed 31 May 2020.

¹⁶ Frayer, Corey. "[The Very Real Dangers of Adopting Virtual Money.](#)" *Consumer Federation of America*. February 15, 2025.

¹⁷ McCabe, Patrick. "[The Cross Section of Money Market Fund Risks and Financial Crises.](#)" Board of Governors of the Federal Reserve System. September 12, 2010.

While government money market funds act countercyclically as a flight to safety, broader MMFs have tended to be procyclical.¹⁸ Given that the composition of stablecoin reserves are strikingly similar to the permissible assets of the money market funds eligible to be held as reserves, the proposed rule creates an ouroboros of procyclical stablecoin reserve deterioration. As customers demand redemptions, issuers will have to sell reserve assets identical to those invested in by the very money market funds that also act as stablecoin reserves. Downward price pressure on such assets - to which not even the safest government bonds are invulnerable - will erode the asset base of the money market funds as customers demand redemptions of those shares as well. The vicious cycle of asset value depreciation is precisely the condition financial stability regulations are meant to prevent, not encourage.

An elementary understanding of finance demonstrates that, if they are not bank deposits, stablecoin issuers are simply money market funds that hoard interest rather than distribute those gains to stablecoin holders - but also unbound by the suite of rules applicable to the registered '40 Act funds they mirror. Thus, at an inadequate minimum, stablecoin reserves should be limited strictly to government money market funds as defined by SEC regulations.

II. The GENIUS Act's regulatory tailoring approach establishes weak capital, liquidity and other standards that are inadequately addressed or strengthened by the proposed rule.

The proposal adopts a regulatory tailoring approach for stablecoin issuers' capital, liquidity, and risk management standards that inadequately address the financial stability risks posed by undercapitalized, illiquid, or poorly managed stablecoins.

Regulatory tailoring has long been used as coded language for deregulatory approaches to financial regulation, particularly for the banking sector. In the guise of making supervision and regulatory guardrails tailored to the size and complexity of the bank, regulatory tailoring efforts have been used to broadly reduce the scrutiny, supervision, and regulatory requirements for capital, liquidity, and risk management. This exempted banks from regulatory requirements and prevented regulators from having the tools to prevent financial stresses from compromising the viability of troubled institutions.

As Graham Steele noted in recent Congressional testimony, in 2017 “banking agencies began weakening the more stringent post-Global Financial Crisis approach to financial regulation in several respects” while Congress pursued passage of the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Steele says “the ensuing regulatory changes...were known as ‘tailoring.’”¹⁹ Steele went on to explain that the banks that failed in 2023 due to runs by uninsured depositors — SVB, First Republic and Signature — were all “beneficiaries of tailoring, including less stringent capital, liquidity, stress testing, and resolution planning requirements.”²⁰

¹⁸ Hiltgen, Daniel. “Charting the Course: A Systematic Exploration of Influences Shaping Money Market Fund Growth.” June 13, 2024.

¹⁹ Steele, Graham. “[Regulatory Overreach: The Price Tag on American Prosperity.](#)” Testimony before the Subcommittee on Financial Institutions. Committee on Financial Services. U.S. House of Representatives. April 29, 2025.

²⁰ *Ibid.*

The GENIUS Act embeds deregulatory tailoring into the oversight of stablecoin issuers. It obligates federal and state regulators to establish capital, liquidity, and risk management standards in a manner “tailored” to the business model and risk profile of a permitted payment stablecoin issuer in a manner that “does not exceed requirements that are sufficient to ensure ongoing operations...of an issuer.”²¹ This deeply misguided approach discourages regulators from establishing sufficiently rigorous standards to promote the stability of stablecoin issuers by mandating additional buffers to ensure resiliency during times of stress, and it effectively establishes a presumption that discounts the benefits to financial stability and customer protections from strong capital, liquidity, and governance requirements. The GENIUS Act’s heedless commitment to “tailoring” exempts stablecoin issuers from stronger leverage and risk-based capital requirements such as would be applied to FDIC insured depository institutions and their parent holding companies. For example, the GENIUS Act does not require that stablecoin issuers maintain sufficient capital and liquidity buffers to reduce the likelihood that they will fail in times of financial stress or pose systemic risks to the financial system.

The proposed rule does not address the risks posed by stablecoin issuers to financial stability and fails to develop adequate capital, risk-management, liquidity, and governance requirements. The administration’s reckless campaign to dismantle the post-crisis banking regulatory architecture — by reducing supervisory oversight, weakening stress testing, lowering regulatory capital requirements, and gutting consumer protections — makes the prospect of adding poorly supervised and regulated stablecoin issuers into this deregulated financial system even more dangerous. The risks from the administration’s deregulatory campaign are far greater than the sum of their deregulatory components, since the impacts of removing guardrails and oversight are compounded by each new part of the deregulatory agenda. The addition of lightly regulated stablecoin issuers would make the likelihood and severity of a systemic financial crisis even greater.

The proposal’s weak capital requirements exemplify the pitfalls of a tailoring approach.

The proposed rule’s capital requirements are insufficient to create and maintain adequately capitalized stablecoin issuers. The proposed rule generally mirrors the capital requirements for uninsured trust banks and other chartered financial institutions, but it contains many caveats and loopholes that mean the effective capital requirements will be far lower.

The proposal allows issuers to adjust their capital levels to account for their risk profile. And the rule nominally recommends that new issuers be subject to de novo charter conditions for a three year period (subject to a waiver).²² But despite these gestures towards consistency with modest bank capital requirements and conditions, the proposed rule includes loopholes that undercut these standards and ultimately establishes capital requirements that are insufficient for stablecoin issuers to absorb losses that could threaten the issuer’s solvency. And the rule fails to consider key aspects of stablecoin business models as they exist today, which present real risks that demand more rigorous and concrete capital reserve requirements.

For example, the rule notes that while current OCC rules for national banks and federal savings associations adjust minimum ratios of each tier of bank capital to manage the loss absorption of that capital, the OCC believes a similar structure is unnecessary for stablecoin issuers “based on their

²¹ [GENIUS Act](#) §4(a)(4)(A)(i).

²² [91 Fed. Reg. 40](#) at 10238 to 10241.

variety of business models.”²³ This alludes to the fact that stablecoin issuers under the GENIUS Act are not allowed to engage in some traditional banking activities, such as lending, which presumably means they aren’t exposed to risk associated with these activities.²⁴ However, stablecoin issuers today do engage in a wide variety of risky investment and business activities that warrant robust capital requirements.

Tether recently disclosed an investment portfolio of \$20 billion, presumably funded by excess profit from its reserves. This includes \$600 million of investments in crypto start-ups this year, and \$1.4 billion in non-crypto start-ups, including robotics, high tech mattresses, and a European professional soccer club. Circle Ventures, the investment arm of Circle Financial, has made well over a hundred venture capital investments.²⁵ Paxos, a smaller but growing issuer, has established a similar venture capital arm, Paxos Ventures.²⁶

The investment strategies of stablecoin issuers are widely understood to follow the venture capital-style investments favored by Silicon Valley. Silicon Valley venture capital funds make big bets on many experimental businesses; investors assume that most will fail but hope that a few may generate outsized returns and help compensate for losses. Additionally, the crypto industry has a long history of interlocking investment and business relationships with each other and with Silicon Valley venture capital firms. For example, token issuers invest in blockchain infrastructure projects, while crypto platforms invest in decentralized app developers. The risk of this interconnectedness was amply demonstrated by the 2022 crypto market crash.²⁷ Many major venture capital firms that focused on crypto and crypto-related enterprises lost considerable amounts in that crash. And, recent crypto market volatility has contributed as much as \$22 billion in losses to crypto venture capital firms this year.²⁸ The GENIUS Act is intended to promote the issuance of stablecoins that would generate excess revenue and capital for stablecoin issuers to invest. There is little reason to think issuers will not continue to pursue this risky and interconnected investment strategy.

The primary uses for stablecoins are in trading, liquidity, and lending on crypto platforms, including decentralized platforms, which present a unique risk vector to the stability of stablecoin issuers. Bank capital is invested in a range of asset classes, each with their own risk profile. That profile stems both from the risk associated with the asset and the market exposures. The capital requirements for banks are structured accordingly. In contrast, stablecoin issuers under the GENIUS Act will be exposed to both risks from the traditional financial sector — including risks associated with their reserve assets, their custodians, cybersecurity, and more — as well as risks associated with crypto markets and the volatile venture capital sector.

The operational risks of stablecoins and other crypto-assets are manifold, complex, and poorly understood. For example, crypto users and platforms are beset with hacks on a nearly daily basis,

²³ [91 Fed. Reg. 40](#) at 10239.

²⁴ [GENIUS Act](#) §4(a)(7). Stablecoin issuers may only issue stablecoins, redeem stablecoins, manage reserves, and provide custodial services for stablecoins.

²⁵ Messari Company Profiles. “[Circle Ventures](#).”

²⁶ Crunchbase Company Profiles. “[Paxos Ventures](#).”

²⁷ Nicolle, Emily, Olga Kharif, and Stacey-Marie Ishmael. “[All The Ways That Crypto Broke In 2022](#).” *Bloomberg*. December 22, 2022. “What 2022 showed, more than once, is that the digital asset industry ecosystem is significantly more interconnected and concentrated than even its biggest participants might have realized.”

²⁸ “[Tier-1 VCs Face \\$22 billion Losses as Crypto Valuations Plummet](#).” *Phemex News*. April 23, 2026.

with billions lost each year.²⁹ Stablecoins are often the target of such thefts, given their utility relative to other more volatile crypto assets — as evidenced by the recent hack by North Korean actors of the Drift protocol, where \$285 million in value (much of it in USDC stablecoins) was stolen.³⁰ Additionally, some exploits seek to manipulate markets by taking advantage of pricing anomalies on crypto exchanges, including stablecoin pricing. For example, the Ethena stablecoin USDe lost its peg on Binance during the October 2025 crypto market crash due to several still contested factors, ranging from problems with Binance’s pricing oracle to potential manipulation by outsiders.³¹

The OCC should recognize the potency of these unique risks and establish more demanding and robust capital requirements for stablecoin issuers exposed to these risks. However, the proposed rule’s tailoring-informed approach will not achieve the necessary balance, opting instead for a much more permissive and hazardous approach that underweights the risks issuers might be exposed to while overemphasizing an issuer’s reserve asset content and composition as both justification and substitution for more robust capital requirements necessary to prevent instability or failure.

III. The proposed rule does not set forth adequate criteria for approving charters for federally qualified payment stablecoin issuers.

The proposed rule fails to establish adequate standards or processes for approving charters for federally qualified stablecoin issuers that pose undue risks to stablecoin holders and the financial system. Section 15.30(c) of the OCC’s proposed rule, 12 C.F.R. § 15.30(c), prescribes criteria for approving Federal qualified payment stablecoin issuers. Those criteria are far weaker than the standards governing banks that apply for federal deposit insurance. Under proposed § 15.30(c), the only “review factors” that the OCC could consider would be (1) the ability of the applicant, “based on financial condition and resources, to meet the requirements for issuing payment stablecoins under subpart B” of the OCC’s proposed rules, (2) whether any director or officer of the applicant has been convicted of a specified felony offense, (3) the “competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant” and its affiliates, and (4) whether “the applicant’s redemption policy meets the standards under § 15.12.”

In contrast, the Federal Deposit Insurance Act (FDI Act) sets forth a far more demanding set of criteria that govern applications for federal deposit insurance. Under the FDI Act, the FDIC must consider seven factors in deciding whether to approve an application by a depository institution for federal deposit insurance: (i) the institution’s financial history and condition, (ii) the adequacy of the institution’s capital structure, (iii) the institution’s future earnings prospects, (iv) the character and fitness of the institution’s management, (v) the risks that the institution would pose to the Deposit Insurance Fund, (vi) the convenience and needs of the community to be served by the institution, and (vii) the consistency of the institution’s corporate powers with the purposes of the FDI Act.³²

²⁹ Hays, Mark. “[Decoding DeFi: Breaking Down the Future of Decentralized Finance](#).” Testimony before the Subcommittee on Digital Assets, Financial Technology, and Inclusion. Committee on Financial Services. U.S. House of Representatives. September 10, 2024.

³⁰ TRM Labs. “[North Korean Hackers Attack Drift Protocol In USD 285 Million Heist](#).” Insights. April 2, 2026.

³¹ Singh, OS. “[Did USDe Really Depeg? The Truth Behind Binance's \\$0.65 Crash Explained](#).” *Crypto Citizens Network*. October 15, 2025.

³² 12 U.S.C. § 1816.

As discussed in Sections I and II, the OCC's proposed capital, liquidity, and redemption standards for federal qualified payment stablecoin issuers are inadequate and significantly weaker than the comparable requirements that apply to FDIC-insured banks or SEC-regulated money market funds. The OCC's notice of proposed rulemaking admits that its proposed capital standards for federal qualified payment stablecoin issuers are significantly weaker than the capital requirements governing FDIC-insured national banks and federal savings associations. The comparative weakness of the OCC's proposed capital standards for Federal qualified payment stablecoin issuers is confirmed by the OCC's following statements:

The proposed rule would not require any specific deductions from regulatory capital instruments for permitted payment stablecoin issuers. The OCC's current rules for national banks in 12 CFR part 3 require deductions from capital for goodwill, other intangible assets, and certain other assets such as mortgage servicing assets greater than a specified amount of capital. The OCC's rules require these deductions to implement statutory requirements applicable to insured depository institutions or because the potentially volatile valuation of those assets reduces their ability to absorb losses. While goodwill and other intangible assets may exhibit similar valuation volatility on the balance sheets of permitted payment stablecoin issuers, these risks may be addressed through the backstop requirement and proposed requirements around risk management, capital adequacy assessments, and liquidity....

As proposed, the rule would allow uninsured national trust banks to issue payment stablecoins directly. Currently, uninsured national trust banks are subject to the full requirements of 12 CFR part 3, including risk-based and leverage capital ratios. *However, the capital required under those measures may be significantly in excess of capital that would be required for other types of permitted payment stablecoin issuers under the proposal. In order to establish parity among all types of permitted payment stablecoin issuers, the OCC is proposing to permit uninsured national trust banks that issue stablecoins to elect to follow the proposed capital requirements in part 15 and not calculate or comply with the minimum capital requirements in part 3 (emphasis added).*³³

In addition, the OCC's proposed rules do not include any consideration of (1) the convenience and needs of the community that the applicant stablecoin issuer intends to serve, (2) the potential risks that the applicant's activities would pose to the U.S. financial system, or (3) the consistency of the applicant's corporate powers with the purposes of the FDI Act – namely, (a) to ensure the safety and soundness of FDIC-insured depository institutions, (b) to protect consumers, and (c) to maintain the stability of the U.S. banking system as well as public confidence in the banking system.³⁴ Thus, the OCC's proposed criteria for approving applications for federal qualified payment stablecoin issuers would be far more lenient and dangerous than the FDI Act's standards governing applications for federal deposit insurance. The OCC's proposed lax standards for Federal qualified payment stablecoin issuers are unacceptable because those stablecoin issuers would present serious

³³ [91 Fed. Reg. 40](#) at 10239, 10244.

³⁴ The FDIC describes its institutional mission as follows (Fed. Deposit Ins. Corp., "What We Do," <https://www.fdic.gov/about/what-we-do>): "The mission of the Federal Deposit Insurance Corporation (FDIC) is to maintain stability and public confidence in the nation's financial system. In support of this goal, the FDIC: [Insures deposits](#), [Examines and supervises financial institutions](#) for safety and soundness and consumer protection, and [Resolves failed banks](#)."

potential risks to U.S. financial and economic stability that are comparable to – and likely greater than – the risks posed by many FDIC-insured depository institutions.

The OCC’s proposed rules, like the GENIUS Act, do not provide any specific criteria governing the approval of State qualified payment stablecoin issuers by state regulators.³⁵ The GENIUS Act requires only that a state issuing charters for stablecoin issuers must adopt a regulatory framework for state qualified payment stablecoin issuers that is “substantially similar” to the OCC’s regime for federal qualified payment stablecoin issuers.³⁶ Neither the GENIUS Act nor the OCC’s proposed rules provide any specific standards for determining whether a state’s regulatory framework would be sufficiently robust to satisfy the prescribed “substantially similar” test. In the absence of any federally-specified criteria governing the chartering of state qualified payment stablecoin issuers, legislators and regulators in some states are likely to establish hazardous and excessively lenient standards for approving such stablecoin issuers, thereby imposing unacceptable risks on consumers, our financial system, and U.S. taxpayers.

IV. The proposed rules lack adequate standards for bringing enforcement actions against federal and state qualified payment stablecoin issuers.

The OCC’s proposed rules, like the GENIUS Act, would provide state qualified payment stablecoin issuers with a general exemption from federal supervision, examination, and enforcement.³⁷ Under the GENIUS Act, state regulators have plenary “supervisory, examination, and enforcement authority” over state qualified payment stablecoin issuers.³⁸ The Federal Reserve Board does not have any authority to supervise or examine a state qualified payment stablecoin issuer, or to exercise general enforcement powers over such an issuer, unless the applicable state regulator agrees in writing to delegate such authority to the Fed.³⁹ The GENIUS Act does not include any provision authorizing state regulators to delegate their supervisory and enforcement authority over state qualified nonbank payment stablecoin issuers to the OCC. Thus, the Fed and the OCC would not have authority in non-emergency situations to examine, supervise, or take enforcement actions against state qualified payment stablecoin issuers unless the responsible state regulator agreed to allow the Fed to exercise such authority.

Under the GENIUS Act and the OCC’s proposed rules, the OCC would have only a narrowly limited emergency power to take enforcement actions against a state qualified payment stablecoin issuer that is a nonbank entity.⁴⁰ The OCC could exercise that emergency enforcement authority only (i) “in unusual and exigent circumstances,” (ii) after providing at least “48 hours’ prior written notice to the applicable State payment stablecoin regulator,” and (iii) after the OCC determines that

³⁵ See proposed 12 C.F.R. § 15.15.

³⁶ 12 U.S.C. § 5903(c)(1).

³⁷ See 12 U.S.C. § 5906(a).

³⁸ *Id.* §§ 5906(a)–(d).

³⁹ *Id.* § 5906(b).

⁴⁰ *Id.* § 5906(e); see proposed 12 C.F.R. § 15.16.

“the continuation by a State qualified payment stablecoin issuer of any activity constitutes a serious risk to the financial safety, soundness, or stability of [that] issuer.”⁴¹

The OCC’s proposed rules would define “unusual and exigent circumstances” to include an existing or imminently expected activity by a state qualified nonbank stablecoin issuer “that poses an immediate risk to the financial safety, soundness, or stability of the issuer or the financial system of the United States.” The OCC’s proposed rules would require the OCC to consider the risks posed by that activity to stablecoin holders as well as any remedial actions that have been taken by the responsible state regulator.⁴²

Even in a dangerous and urgent situation, the OCC would be required to provide at least “48 hours’ prior written notice to the applicable State . . . regulator” before the OCC could issue any emergency enforcement order against a state qualified nonbank stablecoin issuer.⁴³ Such a narrowly confined and untimely federal enforcement power would be completely inadequate and ineffective to address dangers arising out of instant stablecoin transactions and other real-time financial technologies, which greatly accelerate the speed and magnify the potential impact of financial disruptions. For example, Circle’s stablecoin USDC depegged within 24 hours after SVB was taken into receivership.⁴⁴

The OCC Does Not Have Authority to Allow National Trust Banks to Issue Stablecoins.

The OCC’s proposed rules would treat national trust banks as uninsured national banks and would recognize the eligibility of national trust banks to become federal qualified payment stablecoin issuers.⁴⁵ For the following reasons, the OCC does not have any authority to permit national trust banks to issue stablecoins:

- (1) Under 12 U.S.C. §§ 27(a) and 92a, national trust banks are authorized solely to act in federally-recognized “fiduciary capacities” and to engage in permissible “ancillary” activities (e.g., managing, maintaining, and preserving assets held in fiduciary capacities) that are necessary or appropriate for national trust banks to fulfill their fiduciary responsibilities;
- (2) Under 12 U.S.C. §§ 27(a) and 92a, national trust banks do not have authority to issue stablecoins or to engage in any other nonfiduciary activities, regardless of whether competing state-chartered trust companies would be allowed to engage in such activities under state law;
- (3) Under 12 U.S.C. § 35, the OCC must require a national trust bank that has converted from a state-chartered trust company to cease issuing stablecoins and to cease engaging

⁴¹ 12 U.S.C. § 5906(e)(1)(A) & (C), (e)(2)(A) & (C); proposed 12 C.F.R. § 15.16.

⁴² Proposed 12 C.F.R. § 15.16(c).

⁴³ 12 U.S.C. § 5906(e)(1)(A).

⁴⁴ Du, Chuan, Ria Sonawane, and Cy Watsky. Federal Reserve Board. “[In the Shadow of Bank Runs: Lessons from the Silicon Valley Bank Failure and Its Impact on Stablecoins.](#)” *FEDS Notes*. December 17, 2025.

⁴⁵ 91 Fed. Reg. at 10207 n.27, 10243, 10244, 10271; Proposed 12 C.F.R. § 15.41(d).

in any other nonconforming activities that were conducted by its state-chartered predecessor; and

- (4) The issuance of stablecoins by national trust banks would constitute illegal deposit-taking in violation of 12 U.S.C. §§ 92a(d) and 378(a)(2).⁴⁶

The OCC's previous charter approvals allowing national trust banks to issue stablecoins and engage in other crypto-related nonfiduciary activities are unlawful and invalid for the foregoing reasons. Accordingly, the OCC (i) must promptly rescind all charter approvals and other orders permitting national trust banks to issue stablecoins and engage in other crypto-related nonfiduciary activities, (ii) must not issue any further approvals or orders granting such permission; and (iii) must clarify in its final stablecoin rules that national trust banks are *not* eligible to become federal qualified payment stablecoin issuers.

V. The GENIUS Act lacks adequate consumer and investor protections, and the proposed rule fails to address these concerns.

The GENIUS Act's supporters promised to include statutory language that would obligate stablecoin issuers to properly custody their reserve assets, protect customers' assets, and provide them with timely and reasonable access to redemption on demand. The legislation's supporters understood that they needed to meaningfully address these longstanding problems in the crypto industry in order to create a solid framework to enable stablecoins to be used as a reliable and secure means of payment. However, the statutory language fell far short of what was needed, especially in addressing shortcomings in the custody of customers' stablecoins and associated asset reserves and the redemption rights of stablecoin holders.

The GENIUS Act's final language fails to include enforceable standards for timely redemption and reasonable redemption fees. Additionally, the Act allows issuers far too much leeway with regard to the custody of consumer and reserve assets — in particular, allowing the commingling of funds in omnibus accounts in ways that issuers could exploit and that could complicate timely redemption of stablecoins or customer resolution in the event an issuer becomes insolvent. The rule provides some nominal clarity or specificity on these issues but leaves open significant questions, and fails to provide concrete assurances for customers, undermining the real or perceived stability of these crypto assets.

The proposed rule's redemption guidelines fail to protect customers and only aim to manage runs, not mitigate or prevent them.

The GENIUS Act requires permitted stablecoin issuers to publicly disclose their redemption policies to customers.⁴⁷ Such disclosures include procedures for redemption of outstanding issued stablecoins and all fees associated with both purchasing and redeeming issued coins. The statute establishes redemption policy disclosure as the minimum standard for issuers, but places no limits

⁴⁶ See Arthur E. Wilmarth, Jr., "Policy Brief: The OCC Has Violated Four Federal Statutes by Allowing National Trust Banks to Engage in Crypto-Related Nonfiduciary Activities, including the Issuance of Stablecoins" (forthcoming).

⁴⁷ [GENIUS Act](#) §4(a)(1)(B).

on the time frame for redemption or the scope of fees issuers could impose for redemption.⁴⁸ The resulting gaps allow stablecoin issuers to set redemption timelines and fees that are onerous or unreasonable for most consumers, undermining the efficacy, utility, and stability of stablecoins for customers.

The OCC's proposed rule does propose a maximum redemption timeline of no more than two business days for issuers,⁴⁹ which is nominally an improvement on the language in the statute. However, the proposed rule also provides that redemption timelines would be extended for longer periods, up to seven calendar days, if an issuer receives redemption requests that exceed 10 percent of the value of their issued stablecoins in a single 24-hour period.⁵⁰

The rule's logic is that requiring an issuer to be able to redeem all outstanding coins in demand could, under circumstances where the liquidity of an issuer's reserves are in question, precipitate or exacerbate a de-pegging event. Whereas, if an issuer could demonstrate its ability to meet a threshold of initial redemption demands immediately, while promising to meet future redemption requests in the near future, that would buy time to free up more reserves. Stablecoin customers could hold redemption requests that could further devalue the stablecoin, knowing their requests would still be honored on a longer timeline with less fear of devaluation.

The logic used here is not invalid, but it optimistically assumes that a) the conditions leading to a large-scale redemption request would not make it difficult or impossible for an issuer to sell off reserve assets to meet redemption requests in a timely way even within the 7 day period, and b) that an issuer, knowing that their actual redemption obligations for outstanding coins are lower than stated in statute, would not be incentivized to take on more risk by locking up more reserves in less liquid, higher yield producing instruments, prior to a run on redemptions. Those more likely outcomes could mean that accumulating demand for redemptions would increase the risk of de-pegging that could be unmet by liquid reserves.

Lastly, the tension between a two-day maximum redemption period and a non-discretionary seven calendar day extension period if the 10 percent redemption request threshold is exceeded could create confusion for stablecoin holders. Customers who could not redeem their stablecoins within two days would realize that the emergency redemption extension meant that the issuer of their stablecoin was facing financial stress, which would add to the redemption demand and run risk. In addition, there appear to be gaps in the clarity of the process (which the OCC states should be "fair and transparent,"⁵¹ but not necessarily, for example, sequential) outlined in the rule for determining how outstanding redemption requests will be honored after the first 24 hour period.

The rule requires issuers to notify the OCC within 24 hours if it believes redemption requests will exceed the stated 10 percent threshold within a 24 hour period. Upon notification, the OCC is directed to work with the issuer to facilitate an orderly liquidation of reserve assets. Additionally, an issuer cannot honor outstanding redemption requests beyond the 10 percent threshold *sooner than* the

⁴⁸ 12 USC § 5903(a)(1)(B)(i).

⁴⁹ [91 Fed. Reg. 40](#) at 10220. Proposed § 15.12(b)(1)(i).

⁵⁰ [91 Fed. Reg. 40](#) at 10220. Proposed § 15.12(c)(1).

⁵¹ [91 Fed. Reg. 40](#) at 10220.

seven day extension period unless the OCC has determined the issuer “has the ability to redeem sooner in an orderly fashion and through a fair and transparent process.”⁵²

While this language seems intent on giving the OCC flexibility and authority to intervene to ensure a large-scale redemption doesn’t give rise to greater financial instability, it does not give holders much clarity or confidence. What constitutes a fair and transparent process? Is that solely determined by the issuer and the OCC, or do other stakeholders have an opportunity to weigh in? If a holder has made an outstanding request for redemption above the ten percent threshold, at what point during the seven day period can they expect to receive their redemption? Are issuers meant to spread out their subsequent redemptions evenly over the course of that seven day period, or release funds as they become available, regardless of exactly when during that period? What order could redemptions be processed? The proposed rule would allow issuers to redeem stablecoins in almost any order, including prioritizing the customers with the largest redemption requests. That could disadvantage customers that made smaller but earlier redemption requests who might receive less for their holdings during a de-pegging event.

While some of these questions reasonably must be informed by real-time conditions during a redemption event, the vagueness of this language does not support efforts to ensure timely redemptions. The OCC could strengthen this part of the rule by providing more detail about what they generally believe constitutes a fair, transparent, and orderly redemption process, and by providing greater clarity on how they envision redemptions to be processed and allocated during an extended seven day window and after that extension has been lifted.

Nonetheless, while this structured gating of the redemption process is meant to inhibit the possibility of runs, historically gating in money market mutual funds has demonstrated the opposite effect. SEC reforms adopted in 2014 required money market mutual funds to create redemption gates to ease redemption pressure and run risk during periods of market stress.⁵³ But, a Government Accountability Office (GAO) study subsequently determined that the redemption gates did not prevent large-scale MMMF redemptions during the market contractions precipitated by the Covid-19 pandemic, and may have instead incentivized investors to accelerate withdrawals to avoid gating or fees.⁵⁴ Given the demonstrated ineffectiveness of redemption gates for MMMFs, it is only reasonable to assume that the OCC’s seven-day redemption gate is designed to give federal regulators time to arrange an ad hoc bailout to prevent the collapse of a systemically important stablecoin issuer.

The proposed rule also acknowledges its redemption requirements apply “only to the redemption of a payment stablecoin by the permitted payment stablecoin issuer (and any entity acting on behalf of the permitted payment stablecoin issuer) and would not apply to secondary market trading.”⁵⁵ That statement at least suggests, and may be read to confirm, that stablecoin holders who purchase stablecoins on secondary markets, instead of directly from an issuer, would not have a claim to redeem a coin directly from that issuer. To date, most stablecoins, including stablecoins that will be

⁵² [91 Fed. Reg. 40](#) at 10220. Proposed § 15.12(c)(3).

⁵³ [Aronoff and Narula, et al.](#)

⁵⁴ Government Accountability Office. “[Money Market Mutual Funds: Pandemic Revealed Unresolved Vulnerabilities.](#)” GAO-23-105525. February 2023.

⁵⁵ [91 Fed. Reg. 40](#) at 10221.

treated as payment stablecoins under the GENIUS Act, have been used to purchase other crypto tokens or digital assets. As such, many stablecoins, following their issuance, are immediately used on crypto exchanges to purchase other cryptocurrencies, for staking, or similar secondary market activity.⁵⁶ If the redemption requirements only apply to stablecoins purchased directly from the issuer, the vast majority of stablecoin holders will not be covered by the proposed rule's redemption requirements.

Currently, many stablecoin holders cannot directly redeem stablecoins directly with issuers. For example, as of 2025, Circle's terms of service states that "Only Users Type A can redeem USDC directly with Circle. For Users Type A, your ability to redeem 1 USD with us for each USDC is conditional on (i) your possession of a corresponding amount of USDC associated with a registered Circle Mint account."⁵⁷ Circle's Mint account holders are generally institutional investors who are engaged in high volume activity that choose to meet Circle's account requirements. Retail holders of USDC stablecoins who are not Type A Circle Mint account holders cannot redeem their coins directly with Circle but must instead rely on selling the coins to intermediaries like exchanges, where asset prices for stablecoins fluctuate.⁵⁸

This restriction on redemption appears to apply even to Coinbase customers, despite the close relationship between Circle and Coinbase. Coinbase's terms of service state that, "You may elect to buy USD Coin ("USDC") from Coinbase, a Digital Asset issued by Circle Internet Financial ("Circle") and supported by Coinbase. You are the owner of the balance of your USDC Wallet. Coinbase is not the issuer of USDC, does not hold reserves for USDC, and *has no obligation to repurchase your USDC for USD*. You can redeem your USDC with Circle, and Coinbase may also elect to repurchase your USDC in exchange for USD" (emphasis added).⁵⁹

Tether appears to have even more onerous terms and conditions for redemptions. For example, Tether's current redemption policy states that it will only accept redemption requests from users with a verified Tether.io account and will only honor redemption requests starting at a minimum level of USDT equivalent to \$100,000 USD.⁶⁰

Presumably, the redemption disclosure policies contained in the proposed rule would require stablecoin issuers to disclose such conditions and limits on redemption. However, since the GENIUS Act and the proposed rule evidently limit an issuer's obligations to stablecoin holders who have directly purchased stablecoins from the issuer and continue to custody their coins with that issuer, large numbers of stablecoin holders who purchase or hold their stablecoins with other custodians or on secondary platforms or exchanges will not be able to directly benefit from the issuer's redemption obligations under the proposed rule. This stands in contrast to repeated claims by supporters of the GENIUS Act that the legislation would establish strong consumer protection rules for stablecoin holders in general.

⁵⁶ Question 4 obliquely refers to this problem, asking if the definition of customer should "expressly include only persons with direct interactions with a permitted payment stablecoin issuer." [91 Fed. Reg. 40](#) at 10251.

⁵⁷ Circle. "[USDC Terms](#)" - Number 13 "Claim on Funds." December 12, 2025.

⁵⁸ "[1:1 Redemptions for Some, Not All](#)." *MIT Digital Currency Initiative Blog*, July 15, 2025.

⁵⁹ Coinbase. "[Coinbase User Agreement](#)." Individual Agreement, 2.10. "USDC Wallets." April 20, 2026.

⁶⁰ Tether. "[How to redeem Tether tokens to fiat currency](#)."

The absence of robust redemption requirements in the proposed rules will mean that market conditions affecting a stablecoin's price on secondary markets will have much greater influence on the stability of the price peg for an issued stablecoin, regardless of the quality of its reserves — given that most holders seeking to redeem their stablecoins will be forced to rely on secondary markets. Thus, by failing to provide strong redemption guarantees for all stablecoins holders, the proposed rule will make the stability of stablecoins vulnerable to disruptions occurring on crypto exchanges and other secondary market trading venues.

Lastly, the rule's inadequate attempt to address possible redemption bottlenecks demonstrate the crucial importance of establishing a credible insurance fund for stablecoins, which would remove the need for stablecoin holders to rely solely or primarily on the adequacy of stablecoin reserves and the liquidity of secondary trading markets to satisfy their redemption requests. As the Federal Deposit Insurance Fund has demonstrated, insured retail depositors are much less likely to seek to redeem their deposits en masse when banks face severe problems, thereby making bank runs less likely to occur and less contagious, giving unstable banks and their regulators more options for remedy or resolution.

The OCC's proposed rule fails to address the GENIUS Act's relative silence on fee policies and caps.

The GENIUS Act said nothing about limits or conditions on fees levied by issuers for purchasing or redeeming stablecoins. The law only states that issuers shall “publicly disclose the issuer's redemption policy, which shall...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.”⁶¹

The GENIUS Act effectively allows stablecoin issuers to impose any transaction fee structure they choose for redeeming their stablecoins. The Act and the proposed rule do not establish reasonable transaction fee limits to avoid creating a de facto barrier to consumers to redeem their stablecoins. Theoretically, a stablecoin issuer could sell stablecoins without any fees but impose a 100 percent redemption fee and still be in full compliance with the GENIUS Act and the proposed rule. That result would destroy the GENIUS Act's premise that stablecoins are meant to be easily redeemable on demand by their holders, and that issuers must establish policies and procedures for timely redemption. Additionally, as in other quarters of finance, costly fees associated with accessing financial products or services can disproportionately impact lower-income and Black, Latine, and Indigenous communities, hindering access to fair and affordable financial services.⁶²

Today, stablecoin holders face a set of costs associated with redeeming stablecoins on at least three fronts: on-ramp/off-ramp fees, network transaction fees (which are often variable), or direct redemption fees for institutional customers. While these fees are sometimes similar to or lower than those found in traditional finance, costs can vary widely, and the use of stablecoin technology does not guarantee low or no fees. As the authors of a recent Federal Reserve paper noted:

⁶¹ [12 USC § 5903 \(a\)\(1\)\(B\)\(ii\)](#).

⁶² Devito, Emily. Roosevelt Institute. [“The Business of Bank Fees: How Public Alternatives Can Ensure Equitable Economic Participation.”](#) June 5, 2024.

While a payment stablecoin may eliminate some costs associated with cross-border payments, it does not eliminate all costs. In our example, the small Mexican bank still depends on the service of the large Mexican bank to unload foreign exchange risk. In addition, while the ‘on-chain’ cost—cost for sending or receiving payment stablecoins between entities that already hold stablecoins—is likely to be small, there may be greater ‘on-ramp’ and ‘off-ramp’ costs associated with exchanging payment stablecoins for fiat currency. Overall, these caveats show that a successful adoption of payment stablecoins for cross-border payment is not guaranteed at all. *It depends on the pricing of services by stablecoin issuers, which will be driven by regulation and technology, among other things* (emphasis added).⁶³

Despite the foregoing concerns, the OCC’s proposed rule adds little clarity or guidance regarding how issuers can or should levy fees. The rule restates the statute’s requirements that policies regarding fees must be “publicly, clearly, and conspicuously disclosed in plain language.”⁶⁴ The rule also states issuers must update their disclosures if they elect to change fees associated with the purchase or redemption of an issued stablecoin and must give customers at least seven calendar days prior notice of such change. It clarifies that levying fees associated with redemption are part of the enumerated activities authorized by the statute.⁶⁵ And the rule acknowledges the need for payment of network fees (often called gas fees) by way of allowing issuers to pay such fees to facilitate customer transactions and allowing issuers to hold non-payment stablecoin crypto assets to facilitate payment of such fees. The proposed rule also states that if an issuer’s payment stablecoin operates on a blockchain that assesses transaction fees, the issuer “may choose to pay transaction fees on behalf of the customer” but says nothing about the ability of issuers to pass that cost on to their customers.⁶⁶

Finally, the OCC’s notice of proposed rulemaking includes Question 104: “Are there limitations that the OCC should impose on redemption fees, e.g., to discourage run risk or to encourage price stability?”⁶⁷ Plainly, this is an open ended question better suited for an advance notice of proposed rulemaking. It suggests that the agency has either not done sufficient research to make a more targeted policy recommendation regarding fee structures and models for stablecoin issuer and redemption or believes that such determinations should be left largely to the market. And, given the GENIUS Act’s and the proposed rule’s silence on the application of Electronic Fund Transfer Act and other consumer financial protection laws to payment stablecoin users (discussed in Section VI), the proposed rule’s lack of specificity about fee limits and structures raises concerns that unscrupulous stablecoin issuers will have abundant leeway to charge customers unreasonable and unconscionable fees for redemption.

Because stablecoins are purportedly designed to resemble and function similarly to bank demand deposits, it is worth noting that most banks do not charge their account holders fees at their branches or ATMs for access to their demand deposits. Accordingly, we strongly recommend that

⁶³ Kim, Kyungmin, et al. “[Payment Stablecoins and Cross Border Payments: Benefits and Implications for Monetary Policy Implementation](#).” *FEDS Notes*. March 30, 2026

⁶⁴ [91 Fed. Reg. 40](#) at 10273.

⁶⁵ *Id.* at 10273.

⁶⁶ [91 Fed. Reg. 40](#) at 10211.

⁶⁷ [91 Fed. Reg. 40](#) at 10259.

the OCC amend the proposed rule to require stablecoin issuers to provide all holders of their stablecoins with the ability to redeem their stablecoins up to a certain amount either (i) without any fee, or (ii) for a reasonable fee, which should be charged on a cost recovery basis only, to preclude issuers from using redemption fees as a profit center for their business. Crypto industry advocates have long claimed that their products serve the public interest by disrupting the high costs of traditional finance, such as fees associated with banking. The OCC's implementation of the GENIUS Act should require the industry to make their public interest claims operational.

The proposal's guidance on customer asset custody, segregation, and commingling of funds is vague, generating uncertainty and excessive leeway for stablecoin issuers and their custodians.

The GENIUS Act allows a permitted stablecoin issuer to commingle their own reserves, customer funds, issued stablecoins, cash, and other property in an omnibus account at a state chartered depository institution, insured depository institution, national bank, or trust company. The Act does not require issuers to deposit all their customers' funds in federally insured deposit accounts at FDIC insured banks. It also does not require the issuer to maintain current and accurate records identifying which customers own which portions of the funds that are commingled in these accounts, including recordkeeping procedures that would determine whether a customer's combined funds in such accounts would or would not qualify for deposit insurance coverage under FDIC pass-through deposit insurance rules. The OCC rule's proposed language on asset custodial requirements makes a nod to filling these gaps but falls short and introduces uncertainty regarding custodian's obligations regarding asset segregation versus the use of omnibus accounts.

The proposed rule intends to "implement certain minimum principles-based requirements ...[for]custodial and safekeeping services for covered assets."⁶⁸ Principles-based requirements allow issuers to meet the purported intent of the rule without aligning to specific requirements. Principles-based systems can often lead to ambiguity, which in the words of two scholars, "leads to social costs, the level of which is influenced by regulatory competition. Regulatory competition leads to a race to the bottom effect, which is more harmful under the principles based systems."⁶⁹ Principles-based approaches can encourage regulatory evasion and arbitrage due to a reliance on broad based regulatory approaches rather than prescriptive or proscriptive measures.

The rule's treatment of custody, including the use of omnibus accounts, illustrates the potential for such uncertainty. Under the proposed rule, custodians of covered assets (which include reserve assets, issued stablecoins, other non-issued crypto-assets, as well cash and other instruments) must "separately account for the covered assets of each covered customer and must treat and deal with those covered assets as belonging to such covered customer and not as the property of the covered custodian." The rule then provides that, in order to achieve this separate accounting and segregation, custodians must adopt, implement, and maintain written policies, procedures and internal controls to comply with the law, commensurate with the custodian's profile and those of the assets it holds.⁷⁰

⁶⁸ [91 Fed. Reg. 40](#) at 10230.

⁶⁹ Frantz, Pascal, and Norvald Instefjord. "[Rules vs Principles Based Financial Regulation](#)." London School of Economics. November 25, 2014.

⁷⁰ [91 Fed. Reg. 40](#) at 10230.

The proposed rule states that custodians should take steps that the OCC would “typically expect a supervised institution to take as a part of sound custodial practices,” and refers to custodial rules, including the segregation of customer funds, that apply to national banks and federal savings associations.⁷¹ The proposed rule gives custodians great latitude in determining that their policies and procedures are “adequate to comply with applicable law” and are “commensurate with the covered custodian’s size, complexity, and risk.”⁷²

The proposed rule would prohibit the commingling of customer assets with the custodian’s assets but allows the use of omnibus accounts for customers’ funds. The rule states that custodians shall “segregate all covered assets of covered customers and not commingle them with the assets of the covered custodian.”⁷³ But the proposal allows “any covered custodian to commingle the covered assets of multiple covered customers in one or more omnibus accounts” if such commingling meets the custodian’s own assessment of it has adequate and commensurate policies that are “adequate to maintain safe and sound practices for the use of omnibus accounts, and to the extent that the use of omnibus accounts is consistent with applicable law.”⁷⁴

The proposed rule allows custodians to determine whether they are in compliance with applicable law and appropriate to their size and risk. But the rule does not establish any specific benchmarks or metrics to ensure that custodians’ internal policies, procedures, and internal controls are sufficient to protect each customer’s covered assets. Thus, the proposed rule does not prioritize the specific goal of protecting the assets of each *customer* and instead allows principles-based omnibus accounts as long as the custodian believes it can “maintain safe and sound practices for the use of omnibus accounts, and to the extent that the use of omnibus accounts is consistent with applicable law.”⁷⁵ Custodians under other regulatory regimes, such as the SEC’s rules governing securities broker-dealers and registered investment advisers, must comply with much stronger standards in safeguarding and accounting for their customers’ funds, transactions, and redemptions.⁷⁶ The OCC’s proposed rule clearly lacks the necessary standards, oversight, and enforcement to hold custodians of assets invested by stablecoin holders accountable to their customers.

Custody is a critical node in the crypto industry's architecture. It is well known that poor custody practices contributed to the loss, theft, or misuse of customer funds by many crypto exchanges that subsequently failed or faced civil or criminal charges in 2022, and beyond. Custody is a critical issue in traditional financial markets as well. Indeed, a 2023 SEC staff bulletin warned broker-dealers acting as custodians for traditional financial instruments of “the various risks arising from illicit activities associated with transactions in low-priced securities through omnibus accounts.”⁷⁷

⁷¹ [91 Fed. Reg. 40](#) at 10231.

⁷² § 15.21(b). [91 Fed. Reg. 40](#) at 10295.

⁷³ *Id.* at 10231.

⁷⁴ 10231, *Id.*

⁷⁵ § 15.22.(b). [91 Fed. Reg. 40](#) at 10296.

⁷⁶ 17 C.F.R. §§ 240.15c3-3 & 275.206(4)-2 (SEC regulations governing securities broker-dealers and investment advisers who act as custodians for their customers’ assets).

⁷⁷ Staff Bulletin. “[Risks Associated with Omnibus Accounts Transacting in Low-Priced Securities.](#)” *Securities and Exchange Commission*. October 17, 2023

The question of the scope of use for omnibus accounts is very significant in terms of investor and customer protection. The crypto industry has established a weak, inadequate, and deeply tarnished industry practice of failing to protect customers' assets in omnibus accounts and commingling customers' assets with the assets of crypto firms and trading platforms. According to one industry service provider, omnibus accounts are "commonly used by cryptocurrency exchanges and service providers to streamline operations and reduce costs" and generally speaking, "with omnibus accounts [for crypto assets] all user assets, including Bitcoin, are pooled together without strict segregation."⁷⁸ Crypto firms pool assets not only to reduce costs, but also to provide "enhanced liquidity," that gives the firms more "opportunities for trading and investment activities."⁷⁹ As we have seen in many past crypto firm scandals, including the collapse of Celsius, Voyager Digital, and FTX, crypto industry practices related to omnibus accounts have often exploited customer assets for the custodian's unlawful gain.

Despite the demonstrated risks of crypto omnibus accounts, the OCC's proposed rule is too permissive with respect to asset custody, segregation, and the use of omnibus accounts. The rule should establish specific and enforceable custodial requirements that provide robust protections for customer assets. The stablecoin model eschews traditional banking business models and regulations (such as deposit insurance, more comprehensive supervision, and other standards) in favor of reliance on reserve assets, disclosure, and other measures. In addition to proper maintenance of reserves assets, stablecoin holders must be assured of the timely redemption of their outstanding stablecoins on reasonable terms and the proper custody of both customers' asset and reserve assets. The OCC's proposed rule does not provide adequate oversight and standards to ensure either goal, and instead essentially relies on the good intentions of issuers, a very risky premise for both stablecoin holders and broader financial markets in light of the crypto industry's dark record of improper management and unauthorized exploitation of customer assets and customer trust.

VI. The proposed rule does not address the critical applicability of the Consumer Financial Protection Act and other federal consumer financial laws to federally qualified payment stablecoin issuers.

The OCC's notice of proposed rulemaking does not include any mention of (i) the Consumer Financial Protection Bureau (CFPB), (ii) the Consumer Financial Protection Act (CFP Act),⁸⁰ (iii) the "enumerated" federal consumer protection statutes, including the Electronic Fund Transfer Act (EFT Act),⁸¹ which are part of the "Federal consumer financial law" incorporated in the CFP Act,⁸² or (iv) the CFPB's authority to administer and enforce those statutes with respect to stablecoin transactions involving consumers.⁸³

⁷⁸ Blog. "[Omnibus vs segregated accounts in digital asset management](#)." Fortris. Undated.

⁷⁹ Fortris, *Ibid*.

⁸⁰ Pub. L. No. 111-203, tit. X, 124 Stat. 1955 (2010).

⁸¹ 15 U.S.C. § 1693-1693r.

⁸² 12 U.S.C. §§ 5481(12), (14) (listing the "enumerated consumer laws," including the EFT Act, which are part of the "Federal consumer financial law" incorporated in the CFP Act).

⁸³ *See* 12 U.S.C. §§ 5491(a) & 5492(a) (establishing the CFPB and authorizing the CFPB to administer and enforce "Federal consumer financial law").

The OCC's failure to make any reference to the CFPB's administrative, supervisory, and enforcement authorities under the foregoing statutes represents a serious and inexcusable dereliction of the agency's duty to ensure appropriate protection for consumers. In fact, the OCC's notice of proposed rulemaking acknowledges that (1) "consumer protection-related compliance risk management" is a matter of significant potential concern for permitted payment stablecoin issuers,⁸⁴ and (2) fraudulent acts related to stablecoins – including the "potential for . . . fraudulent tokens to harm consumers" – create major concerns for consumers as well as the integrity of our payments system.⁸⁵

The OCC's notice of proposed rulemaking could not properly avoid the urgent issues related to the application of federal consumer financial law — including the CFP Act and the "enumerated" federal consumer protection statutes, as well as the CFPB's administrative, supervisory and enforcement authorities — to payment stablecoins and the issuers of stablecoins. The GENIUS Act fails to address the same issues, as it contains only the following "Rule of Construction" in 12 U.S.C. § 5905(c): "Nothing in this Act may be construed to modify or otherwise affect any right or remedy under any Federal consumer financial law, including 12 U.S.C. 5515 and 15 U.S.C. 41 et seq."

Section 5905(c) states that the GENIUS Act does not "modify or affect any right or remedy under any Federal consumer financial law." However, § 5905(c) and the OCC's notice of proposed rulemaking do not expressly state that "Federal consumer financial law," including the EFT Act, applies to stablecoins.⁸⁶ Despite the GENIUS Act's relative silence, there are compelling reasons to conclude that a purchase or redemption of a stablecoin by a "consumer"⁸⁷ should be treated as a "consumer financial product or service" subject to the CFP Act as well as the CFPB's authorities thereunder.

The CFP Act would presumably apply to purchases, transfers, and redemptions of stablecoins by consumers because those transactions would involve the transmission of funds, the issuance and sale of payment instruments, and the provision and receipt of payment services connected to those payment instruments.⁸⁸ The same types of transactions would also presumably constitute "electronic fund transfers" governed by the EFT Act.⁸⁹ Accordingly, the CFP Act, the EFT Act, and the CFPB's authorities to administer and enforce those statutes, as well as other provisions of "Federal consumer financial law," should apply to stablecoin transactions involving consumers.⁹⁰ The OCC must adopt a rule that recognizes and explains the respective roles of the CFP Act, the EFT Act, other "Federal consumer financial law," and the CFPB in regulating transactions involving payment stablecoins.

⁸⁴ Question 120, 91 Fed. Reg. 40 at 10260

⁸⁵ Question 210, 91 Fed. Reg. 40 at 10268.

⁸⁶ The GENIUS Act, in 12 U.S.C. § 5905(c), refers only to the CFPB's authority to supervise large depository institutions under 12 U.S.C. § 5515 and the Federal Trade Commission's authorities under the Federal Trade Commission Act, 15 U.S.C. §§ 41-77.

⁸⁷ See 12 U.S.C. § 5481(4) (defining "consumer").

⁸⁸ 12 U.S.C. §§ 5481(5), (15)(a)(iv), (15)(a)(vii) & (18).

⁸⁹ 15 U.S.C. § 1693a(7).

⁹⁰ 12 U.S.C. §§ 5491(a), 5492(a), 5511.

VII. The proposed rule does not address crucial questions regarding the applicability of state consumer protection laws to federally qualified payment stablecoin issuers.

The OCC’s notice of proposed rulemaking does not include any proposed regulations to implement what the OCC describes as “self-executing provisions . . . addressing the applicability of State law to permitted payment stablecoin issuers.”⁹¹ The OCC refers to § 4(b)(1) of the GENIUS Act, 12 U.S.C. § 5903(b)(1), which — in the OCC’s view — gives the agency “exclusive authority to exercise visitorial powers with respect to Federal qualified payment stablecoin issuers” and also “preempts certain State laws with respect to Federal qualified payment stablecoin issuers.”⁹² The OCC also refers to § 5(h) of the GENIUS Act, which — according to the OCC — preempts “any State requirement for a charter, license, or other authorization to do business” affecting a federal qualified payment stablecoin issuer or a subsidiary of an OCC-regulated insured depository institution that the OCC has approved as a permitted payment stablecoin issuer.⁹³

Apart from identifying state laws dealing with chartering, licensing, registration, authorization to do business, and other “visitorial powers,” the OCC’s notice of proposed rulemaking does not contain any description or analysis of specific types or categories of state laws that the OCC believes would be preempted with respect to uninsured national banks and other federal qualified payment stablecoin issuers. Most significantly, the OCC’s truncated and woefully inadequate discussion of preemption issues does not include any analysis of 12 U.S.C. § 25b. Section 25b compels the OCC to satisfy demanding substantive and procedural requirements whenever the OCC seeks to preempt the application of state consumer financial laws to national banks. Section 25b clearly applies to uninsured national banks that are federal qualified stablecoin issuers.

Under § 25b(b)(1)(B), a nondiscriminatory state consumer financial law is preempted “only if” that law “prevents or significantly interferes with” the exercise by a national bank of its federally-granted powers. The OCC must comply with demanding procedural requirements before the OCC can make a determination, by rule or order, that a state consumer financial protection law is preempted with regard to a national bank. Sections 25b(b)(1)(B) and (b)(3) require the OCC to act on a “case-by-case” basis in deciding whether to issue an order or rule preempting a state consumer financial protection law. The “case-by-case” mandate requires the OCC to consider “the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms,” and the OCC must consult with the CFPB before concluding that multiple state consumer financial laws are preempted by a federal law. The OCC has repeatedly violated § 25b’s requirements in the past,⁹⁴ and it must not commit further violations of § 25b with regard to uninsured national banks that are stablecoin issuers. During oral argument in *Cantero v. Bank of Am., N.A.*,⁹⁵ Justice Gorsuch strongly criticized the OCC for failing

⁹¹ 91 Fed. Reg. 40 at 10203.

⁹² 91 Fed. Reg. 40 at 10203 to 10204.

⁹³ *Ibid.* at 10204.

⁹⁴ See Wilmarth, Arthur E., Jr. “[Policy Brief: The OCC’s Unlawful Proposal to Preempt State Interest-on-Escrow Laws Reveals That the Agency’s Ultimate Goal Is to Revive Its Illegal De Facto Field Preemption Regime for National Banks.](#)” *Geo. Wash. U. Law Sch. Leg. Stud. Rsrch. Paper*, No. 2026-17. February 20, 2026 (describing the OCC’s repeated violations of § 25b’s substantive and procedural requirements for preemption determinations).

⁹⁵ 602 U.S. 205 (2024).

to bring its preemption rules into compliance with § 25b, and he asked the Deputy Solicitor General, “[I]s the OCC ever going to get around to doing that which Dodd-Frank directs it to do?”⁹⁶

The OCC may not issue a preemption rule or order under § 25b(b)(1)(B) unless the OCC provides “substantial evidence, made on the record of the proceeding,” which supports the OCC’s conclusion that a state consumer financial law “prevents or significantly interferes” with the exercise by a national bank of a federally-granted power. The OCC’s notice of proposed rulemaking does not explain how the OCC will comply with § 25b’s substantive and procedural requirements for preemption determinations affecting uninsured national banks that are stablecoin issuers. Section 25b’s requirements apply to all national banks, including uninsured national banks that are federal qualified payment stablecoin issuers.

In *Cantero*, the Supreme Court held that the OCC or a court must follow a detailed, fact-based methodology when it applies the governing “prevents or significantly interferes” preemption standard – a standard that § 25b(b)(1)(B) incorporated from the Supreme Court’s decision in *Barnett Bank of Marion County, N.A. v. Nelson*.⁹⁷ The methodology prescribed by the Supreme Court in *Cantero* requires (i) “a practical assessment of the nature and degree of the interference” caused by a challenged state consumer financial protection law with the exercise of a national bank power, and (ii) a “nuanced comparative analysis” of the challenged state law, which must “carefully account for” that law’s similarities or differences with the state laws that were preempted, or not preempted, in *Barnett Bank* and six other Supreme Court decisions identified in *Cantero*.⁹⁸ The OCC’s notice of proposed rulemaking does not explain how the OCC will apply *Cantero*’s required methodology for evaluating preemption claims related to uninsured national banks that are Federal qualified payment stablecoin issuers.

The OCC’s notice of proposed rulemaking recognizes that “Section 7(f)(4) of the GENIUS Act (12 U.S.C. 5906(f)(4)) provides that nothing in the GENIUS Act preempts State consumer protection laws.” The OCC’s notice does not explain how the OCC will analyze preemption claims involving federal qualified payment stablecoin issuers, in view of the GENIUS Act’s express preservation of state consumer protection laws in § 7(f)(4), “including common law, and the remedies thereunder.” In addition, the OCC’s proposal does not explain how the agency intends to apply the controlling judicial principle that “consumer protection law is a field traditionally regulated by the states, [and] compelling evidence of an intention to preempt [by Congress] is required in this area.”⁹⁹

The OCC must address these crucial issues in its final rulemaking.

⁹⁶ [Transcript of Oral Argument in *Cantero v. Bank of Am., N.A.*, No. 22-529](#) (U.S., Feb. 27, 2024), at 51-54 (quote at 54).

⁹⁷ 517 U.S. 25, 33 (1996).

⁹⁸ 602 U.S. at 219-21.

⁹⁹ *N.Y. State Telecomm. Ass’n v. James*, 101 F.4th 135, 148 (2d Cir. 2024) (quoting *General Motors Corp. v. Abrams*, 897 F.2d 34, 41–42 (2d Cir. 1990)); *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1191 (9th Cir.) (same), *cert. denied*, 139 S. Ct. 567 (2018); see also *In re Aurora Dairy Corp. Organic Milk Marketing & Sales Practices Litigation*, 621 F.3d 781, 794 (8th Cir. 2010) (quoting first portion of the quoted sentence from *Abrams*); *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (“In all pre-emption cases, and particularly in those in which Congress has legislated . . . in a field which the States have traditionally occupied, . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.”) (Internal quotation marks and citations omitted); *Lewis v. BT Inv. Mgrs.*, 447 U.S. 27, 38 (1980) (“[B]anking and related financial activities are of profound local concern. . . . [S]ound financial institutions and honest financial practices are essential to the health of any State’s economy and to the well-being of its people. Thus, it is not surprising that ever since the early days of our Republic, the States have chartered banks and have actively regulated their activities.”).

VIII. The GENIUS Act relies on an unworkable approach to resolve failed stablecoin issuers under the bankruptcy code. The OCC’s Proposed Rule fails to address those problems or the OCC’s receivership rules for resolving uninsured national banks.

Section 11 of the GENIUS Act relies on the Bankruptcy Code to resolve failed permitted payment stablecoin issuers.¹⁰⁰ Under Section 11(a), holders of stablecoins issued by a bankrupt issuer have “priority . . . over the claims of the permitted payment stablecoin issuer and any other holder of claims against the permitted payment stablecoin issuer, with respect to required payment stablecoin reserves.”¹⁰¹ Section 11 also creates an exemption from the Bankruptcy Code’s automatic stay provision.¹⁰² Under that exemption, a bankruptcy court has authority to order an accelerated “redemption of payment stablecoins” issued by a failed stablecoin issuer if the court determines that “there are payment stablecoin reserves available for distribution on a ratable basis to similarly situated payment stablecoin holders.”¹⁰³

The GENIUS Act’s bankruptcy regime for failed stablecoin issuers creates significant uncertainties and imposes substantial costs on stablecoin holders. As Dan Awrey, Howell Jackson, and Timothy Massad explained, shortly before Congress passed the GENIUS Act:

[T]he process of lifting the [Bankruptcy Code’s] automatic stay requires a party in interest—most likely a stablecoin holder—to incur the legal and other costs of making an application to the [bankruptcy] court. As the recent bankruptcy of the financial technology service provider Synapse vividly illustrates, these costs can be significant—especially in the context of complex and contested bankruptcy proceedings.¹⁰⁴

Bankruptcy proceedings for large nonbank financial companies are costly, cumbersome, and prolonged. The bankruptcy proceeding for Lehman Brothers lasted more than fourteen years and generated over \$7 billion of expenses.¹⁰⁵ The bankruptcy proceeding for FTX, which was called a “model case” by the bankruptcy judge, lasted for over two years and produced almost \$1 billion of expenses.¹⁰⁶ The bankruptcy proceeding for Synapse began in April 2024, was dismissed in November 2025, and left many claimants without full reimbursement for the funds they lost when Synapse failed.¹⁰⁷ As former Assistant Secretary for Financial Institutions Graham Steele observed,

¹⁰⁰ Pub. L. No. 119-27, § 11, 139 Stat. 457 (2025).

¹⁰¹ *Id.* § 11(a)(1); *see also id.* § 11(d)(2), 139 Stat. 458 (giving the unpaid redemption claims of stablecoin holders “first priority over any other claim”).

¹⁰² *Id.* § 11(c), 139 Stat. 457.

¹⁰³ *Id.*

¹⁰⁴ Awrey Dan, Howell E. Jackson & Timothy G. Massad. “[Stable Foundations: Toward a Robust and Bipartisan Approach to Stablecoin Legislation](#).” (A-4). *Harv. Pub. L. Rsrch. Paper No. 25-19, Cornell L. Sch. Rsrch. Paper No. 25-12*. August 6, 2025.

¹⁰⁵ “[Lehman Brothers Inc.’s 14-Year Liquidation Successfully Concludes](#),” Sec. Inv. Protection Corp. (Sep. 28, 2022); Levine, Matt. “[Lehman Brothers Bankruptcy Keeps Getting More Expensive](#),” *Bloomberg*, Jan. 19, 2019.

¹⁰⁶ Randles, Jonathan & Stephen Church, “[FTX CEO Who Led ‘Model’ Bankruptcy Is Up for \\$41 Million Bonus](#),” *Bloomberg*, March 3, 2025.

¹⁰⁷ Penny Crosman, “Synapse bankruptcy dismissed, CFPB may start paying victims,” *American Banker*, Nov. 14, 2025. Available on Westlaw 2025 WLNR 30084176; *see also* Penny Crosman, “CFPB to refund \$46 million to Synapse victims,” *American Banker*, Dec. 22, 2025. available on Westlaw at 2025 WLNR 34180394 (reporting that the CFPB planned to reimburse Synapse victims for \$46 million of their losses, but their total losses were estimated to be \$60 to \$90 million).

“the slow-moving bankruptcy claims process is not the right resolution regime for entities [like stablecoin issuers] that issue money-like claims that people expect to be able to redeem at par, on demand.”¹⁰⁸

The “priority” provisions in § 11 of the GENIUS Act are designed to give stablecoin holders priority over other unsecured creditors of a bankrupt stablecoin issuer.¹⁰⁹ However, stablecoin holders would almost certainly have their claims subordinated to the claims presented by (i) secured creditors, (ii) creditors who have “super priority” status, such as counterparties under securities repurchase agreements, (iii) the bankruptcy trustee for administrative costs, and (iv) providers of debtor-in-possession financing for the bankrupt stablecoin issuer. “Super priority” creditors would not be subject to the Bankruptcy Code’s automatic stay and could enforce their claims immediately.¹¹⁰ Adam Levitin has warned that, despite the GENIUS Act’s “priority” provisions, the claims of stablecoin holders would probably have only *fifth priority* in a bankruptcy proceeding following the failure of a stablecoin issuer.¹¹¹

In addition, as Awrey, Jackson, and Massad have cautioned, the “direct and indirect costs” and “legal uncertainty” caused by a bankruptcy proceeding would almost certainly trigger panicked runs by stablecoin holders whenever they have reason to believe that the issuers of their stablecoins could become insolvent:

In the shadow of these costs, stablecoin holders are more likely to engage in destabilizing run-like behavior that could itself increase both the probability of bankruptcy and the resulting harm to those holders who are unable to sell or redeem their holdings prior to the commencement of the bankruptcy process. In turn, these runs can potentially spread contagion to other financial institutions, platforms, and markets.¹¹²

The OCC’s notice of proposed rulemaking does not address any of the foregoing problems created by the GENIUS Act’s profoundly misguided reliance on bankruptcy to resolve failures of stablecoin issuers. Remarkably, the OCC’s notice contains only three minor references to the potential risks created by the insolvency or bankruptcy of a permitted payment stablecoin issuer.¹¹³ In addition, the OCC’s notice of proposed rulemaking includes only one question related to Section 11 of the GENIUS Act:

¹⁰⁸ Steele, Graham. [“Neither Stable Nor Genius: The Misguided Legislative Attempt to Regulate Stablecoins.”](#) *Briefing Book*. March 31, 2025.

¹⁰⁹ Pub. L. No. 119-27, § 11, 139 Stat. 457 (2025).

¹¹⁰ Awrey, Dan. *Beyond Banks: Technology, Regulation, and the Future of Money* 17–19, 158–83 (2024); Levitin, Adam J. “Not Your Keys, Not Your Coins: Unpriced Credit Risk in Cryptocurrency,” 101 *Texas Law Review* 877, 902–04, 931–35 (2023); Yadav, Yesha & Robert J. Stark, “The Bankruptcy Court as Crypto Regulator,” 96 *Southern California Law Review* 1479, 1510–44 (2024).

¹¹¹ Levitin, Adam J. [“Sorry to Break It to You Geniuses: Under the GENIUS Act the Holders of Stablecoins Actually Have FIFTH Priority in an Issuer Bankruptcy.”](#) *Credit Slips*. Dec. 2, 2025.

¹¹² Awrey, Jackson & Massad, *supra* note 315, at A-5; *see also* Born & Johnson, *supra* note 537 (“Utilizing the bankruptcy code for failed stablecoin issuers will inevitably impose severe costs on consumers, like prolonged delays in receiving what’s left of their money, and would likely further exacerbate runs on other stablecoin issuers.”).

¹¹³ 91 Fed. Reg. 40 at 10253 and 10265.

Question 207: Should the OCC adopt any new rules or change any existing rules to implement the insolvency provisions of the GENIUS Act? Should the OCC require permitted payment stablecoin issuers to establish resolution plans?¹¹⁴

The OCC did not address the foregoing issues – a failure that confirms the absence of any plan by the OCC to deal with the unworkable nature of bankruptcy as a method for resolving failures of stablecoin issuers. There is an additional major problem with bankruptcy that the OCC has not acknowledged. In 2016, when the OCC adopted a regulation to establish receiverships following failures of uninsured national banks, the OCC admitted that the National Bank Act’s provisions governing receiverships for failed national banks are *not* congruent with the Federal Bankruptcy Code.¹¹⁵ Hence, Section 11 of the GENIUS Act could well prove to be unviable for dealing with failures of stablecoin issuers that are uninsured national banks, due to unresolved conflicts between the Bankruptcy Code and the National Bank Act’s receivership provisions.

XI. The GENIUS Act Sets the Stage for a federal government bailout of stablecoin issuers to forestall systemic crises. The OCC’s proposed rule fails to address those systemic risks.

The GENIUS Act does not provide any source of federal funding to support pre- or post-insolvency resolutions of troubled stablecoin issuers. Payment stablecoins issued by permitted payment stablecoin issuers are not guaranteed by the federal government and are not protected by federal deposit insurance.¹¹⁶ In addition, it is highly unlikely that uninsured national banks that issue stablecoins would be eligible to receive loans from the Fed’s discount window because uninsured national banks are not “depository institutions.”¹¹⁷ The OCC’s recent charter approvals for uninsured national trust banks that intend to issue stablecoins require those trust banks to avoid being treated as “banks” under §§ 2(c)(1) & (2) of the Bank Holding Company Act (“BHC Act”), 12 U.S.C. §§ 1841(c)(1) & (2).¹¹⁸ To avoid being treated as a “bank” under § 2(c)(2)(D) of the BHC Act, a national trust bank must not “exercise discount or borrowing privileges pursuant to [12 U.S.C. § 461(b)(7)].” Thus, uninsured national trust banks that are stablecoin issuers – unlawful institutions as shown in Part IV – would almost certainly lack access to discount window loans from the Fed.

In the absence of any external source of federal support, threatened failures of large nonbank stablecoin issuers would likely ignite widespread runs on stablecoins and other types of uninsured, short-term financial claims, including uninsured bank deposits, money market funds, repos, and

¹¹⁴ 91 Fed. Reg. 40 at 10268.

¹¹⁵ OCC, “Receiverships for Uninsured National Banks: Final rule,” 81 Fed. 92954 (Dec. 20, 2016) (codified at 12 C.F.R. § 51); *see id.* at 92957 n.14 (“The OCC is not aware of any opinion of a U.S. Bankruptcy Court, or any other U.S. court, finding that an uninsured national bank is eligible to be a debtor subject to a petition under the Code.”); *id.* at 92598 (“[T]he receivership regime established by the NBA differs somewhat from the approach set out in other resolution regimes, such as the bankruptcy provisions of the United States Code and the receivership provisions of the FDIA.”).

¹¹⁶ 12 U.S.C. § 5903(e).

¹¹⁷ *See* 12 C.F.R. § 201.1 (authorizing the Fed to provide discount window loans to “depository institutions” pursuant to 12 U.S.C. § 347b); *see also* 12 C.F.R. § 201.2(c)(1) (indicating that uninsured national bank stablecoin issuers would not be eligible to receive Fed discount window loans because those issuers would not satisfy the definition of “depository institutions”).

¹¹⁸ *See, e.g.*, OCC Conditional Approval No. 1358 (Dec. 22, 2025) (Paxos Trust Company, Nat’l Ass’n), at 7, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2026/ca1358.pdf>.

short-term commercial paper.¹¹⁹ To prevent runs on uninsured nonbank stablecoins from precipitating a systemic financial crisis, the Fed and the Treasury Department would probably feel compelled to provide emergency loans, capital infusions, and financial guarantees to support nonbank stablecoin issuers as well as issuers of other types of uninsured, short-term financial claims. The Fed and the Treasury provided such emergency support for money market funds, commercial paper, and repos in both 2008 and 2020.¹²⁰ During both crises, the Fed exercised its authority to provide loans to nonbank financial institutions in “unusual and exigent circumstances” under Section 13(3) of the Federal Reserve Act,¹²¹ while the Treasury Department relied on the Exchange Stabilization Fund to provide financial guarantees for the Fed’s loans.¹²²

The Fed cannot issue emergency loans under § 13(3)(A) of the Federal Reserve Act unless those loans are “secured to the satisfaction” of the Fed. Assuming that an uninsured national bank stablecoin issuer became insolvent — which would be a near-certainty in the case of a stablecoin issuer that could not satisfy redemption demands in a timely manner — how could the issuer possibly provide adequate security for emergency Fed loans under § 13(3)(A)? The obvious answer, as we witnessed in 2008 and 2020, is that the federal government would be compelled to provide capital infusions or financial guarantees — i.e., bailouts — to enable the Fed to exercise its emergency lending authority under § 13(3).

As discussed above in Part I, the federal government has already approved its first bailout of a payment stablecoin issuer. In March 2023, the world’s second largest stablecoin — Circle’s USDC — lost its peg to the dollar, and its market value fell as low as \$0.87, after Silicon Valley Bank failed in March 2023. At the time of SVB’s downfall, Circle held \$3.3 billion of uninsured deposits at SVB, representing about 7 percent of USDC’s total reserves. SVB’s failure triggered a panicked run by USDC’s holders. USDC recovered its \$1 peg only after federal regulators invoked the “systemic risk exception” in the FDI Act to rescue (bail out) SVB’s uninsured depositors, including Circle, which was the largest uninsured depositor at SVB when the bank failed.¹²³ The lessons from the bailouts of 2008, 2020, and 2023 are crystal clear. Whenever the federal government permits uninsured nonbanks to issue “runnable” short-term financial claims, federal authorities will almost certainly be forced to rescue those “private money” claims by arranging bailouts to prevent investor runs from causing systemic financial crises. The GENIUS Act and the OCC’s proposed rules ignore the lessons of past financial crises by authorizing uninsured nonbanks to issue stablecoins, which represent “runnable,” money-like, short-term financial claims.¹²⁴

¹¹⁹ Wilmarth, Arthur E., Jr. “[The Looming Threat of Uninsured Nonbank Stablecoins](#).” 50 *Delaware Journal of Corporate Law* 3, 121. December 5, 2025) (hereinafter Wilmarth, *Looming Threat*)

¹²⁰ *Id.* at 9-10, 34-37, 52-58, 69-70, 86-94, 104-05, 121-22.

¹²¹ 12 U.S.C. § 343(3).

¹²² 12 U.S.C. § 343(3); see also Bd. of Governors of the Fed. Res. Sys., *The Fed Explained: What the Central Bank Does* 39, 54 (2021) (describing the Fed’s authority to establish emergency loan programs with “broad-based eligibility” to support nondepository institutions under § 13(3)); Milstein, Eric & David Wessel. “[What Did The Fed Do In Response to The COVID-19 Crisis?](#)” *Brookings*. Jan. 2, 2024 (describing the Fed’s emergency loans and the Treasury’s financial guarantees from the Exchange Stabilization Fund that supported MMMFs, commercial paper, and repos during the crises of 2008 and 2020).

¹²³ Wilmarth, *Looming Threat*, *supra* note 114, at 30-35, 89-90, 104-05; see also Wilmarth, Arthur E., Jr., “[We Must Protect Investors and Our Banking System from the Crypto Industry](#).” 101 *Washington University Law Review* 235, 278-90. (September 17, 2023 (discussing the failures in March 2023 of SVB and Signature Bank (another crypto-focused bank) and the decisions by federal regulators to invoke the “systemic risk exception” in the FDI Act to protect uninsured depositors at both banks, including Circle).

¹²⁴ Wilmarth, *Looming Threat*, *supra* note 114, at 122.

The GENIUS Act placed the federal government’s seal of approval on uninsured nonbank stablecoins, and investors will therefore expect the federal government to protect those stablecoins during future systemic crises, just as (i) the federal government rescued money market funds, repos, and commercial paper during the global financial crisis of 2008 and the pandemic financial crisis of 2020, and (ii) federal regulators invoked the “systemic risk exception” to protect Circle’s uninsured deposits at SVB, thereby stopping a disastrous run on Circle’s USDC stablecoins, during the Spring 2023 regional banking panic. As Adam Levitin correctly pointed out, “[t]he GENIUS Act creates an implicit government guaranty of stablecoins,” and the GENIUS Act will inevitably produce federal bailouts during future systemic crises involving stablecoins:

By creating a regulatory regime for stablecoins, the federal government will “own” any problem that arises in the market. And here’s the pernicious operation of its ineffective insolvency provisions: they promise to have created safety for stablecoin investors at no cost, but because it cannot deliver on that promise, it sets up a situation where the government has to deliver safety otherwise, on its own dime. In other words, it sets up a bailout. When there is another crypto crash and stablecoin owners realize that [they’re] going to incur major losses, they will come crying for a bailout, noting how critical stablecoins are for the whole DeFi world and how they thought their investments were safe because of the GENIUS Act.¹²⁵

As shown above, the OCC’s proposed rules do nothing to address the systemic risks created by uninsured stablecoins. Accordingly, the OCC’s failures to take necessary remedial actions will greatly increase the likelihood of federal bailouts during future systemic stablecoin crises.

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The OCC’s proposed rule fails to establish an effective and robust framework to protect consumers, investors, and our financial system from the risks and threats posed by stablecoins. The future costs of the proposed rule’s inexcusable shortcomings will be high, with devastating consequences for consumers, investors, and our financial system. The GENIUS Act’s woefully inadequate regulatory framework for licensing and issuing stablecoins has created a hazardous new category of “money-like,” quasi-deposit financial instruments without the vitally needed protections provided by federal deposit insurance and the comprehensive prudential regulatory system governing FDIC-insured banks and their corporate owners. The introduction of such exotic, poorly understood, and highly “runnable” financial instruments into our financial markets under the federal government’s imprimatur will likely lead, as history has shown, to systemic financial and economic crises when confidence in such financial instruments falters. The OCC’s proposed rule falls far short of the mark in even identifying the potential risks of payment stablecoins, and the proposed rule does virtually nothing to address their unacceptable systemic dangers.

¹²⁵ Levitin, Adam J. Levitin. “[The GENIUS Act: Insolvency Risk with Stablecoins.](#)” *Credit Slips*. March 2, 2025; Hilary J. Allen & Graham Steele. “[How Congress Can Stop the Looming Crypto Disaster.](#)” *Just Security*. May 7, 2025 (“If a stablecoin loses its peg and panic ensues, it seems inevitable that government authorities would provide emergency financial support—i.e., bailouts—to the [crypto] industry.”); Barry Eichengreen. “[The GENIUS Act Will Bring Economic Chaos.](#)” *New York Times*. June 17, 2025 (“[I]f the value of one or more different stablecoins collapses, panicked investors might rush to redeem their holdings of other tokens. Regulators would feel compelled to step in to prevent the collapse of the payment system.”).