November 4, 2025

U.S. Department of the Treasury
Attention: Office of General Counsel
1500 Pennsylvania Avenue NW
Washington, DC 20220.

Re: GENIUS Act Implementation; RIN 1505 ZA-10; TREAS–DO–2025–0037; 12 CFR Chapter XV, 31 CFR Subtitles A and B (September 19, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the advance notice of proposed rulemaking ("ANPR") which solicits feedback on the implementation of provisions in the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act. There are a host of issues related to financial stability, consumer protection, illicit finance and competition on which the U.S. Department of the Treasury ("Treasury" or "the Department") should consider feedback before proposing regulations.

Introduction

Stablecoins are useful for several functions which happen to have nothing to do with payments for non-crypto goods and services: 1) to provide a waystation of (relative) stability in between volatile crypto trades; 2) for ease-of-use (or illicit activity) across crypto trading platforms, reducing the frictions inherent in trading into, and out of, fiat currency; 3) to function as (relatively) stable collateral for crypto lending arrangements, sometimes using extreme amounts of leverage; and 4) to earn yield by transferring stablecoins to crypto platforms that provide interest on deposits. In short, stablecoins are essential for the functioning of the wider crypto market and remain among the most highly traded assets as a percentage of total volume on many crypto trading platforms.[2]

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] TradingView. "Most Traded Coins." Accessed on October 31, 2025, available at: https://www.tradingview.com/markets/cryptocurrencies/prices-most-traded/

In contrast, stablecoins currently do not exist as a substitute for fiat currency. Recent data from the Federal Reserve found that only 2 percent of Americans used cryptocurrency to buy something or make a payment, and 1 percent used it to send money to friends or family.[3] Even narrowing our consideration to just stablecoins, other data suggests that 88 percent of stablecoin transaction value in 2024 was generated via pairings with another crypto asset in trading, and only 6 percent of transactions were for payments.[4]

The lack of consumer appetite for stablecoin transactions as a payment mechanism makes sense. History is rife with stablecoin depegging events,[5] with substantial loss of value happening as recently as October 2025.[6] Currently, while these depegging events represent a lucrative arbitrage opportunity for the few crypto market-making firms that have the right to directly redeem stablecoins at par with the issuer, they represent material losses for all other consumers, who must access liquidity for their stablecoins by buying or selling on a crypto trading platform.

This risk of loss on stablecoins may be an acceptable gamble for crypto users, who trade in and out of volatile assets and may be habituated to the wild swings of the Bitcoin market. But query whether that risk is acceptable to a convenience store owner evaluating which "money" she should accept at her store during a crypto market crisis. Should she have a currency conversion terminal to manage the real-time exchange rate risk of all the stablecoins her customers may use?

Nonetheless, policymakers have the aspiration to make stablecoins a real-world payment mechanism. It is therefore incumbent on those writing the rules for stablecoin adoption to best mitigate these risks and ensure that if stablecoins emerge as a dominant form of payments in the future, it is due to bona fide competitive advantages and not regulatory arbitrage. Without careful adoption of financial stability, consumer protection, illicit finance and competition safeguards, stablecoins will not only be unfit for payments, but may import risk to the non-crypto financial system, thereby endangering the broader economy.

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[3] Board of Governors of the Federal Reserve System. "Report on the Economic Well-Being of U.S. Households in 2024 - May 2025." June 12, 2025. Available at: https://www.federalreserve.gov/publications/2025-economic-well-being-of-us-households-in-2024-executive-summary.htm

[4] Yue, Francis. "Stablecoin supply is growing fast. Here's how it compares to cash." *Morningstar*, June 11, 2025. Available at: https://www.morningstar.com/news/marketwatch/20250611248/stablecoin-supply-is-growing-fast-heres-how-it-compares-to-cash

[5] Schiffrin, Ben. " Three Questions for Any (Un)Stablecoin Legislation." *Better Markets*, February 26, 2025. Available at: https://bettermarkets.org/wp-content/uploads/2025/02/Stablecoin-FS-02.26.25.pdf?utm_source=openbanker.beehiiv.com&utm_medium=referral&utm_campaign=forget-myths-the-stablecoin-reality

[6] Fischer, Amanda. " Thin Ice: How October's Crypto Rout Exposes Fragilities in Pending Market Structure Legislation." *Better Markets*, October 29, 2025. Available at: https://bettermarkets.org/wp-content/uploads/2025/10/BetterMarkets_Crypto_Rout_Exposes_Fragilities_10-29-2025.pdf

Reserve Requirements and Other Financial Stability Measures

Without access to the Deposit Insurance Fund ("DIF") or central bank liquidity, the quality and liquidity of stablecoin reserves are the only thing that can assure consumers and investors of the ability of stablecoins to function as U.S. dollar substitutes. And even then, lessons from the Great Financial Crisis of 2008 and the COVID-19 pandemic tell us that bank-like products without the full panoply of bank regulations – even those with highly liquid reserves – are subject to runs and bailouts.[7] While policymakers have advanced rulemakings to ensure that government money market funds are more resilient to these dynamics,[8] the fact that government support for credit markets is the only thing that stopped large-scale runs and redemptions in similar products across recent crises does not inspire confidence for the future of stablecoins. The public expectation for bailouts will be all the more acute given that stablecoin issuers market their products as the "future of money" and promise an imminent world in which stablecoins will be used as a reliable method for payments and remittances.[9]

Notwithstanding the inherent fragilities of non-bank instruments representing themselves as "money," there are actions policymakers can take to try and shore up stablecoin stability via reserve asset composition within the framework provided under the GENIUS Act. Several recommendations for several types of allowable reserve assets are below:

- **Uninsured deposits:** The March 2023 crisis in regional banking provided an important lesson about the risk of flight for uninsured deposits.[10] The banks that were affected earliest and most severely during that episode also happened to be banks with the largest exposures to the venture capital and crypto sectors, [11] and the single largest depositor at Silicon Valley Bank was the stablecoin issuer Circle.[12] Policymakers must limit the concentration of reserve assets that can be in the form of uninsured deposits and must limit stablecoin

[7] Basil, Phillip and Stephen Hall. "The Increasing Dangers of the Unregulated 'Shadow Banking' Financial Sector: Money Market Funds." *Better Markets*, August 11, 2022. Available at: https://bettermarkets.org/wp-content/uploads/2022/08/BetterMarkets_Report_Dangers_of_the_Shadow_Banking_MMFs_August2022.pdf

[8] See U.S. Securities and Exchange Commission. "Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A." *Final Rule*, *Federal Register/Vol. 88/No. 148*, August 3, 2023. Available at: https://www.govinfo.gov/content/pkg/FR-2023-08-03/pdf/2023-15124.pdf

[9] Chandhok, Nikhil. "Shaping the Future of Money: Circle's 2024 Milestones and Vision for 2025." *Circle Blog*. Available at: https://www.circle.com/blog/shaping-the-future-of-money

[10] Olesiuk, Shayna. "Two Years After the 2023 Banking Crisis, Main Street is Still in Danger." *Better Markets*, March 4, 2025. Available at: https://bettermarkets.org/wp-content/uploads/2025/03/BetterMarkets_Two_Years_After_2023_Banking_Crisis_Report_03-04-2025.pdf

[11] Kelly, Steven and Jonathan Rose. "Rushing to Judgment and the Banking Crisis of 2023." *Federal Reserve Bank of Chicago Working Paper No. 2025-04*, March 4, 2025. Available at: https://ssrn.com/abstract=5164978

[12] Egan, Matt. "FDIC Accidentally Reveals Details About Silicon Valley Bank's Biggest Customer." *CNN*, June 23, 2025. Available at: https://www.cnn.com/2023/06/23/investing/svb-bank-fdic

issuers' exposures to individual banks. Likewise, banking agencies should monitor banks' exposure to crypto and crypto-related firms given the volatility, interconnections and opacity in that sector. Unfortunately, the recent dissolution of the novel activities supervision program at the Federal Reserve does not inspire confidence in this regard.[13] Finally, the Department should require that monthly reports describing reserve asset composition include the names of the banks where reserve assets are held so that customers can perform due diligence on stablecoin counterparty risk. Consumers deserve the right to evaluate just how safe their "money" is.

- **Money market funds:** Money market funds raise similar stability and concentration risks as uninsured deposits. Policymakers should also limit the concentration of reserve assets in the form of money market fund shares, should limit exposures to individual funds and should also limit investments in bank-sponsored money market funds where the stablecoin issuer also holds uninsured deposits. Likewise, the Department should require monthly reports describing the money market funds in which stablecoin issuers are holding reserve assets.

- **Repurchase agreements:** Despite the relative safety of U.S. Treasury securities as collateral, the overnight Treasury repurchase agreement market (or "repo" market) is not without risks, highlighted by episodes such as the 2014 flash crash in the Treasury market, repo rate spikes in September 2019 and the COVID-19 related repo market dysfunction in March of 2020.[14]

  Recent data suggests that only 37 percent of the dealer repo and reverse repo markets are centrally cleared, and that 48 percent is non-centrally cleared and bilateral repo ("NBCCR").[15] Recent data from the Office of Financial Reserve evidences that a majority of NBCCR transactions have zero haircuts, meaning the cash value lent in the transaction is equal to the securities used as collateral – with no buffer to account for a deterioration in the value of the underlying collateral.[16] Further, repo borrowing in the NBCCR market is

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[13] Board of Governors of the Federal Reserve System. " Federal Reserve Board announces it will sunset its novel activities supervision program and return to monitoring banks' novel activities through the normal supervisory process." *Press Release*, August 15, 2025. Available at: https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250815a.htm

[14] Copeland, Adam, Ellen Correia Golay, and Agata Zhang. "Haircuts in Treasury Repo: A Look at the Non-Centrally Cleared Bilateral Repo Market." *Federal Reserve Bank of New York*, April 8, 2025. Available at: https://tellerwindow.newyorkfed.org/2025/04/08/haircuts-in-treasury-repo-a-look-at-the-non-centrally-cleared-bilateral-repo-market/

[15] U.S. Department of the Treasury. " Developments in Central Clearing in the U.S. Treasury Market." *Treasury Borrowing Advisor Committe*e, February 2025. Available at: https://home.treasury.gov/system/files/221/TBACCharge2Q12025.pdf

[16] *Supra* note 14

highly concentrated in a small number of hedge funds that themselves are highly-leveraged.[17]

When Treasury prices are stable, most repos can roll-over daily without incident. But given the leverage in this market, adverse shocks across the economy can cause rapid, forced unwinds of the trade that cause Treasury bond prices to deteriorate. In order to minimize disruptions to the stablecoin payment system in the event of an adverse Treasury market shock, policymakers should privilege stablecoin issuer-involved repo arrangements involving centrally-cleared Treasury securities as reserve assets. To the extent that policymakers must allow NBCCR transactions to count as reserve assets, stablecoin issuers should be required to abide by policies consistent with the recent Treasury Market Practices Group recommendations.[18] Specifically, recommendations for haircuts (margin) should be adopted. The Department should also continue its broader work to make the Treasuries market more resilient to shocks.

- **Tokenized assets:** Section 4(a)(1)(viii) of the GENIUS Act provides that reserve assets may be held in otherwise allowable assets that take a "tokenized" form. The Department must explain what "tokenized" means in this context given that the term is not defined elsewhere in the GENIUS Act or in law. If we are to understand that "tokenized" means "has the capacity for transactions in the asset to be finalized using distributed ledger technology," then policymakers must do substantial due diligence in identifying which assets on which distributed ledgers can meet the high bar to qualify as reserve assets under the GENIUS Act. Given the unique risks posed by permissionless distributed ledgers, policymakers should consider only qualifying tokenized assets that have redundant settlement mechanisms using traditional, highly-regulated intermediaries. Policymakers should be vigilant about the risk of cybersecurity events and hacks that may compromise reserve assets.

Beyond the composition of reserve assets, regulators must adopt rules to ensure that stablecoin issuers can fulfill their obligations to customers. This includes:

- **Redemption capacity:** Stablecoin issuers must be able to meet redemption demands even in severe market disruptions. That should include supervisory exercises such as stress tests that evaluate firms against several adverse scenarios. Stress tests should incorporate planning for cybersecurity events and hacks, in addition to market events that deteriorate the price of reserve assets.

[17] Banegas, Ayelen and Phillip Monin. "Hedge Fund Treasury Exposures, Repo, and Margining." *Board of Governors of the Federal Reserve System: FEDS Notes*, September 8, 2023. Available at: https://www.federalreserve.gov/econres/notes/feds-notes/hedge-fund-treasury-exposures-repo-and-margining-20230908.html

[18] Federal Reserve Bank of New York. "Treasury Market Practices Group Finalizes its Recommended Best Practices for Treasury Repo Risk Management." *Treasury Market Practices Group*, May 22, 2025. Available at: https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/Treasury-Repurchase-Agreement-Risk-Management-Recommendation-FAQs.pdf

- **Controls on stablecoin "minting:"** Policymakers should also ensure sufficient controls such that stablecoin issuers can only "mint," or authorize the creation of, tokens when they have established that sufficient reserves exist to meet GENIUS Act dollar-for-dollar backing requirements. Recently, the stablecoin issuer Paxos accidentally minted $300 trillion of stablecoins on the Ethereum blockchain.[19] Though Paxos subsequently destroyed those stablecoins, it raises questions about the policies and procedures the firm had in place to only authorize the creation of stablecoins that were backed by sufficient reserve assets. Other, less flagrant errors may go unnoticed – or may be irreversible depending on what wallet address stablecoins are sent to. And Paxos is not alone in their error, with stablecoin issuer Tether previously accidentally minting $5 billion worth of stablecoins and the crypto lending company BlockFi crediting users with Bitcoin instead of a promotional stablecoin, "forcing complicated reversals."[20]

- **Custody:** Both domestic and foreign permitted stablecoin issuers should also be required to hold all reserve assets backing U.S. customers' stablecoins in U.S. financial institutions in order to minimize settlement and liquidity risks.

- **Prohibition on bailouts:** The Department should issue guidance clearly stating that neither the Exchange Stabilization Fund nor any authorities under Section 13(3) of the Federal Reserve Act shall be used, under any circumstances, to guarantee any funds or support any lending to stablecoin issuers, digital asset service providers or stablecoin holders. Without a clear and unequivocal statement during the implementation phase of the GENIUS Act, market participants may come to expect a bailout of their stablecoin activities during a market disruption. While the events of March 2023 involved the invocation of a separate emergency authority, it did create the expectation that stablecoin issuers would be supported in the event of a crypto or banking crisis.[21] Policymakers must act to disabuse the market of such a perception on a going-forward basis in order to ensure market discipline. The Department should also engage in a consumer education campaign and require clear disclosures from stablecoin issuers that stablecoins are not "money," and carry with them a series of risks including risk of loss, theft, hacks, inability to directly redeem, reliance on trading intermediaries for redemption and lack of Federal Deposit Insurance Corporation ("FDIC") protection.

Payment of Interest

Section 4(a)(11) of the GENIUS Act prohibits stablecoin issuers from paying the holder of any payment stablecoin any form of interest or yield (whether in cash, tokens, or other

[19] Nagarajan, Shalini. "Paxos Accidentally Minted $300 Trillion of PayPal's Stablecoin – Then Burned It." *Yahoo! Finance*, October 15, 2025. Available at: https://finance.yahoo.com/news/paxos-accidentally-minted-300-trillion-035711207.html

[20] *Id*

[21] *Supra* note 10

consideration) solely in connection with the holding, use, or retention of such payment stablecoin. The Department should issue regulations clarifying the scope of this prohibition because a number of arrangements currently available in the market appear to sidestep this clear directive from Congress.

GENIUS Act Prohibitions Already Flouted

For example, this summer, payment providers PayPal and Venmo started to offer 3.7 percent annual yield on PayPal stablecoins kept in balances on their platforms.[22] PayPal owns Venmo, so the distinction between where balances are held is of little significance. It appears that the company is offering this product in clear violation of the GENIUS Act, though it represents that the yield arrangement is compliant because the companies frame payments as "rewards" and represents that the "rewards" are decoupled from prevailing interest rates and reserve asset returns.[23] Similarly, users of the Coinbase crypto exchange can earn 4.1 percent annual "rewards" on their USDC stablecoins if they hold that USDC in a Coinbase-hosted wallet.[24] USDC's issuer Circle's Securities and Exchange Commission ("SEC") filings make it clear that they pay a portion of the income on their reserve assets to Coinbase based on the amount of USDC held on Coinbase. To wit, "the greater the proportion of USDC in circulation held on Coinbase's platform, the greater the proportion of reserve income payable to Coinbase."[25] Like the above PayPal example, this seems clearly violative of the intent of the GENIUS Act.

Risks to Competition and the Economy

Without rules restricting affiliate yield-paying arrangements, the Department risks: (1) distorting the original purpose of the GENIUS Act; (2) undermining fair competition in the marketplace; and (3) harming lending to Main Street businesses, particularly loans from community banks.

First, the purpose of the GENIUS Act was to create a framework for *payment stablecoins* – meaning, dollar substitutes that purport to provide for quicker and cheaper settlement costs.[26]

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[22] Macheel, Tanaya. "PayPal Introduces 3.7 Percent Yield on Stablecoin Balances to Boost Payments Activity." *CNBC*, April 23, 2025. Available at: https://www.cnbc.com/2025/04/23/paypal-introduces-3point7percent-yield-on-stablecoin-balances-to-boost-payments-activity.html

[23] "Coinbase and PayPal Sidestep GENIUS Act With Stablecoin Reward Rates." *The Defiant*, August 7, 2025. Available at: https://thedefiant.io/news/regulation/coinbase-paypal-sidestep-genius-act-stablecoin-reward-rates-502d95b1

[24] USDC Rewards Overview. *Coinbase*, available at: https://help.coinbase.com/en/coinbase/coinbase-staking/rewards/usd-coin-rewards-faq

[25] Circle Internet Group, Inc. "Form S-1 Registration Statement Under the Securities Act of 1933." April 1, 2025. Available at: https://www.sec.gov/Archives/edgar/data/1876042/000119312525070481/d737521ds1.htm

[26] See statements from the sponsors of the GENIUS Act upon its introduction, namely, U.S. Senate Committee on Banking, Housing and Urban Affairs. "Scott, Hagerty, Lummis, Gillibrand Introduce Legislation to Establish a

The original idea behind stablecoin issuers was that they would operationalize the concept of "narrow banks" – or institutions that take little to no credit risk but help support a stable payment system. Paying interest on stablecoins – whether directly or through backdoors – is anathema to the original purpose of the legislation as articulated by its authors and supporters.

Second, allowing affiliate yield arrangements risks undermining fair competition. If stablecoin issuers want to pay yield on stablecoins, they are free to either obtain a bank charter that allows them to do so or to register their products as money market funds subject to SEC regulations. The availability of such products is not hypothetical; many SEC-registered products already exist and are available for investors that want to combine the benefits of earning yield and settlement on the blockchain.[27]

Third, deposit flight to stablecoins means less funding is available to the banking system in order to make loans to households and small businesses. When debating the GENIUS Act, the goal sought by policymakers was to bring stablecoins into a regulatory framework, thereby strengthening transparency into reserve asset composition and supporting the Treasury market. It was not to incent deposits to move to the Treasury market at the expense of bank deposits and the lending they facilitate. Allowing yield on stablecoin arrangements will encourage that movement.

It is difficult to estimate the potential effects on deposit flight and declines in bank lending, but one estimate finds that if the stablecoin market surges to $900 billion, we should expect a $325 billion decline in bank lending.[28] This estimate assumes that stablecoins do not pay yield, meaning it likely underestimates the potential negative impact on lending absent policymakers' further limiting yield-bearing arrangements. What's worse, this effect may be worse for community banks, given that they are less likely to offer stablecoin products themselves and that they are more likely to use assets for lending activity rather than for their trading book. The result of unchecked yield-bearing arrangements may therefore be a decline in real investments across the U.S. and especially in neighborhoods served by community banks.

Stablecoin Regulatory Framework." *Press Release*, February 4, 2025. Available at: https://www.banking.senate.gov/newsroom/majority/scott-hagerty-lummis-gillibrand-introduce-legislation-to-establish-a-stablecoin-regulatory-framework

[27] Vardoulakis, Alexandros P., Francesca Carapella, JP Perez-Sangimino, Nathan Swem, and Pablo Azar. "The Emergence of Tokenized Investment Funds and Their Use Cases." *Liberty Street Economics*, September 24, 2025. Available at: https://libertystreeteconomics.newyorkfed.org/2025/09/the-emergence-of-tokenized-investment-funds-and-their-use-cases/

[28] Jacewitz, Stefan A. "Stablecoins Could Increase Treasury Demand, but Only by Reducing Demand for Other Assets." *Federal Reserve Bank of Kansas City*, August 8, 2025. Available at: https://www.kansascityfed.org/research/economic-bulletin/stablecoins-could-increase-treasury-demand-but-only-by-reducing-demand-for-other-assets/

Consumer Protection

If stablecoins are to emerge as a payment mechanism, the regulatory regime must sufficiently protect consumers. First, with regard to redemption policies, both domestic and foreign issuers should be required to publicly disclose the names of parties with the right to redeem stablecoins at par directly with the issuer. Current industry business practice does not allow individual holders of stablecoins to directly exchange their stablecoins for fiat currency. To wit, Circle notes that only it's "Circle Mint" customers are able to redeem USDC stablecoins with Circle and that "Circle Mint is currently available only to institutions, such as exchanges, institutional traders, wallet providers, banks, and consumer apps companies. Circle Mint is not available to individuals."[29] Instead, individuals must rely on crypto exchanges or brokers to convert their stablecoins back into fiat.

By directly naming the parties that have redemption rights, it will empower consumers to understand potential fragilities in the various stablecoins available to them. For example, if a multitude of institutional traders with redemption rights go bankrupt, it may disrupt the arbitrage function that helps keep stablecoin pegs at par and may have downstream effects for consumers that result in them selling stablecoins at a loss.

The Department should also ensure that, if individual holders of stablecoins do not have a direct redemption right, there is at least a robust ecosystem of institutional market makers that can redeem stablecoins in a timely and predictable manner. Delays in processing redemption requests, the imposition of gates and fees, and other mechanisms to defer or delay redemption may be beneficial to stablecoin issuers but may increase instability and price dislocations for the actual end-users of stablecoins.

The Department should also take a leadership role in encouraging the application of a robust consumer payment framework to stablecoin transactions used for the purchase of non-crypto goods and services by consumers, households and businesses. For example, are various types of stablecoin transactions subject to the Electronic Fund Transfer Act ("EFTA")? If so, under what circumstances? What types of remittance transfers via stablecoins are covered by the EFTA? How should dispute resolution and unauthorized transactions be handled by stablecoin issuers? Should stablecoin issuers be required to allow for the reversibility of transactions? Institutional adoption of stablecoins, and consumer trust of stablecoins as a payment product, cannot be established without clear rules of the road for how such transactions should be covered under consumer protection law. In our view, the only way that stablecoins can serve as a durable payment mechanism is if policymakers adopt technology-neutral consumer protection standards that cover the same transactions in the same manner, regardless of the payment rails used to settle the transaction.

[29] *Supra* note 25

Illicit Finance

The GENIUS Act requires stablecoin issuers to have "technical capabilities, policies, and procedures to block, freeze, and reject specific or impermissible transactions that violate Federal or State laws, rules, or regulations."[30] The Department should demand, through clear and enforceable rules, that stablecoin issuers act as soon as is technologically feasible to stop impermissible transactions upon receiving an order from law enforcement. Unfortunately, certain stablecoin issuers have an uneven record in this regard.

For example, the Harmony's Horizon Bridge Exploit happened on June 24, 2022.[31] This hack consisted of $100 million in stolen assets, including $41.2 million in stablecoin USDC. Although several crypto exchanges took action immediately, Circle did not blacklist wallets associated with USDC stolen in this hack until February 2023.[32] In another example, one independent crypto researcher examined funds stolen by the Lazarus Group and found that it took Circle four and a half months longer than three other stablecoin issuers to freeze the stolen funds.[33] He notes, "not once [has Circle] ever blacklisted after a DeFi exploit / hack when there was ample time while you continue to profit off the transactions."[34]

The Department should also make clear that foreign stablecoin regulatory regimes can only meet comparability determinations under the GENIUS Act if the jurisdiction meets all U.S. AML/CFT standards.

Finally, the Department must apply illicit finance rules to all digital asset service providers ("DASPs"), regardless of whether they use the nomenclature of "centralized" or "decentralized." If an intermediary is – for compensation – exchanging, transferring, matching, custodying or otherwise facilitating stablecoin transactions, the Department must cover those platforms. Without doing so, the Department risks promoting the so-called "Tether loophole" that would allow otherwise GENIUS Act non-compliant stablecoins to reach the hands of U.S. customers.

Non-Financial Stablecoin Issuers

The GENIUS Act upends the foundational separation of banking and commerce, which has been in place, albeit with certain exceptions, since the National Bank Act. The Department

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[30] Section 4(a)(5)(iv) of the GENIUS Act

[31] Marzouk, Omar. "Harmony's Horizon Bridge Exploit: A Crypto Money Laundering Case Study." *Blockchain Intelligence Group*, available at: https://blockchaingroup.io/guides/harmonys-horizon-bridge-exploit-a-crypto-money-laundering-case-study/

[32] *Id*

[33] Post on X.com from user @zachxbt. September 24, 2024. Available at: https://x.com/zachxbt/status/1834961148082266323

[34] *Id*

should be extremely judicious in granting licenses to issue stablecoins to any non-financial business given the extreme risks involved in such an endeavor. Specifically, the condition that such a license to issue stablecoins "will not pose a material risk to the safety and soundness of the United States banking system or the financial stability of the United States" should be interpreted to include the serious risks to financial stability, credit availability, the execution of sound monetary policy and competitive distortions created when nonfinancial firms leverage customer private data in the provision of payments. The *likelihood* of the material risk arising should not be a required factor to consider; instead, only the *nature and effect of the material risk*, if it were to arise, should be the guiding factor in these determinations. Policymakers are not omniscient and cannot predict every institution failure, particularly for non-financial companies that are not supervised by a prudential regulator at the parent company level. Therefore, the Department should prioritize a review of the potential harm caused by failure, if the license were granted and the failure were to occur, rather than try and divine how likely a failure may or may not be.

Any guidance or rules issued by the Department should be based on the assumption that such material risks will arise, unless the stablecoin issuer can prove otherwise with clear and convincing evidence. The Department should further include an analysis of a nonfinancial stablecoin issuers potentially drawing deposits away from the banking system and curtailing the provision of lending to the real economy. This should include sector and geographic-specific analyses, with an emphasis on the impact on community banks.

Implementing regulations should also ensure the ability for public comment under the Administrative Procedure Act and a public hearing before any charter for non-financial company stablecoin issuance is granted by the Stablecoin Certification Review Committee.

Conclusion

Robust implementation of the GENIUS Act is necessary for U.S. financial stability, competitiveness, consumer protection, and to guard our economy from illicit finance risks. We appreciate the opportunity to comment on this ANPR and urge the Department to adopt the recommendations included herein.

Sincerely,

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