Regulatory Alert

Regulatory Insights

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GENIUS Act: NCUA Proposal on Payment Stablecoin Issuance by Credit Union-Affiliated Entities

KPMG Regulatory Insights:

Unified Focus: *NCUA proposal aligns with provisions in the proposed FDIC and OCC standards, including reserve requirements, capital, risk management, and custody (as appropriate), as well as the FinCEN/OFAC proposal on BSA/AML/CFT compliance, including a focus on program effectiveness and risk-based supervision.*

De Novo Terms: *NCUA states that it would expect to shorten the de novo period for an entity that has a history of operating a stablecoin business prior to the effective date of the NCUA's final rule or for a PPSI that converts to an NCUA-PPSI charter from another primary Federal payment stablecoin regulator.*

Potential for Change: *Though closely aligned with the GENIUS Act, the NCUA has posed nearly 200 questions (note the FDIC and OCC together posed nearly 350), which could generate significant input from interested parties ahead of a final rulemaking.*

The NCUA has issued a proposal to implement portions of the GENIUS Act as they apply to permitted payment stablecoin issuers (PPSIs) that are subsidiaries of federally insured credit unions (FICUs) according to the requirements of the GENIUS Act (the Guiding and Establishing National Innovation for U.S. Stablecoins Act[1]). This proposal supplements the NCUA's previous proposal (re: investments in and licensing of PPSI[2]) and would govern the issuance of payment stablecoins and certain related activities by entities subject to the NCUA's jurisdiction (hereinafter NCUA-PPSIs). It also makes amendments to address share insurance coverage, tokenized shares, and other conforming and clarifying amendments.

The NCUA's operational and risk management proposal aligns with proposals for Applications/Prudential Frameworks and AML/CFT and Sanctions Compliance[3] from FDIC, OCC, FinCEN, and OFAC and for NCUA-PPSIs includes:

- Standards
- Activities, reserve assets and redemption
- Risk management, supervision, reporting, and audits
- Custody
- Capital and backstop
- BSA/AML/CFT supervision and enforcement
- Enforcement, share insurance, and tokenized shares

[1] Crypto and Digital Assets: Final GENIUS Act and Other Actions

[2] GENIUS Act: FDIC, NCUA, OCC Proposals for Applications, Prudential Frameworks

[3] GENIUS Act: FinCEN/OFAC Proposal on AML/CFT and Sanctions Compliance

NCUA Standards for PPSIs

PPSIs, FICUs and Subsidiaries: The GENIUS Act does not permit FICUs to issue payment stablecoins directly. Instead, FICU subsidiaries may apply to become NCUA-licensed PPSIs. A subsidiary of a FICU would be required to apply jointly with any FICU parent company and provide certifications and leadership information.

Key Defined Terms: NCUA payment stablecoin standards would define terms used throughout the NCUA framework, including “affiliate,” “applying issuer,” “control,” “digital asset,” “distributed ledger,” “eligible financial institution,” “NCUA-licensed PPSI,” “outstanding issuance value,” “parent company,” “payment stablecoin,” “reserve asset,” “share account,” and “subsidiary of an insured credit union.”

Activities, Reserve Assets, and Redemption

As proposed, NCUA-PPSI activities, reserve-asset and redemption components would include:

Topic	Description
Permitted Activities	NCUA-PPSIs would be permitted to issue and redeem payment stablecoins; manage reserve assets; provide custody or safekeeping services for payment stablecoins, reserve assets, and private keys; assess purchasing or redemption fees; hold and transact in payment stablecoin as principal or agent; pay customer transaction fees; and engage in directly supportive activities.
Prohibited Activities	NCUA-PPSIs would be prohibited from: — Using deceptive names or marketing to present payment stablecoins as legal tender or government-backed. — Representing payment stablecoins as backed by the full faith and credit of the United States or covered by deposit or share insurance. — Paying interest or yield solely for holding, using, or retaining payment stablecoins. — Pledging or rehypothecating reserve assets except for specified purposes. — Evading GENIUS Act requirements. — Providing customer credit to purchase payment stablecoins.
Reserve Assets	Reserve assets would need to be identifiable; segregated, not commingled; maintained with a fair value at least equal to outstanding issuance value at all times; and held directly or within the custody of an eligible institution. Permissible reserve assets would include: — U.S. currency and Federal Reserve balances. — Demand deposits or share accounts at insured depository institutions (IDIs). — Short-duration Treasury securities, repo and reverse repo arrangements, and government money market funds invested solely in permitted assets. — Other NCUA-approved liquid federal government-issued assets and reserve assets in tokenized form.
Reserve Diversification and Reporting	Two alternatives would apply for reserve diversification and concentration standards, including a principles-based option with a quantitative safe harbor and an option making quantitative standards mandatory. NCUA-PPSIs would need to publish monthly reserve composition information, obtain an accounting-firm examination of the prior month-end report, and submit CEO/CFO certifications to NCUA.
Redemption and Customer Disclosures	NCUA-PPSIs would need to publicly disclose redemption policies and provide clear, conspicuous procedures for timely redemption. Policies would need to address: — Redemption timing, instructions, discretionary limitations (to be imposed only by the NCUA), and timing-extension circumstances. — Minimum redemption amounts, fees, issuer identity, and a link to the relevant reserve composition report.

	Redemption generally would be required within two business days after a request, with a seven-calendar-day redemption period allowed if redemption demands exceed 10 percent of outstanding issuance value in a 24-hour period, subject to NCUA involvement. Fee changes would need advance notice to customers and publication on the NCUA-PPSI's website.

Risk Management, Supervision, Reporting, and Audits

As proposed, NCUA-PPSI risk management, examination, reporting, audit, and change-in-control components would include:

Topic	Description
Risk Management	NCUA-PPSIs would be required to establish and maintain internal controls, internal audit systems, and interest-rate risk management appropriate for their size, complexity, activities, and risk profile. Risk management expectations would also address: — Prudent asset growth, earnings monitoring, and insider and affiliate transactions. — Third-party service provider oversight. — Liquidity and concentration risk management. — Information technology and security program, private-key safeguards, incident response, and business continuity. — BSA/AML/CFT, sanctions, and other Treasury financial-crime regulations.
Examinations, Books, and Records	NCUA would generally conduct a full-scope examination of each issuer at least once every 12 months, with a possible 14- to 24-month cycle for qualifying issuers. NCUA-PPSIs would need books and records in English and in compliance with Generally Accepted Accounting Principles (GAAP) and a records-retention policy demonstrating compliance with the GENIUS Act, NCUA payment stablecoin standards, and applicable laws and regulations.
Reports and Audits	NCUA-PPSIs would be required to provide: — Confidential weekly reports covering issuance, redemption, trading volume, reserve assets, blockchains, and related data. — Quarterly financial-condition reports covering income, expenses, balance sheet, reserves, equity, investments, capital, outstanding issuance value, and assets under custody. — In addition, NCUA-PPSIs would be required to provide other reports to the NCUA upon request, including reports on the: — Financial condition of the NCUA-PPSI. — Systems of the NCUA-PPSI for monitoring and controlling financial and operational risk. — Compliance of the NCUA-PPSI and any subsidiary thereof with the GENIUS Act and the NCUA's regulations. — Compliance with the BSA and laws authorizing sanctions. Annual audited GAAP financial statements would be required for issuers with more than $50 billion in outstanding issuance value that are not subject to specified Securities Exchange Act reporting requirements.
Changes in Control and Duplication Avoidance	A person seeking to acquire control of a NCUA-PPSI would need to follow notice procedures similar to those for a FICU seeking to become a new parent company, and NCUA would be able to disapprove or extend review of the acquisition. NCUA would use existing supervisory reports and information where possible and avoid duplicative examination activities, reporting requirements, and information requests to the fullest extent possible.

Custody

As proposed, custody standards would apply to covered stablecoin assets and related safekeeping arrangements, including:

Topic	Description
Covered Assets	Custodial and safekeeping requirements in the proposal would apply to: — Payment stablecoin reserves. — Payment stablecoins used as collateral. — Private keys used to issue payment stablecoins. — Cash or property, as defined in the GENIUS Act, received by the custodian in the course of providing custodial or safekeeping services.
Covered Custodians and Customers and Omnibus Accounts	"Covered custodians" (defined to include IDIs and NCUA-PPSIs) would be required to account separately for covered assets, treat those assets as belonging to covered customers, and protect covered assets from claims of the custodian's creditors and, where applicable, sub-custodians' creditors. Custodians could use omnibus accounts if safeguards are adequate and use is consistent with applicable law.
Self-Custody Hardware and Software Exclusion	FICUs and NCUA-PPSIs would not become subject to custody requirements solely by providing hardware or software that facilitates a person's self-custody of payment stablecoins or private keys. The exclusion would not apply if the entity controls or holds itself out as controlling payment stablecoins or private keys or provides custodial or safekeeping services.

Capital and Backstop

As proposed, capital and backstop requirements would include:

Topic	Description
Capital Elements and Minimum Capital	NCUA-PPSI regulatory capital would consist of common equity tier 1 capital and additional tier 1 capital. Initial capital requirements would be established during licensing on an individualized basis, subject to a minimum of $5 million and NCUA-PPSIs would need an ongoing process to assess and maintain adequate capital. Individualized capital expectations would be based on its business model, risk profile, financial projections, expenses, products, and services.
Backstop	NCUA-PPSIs would need liquid assets supporting continued operations, separate from reserve assets backing stablecoins equal to 12 months of total expenses.
Failure to Meet Requirements	Minimum capital and backstop requirements must be met on a quarterly basis. NCUA-PPSIs that fail to meet the requirements at the end of quarter would be prohibited from issuing new payment stablecoins. NCUA-PPSIs that fail to meet the requirements for two consecutive quarters would be prohibited from issuing new payment stablecoins and would be required to begin liquidating reserve assets and redeeming payment stablecoins. NCUA could impose additional or revised individualized capital or backstop requirements if a NCUA-PPSI's circumstances change (examples provided in the rule).

BSA/AML/CFT Supervision and Enforcement

Supervision and Enforcement. Mirroring the FinCEN/OFAC proposal for the GENIUS Act, the NCUA-PPSI supervision and enforcement framework must emphasize effectiveness and risk-based supervision. An AML/CFT enforcement action or “significant” supervisory action by FinCEN would follow only from either a failure to establish an AML/CFT program or a “significant or systemic” failure to implement that program. As such, if the NCUA intends to take a “significant” supervisory action, it would be required to (1) allow the FinCEN Director opportunity to review the action with 30 days’ notice, and (2) consider the Director’s input.

Enforcement, Share Insurance, and Tokenized Shares

As proposed, enforcement, share insurance treatment, and tokenized-share treatment components include:

Topic	Description
Administrative Actions and Investigations	NCUA administrative action and adjudication rules would be amended to incorporate GENIUS Act-related proceedings into NCUA’s enforcement and investigative framework. The NCUA process would apply to suspension, revocation, cease-and-desist, removal, prohibition, civil money penalty, and investigation matters involving issuers.
Share Insurance Treatment	NCUA share insurance would apply to qualifying accounts at FICUs, not to payment stablecoins themselves. Payment stablecoins would not be backed by the full faith and credit of the United States or guaranteed by the government, and misrepresenting payment stablecoins as subject to deposit or share insurance would be prohibited.
Reserve Accounts and Tokenized Shares	Accounts at insured credit unions held as reserves for a payment stablecoin would be treated as accounts of the NCUA-PPSI and insured as corporate accounts, without pass-through insurance for individual payment stablecoin holders. Shares recorded in tokenized form would be evaluated under existing account concepts, and the technology or recordkeeping method used would not determine whether those liabilities are accounts.

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