UNITED STATES SENATE COMMITTEE ON
BANKING, HOUSING, & URBAN AFFAIRS
★ ★ ★ ★ ★ ★ Senator Elizabeth Warren, Ranking Member

FACT SHEET: Democratic Staff of the Senate Banking Committee Outline Critical Amendments to Fix *The GENIUS Act*

The Senate Banking, Housing, and Urban Affairs Committee Staff reviewed the final text of the *GENIUS Act*. The problems with the *GENIUS Act* are serious, but they can be solved. Democrats want to work with Republicans to advance a bill that will make stablecoins safer to use and curb corruption and abuse. Republican Leader John Thune promised "regular order" for amendments to the GENIUS Act before passage. More than 100 amendments have been filed.

Democrats have filed amendments to fix the following top concerns with the bill:

Ethics and conflicts of interest: The latest version of the bill clarifies that special government employees are subject to conflict-of-interest laws, but these employees are already subject to those rules. <u>Minor clarifications like these miss the forest for the trees: President Trump stands to take in huge sums of money every year from transaction fees generated every time his stablecoin, USD1, is used and from interest earned on the stablecoin's investments.</u>

The GENIUS Act not only fails to apply any safeguards that would prevent the President and his family from continuing to profit off his stablecoin and other crypto ventures, it also turbocharges his corruption by expanding the reach of his stablecoin, which is already the 5th-largest stablecoin in the world and being used by foreign government-backed investment funds to curry favor. Congress should not grease the skids for the most egregious Presidential financial corruption in the history of our nation.

Big Tech issuers: Despite recent language on this issue, the latest version of the bill fails to prohibit Big Tech companies from issuing stablecoins. By tearing down the 200-year separation between banking and commerce, this bill undermines competition, threatens financial stability, and erodes financial privacy. While the bill purports to place restrictions on *some* Big Tech companies' ability to issue stablecoins, those restrictions are riddled with straightforward and easily identifiable loopholes. In addition, Donald Trump can waive even these meager requirements to allow his billionaire friends to issue Big Tech stablecoins. <u>Crucially, the bill explicitly permits *private* companies, like Elon Musk's X, to issue stablecoins.</u>

Consumer protection and financial meltdown risk: If enacted in its current form, consumers may have fewer basic protections when using stablecoins than they do when using Venmo or their bank account, and the risk of another financial meltdown will grow given lax safeguards.

While the latest version bill includes a savings clause that purports to ensure that existing federal consumer protection laws are extended to stablecoins, this language simply states that the bill does not modify any "right or remedy" under consumer protection laws. It does not clarify whether these laws expressly apply to stablecoin transactions. In particular, the bill fails to clarify that the CFPB can enforce consumer protection laws for stablecoin transactions. The latest version could even be read to imply that the CFPB does not have authority over nonbank stablecoins. In addition, other parts of the bill give exclusive authority over certain consumer protections to other regulators, further excluding the CFPB.

Under the GENIUS Act, only one stablecoin issuer in the U.S. would currently be required to have its financial statements audited – meaning the vast majority of stablecoin issuers, those with less than $50 billion in assets, will not be subject to any independent financial audits. This is weaker than bipartisan stablecoin bills that were introduced last Congress and leaves consumers more vulnerable to the types of fraud and scams rampant in the crypto ecosystem. The bill also includes broad preemption provisions that put state consumer protections at risk.

It permits stablecoin issuers to invest in risky assets that have been bailed out multiple times in the past 20 years, including money market mutual funds, uninsured bank deposits (including in offshore accounts), and short-term "repo loans" to hedge funds. Several of these investments were prohibited in previous bipartisan stablecoin bills, including the *Lummis-Gillibrand Payment Stablecoin Act.*

Foreign issuers and new loophole for Tether: The bill still provides foreign issued stablecoins, like Tether, multiple avenues to access U.S. markets while evading the bill's basic regulatory requirements.

The latest version of the bill includes modest curbs on foreign reciprocity agreements that will mean little in practice. The Trump administration, for example, could strike a reciprocity agreement with the Bukele regime in El Salvador, where Tether is based, allowing Tether full access to the U.S. market while sidestepping the requirements of the bill. Even if El Salvador does not receive a reciprocity agreement, the bill permits Tether and other unauthorized foreign issued stablecoins to be listed and circulated on "decentralized" exchanges in the U.S. without having to comply with lawful orders to freeze and seize funds of illicit actors, let alone the rest of the bill's requirements. This "DeFi" loophole is a recent addition to the bill.

While the bill does provide the Secretary of the Treasury with the authority to delist noncompliant foreign issuers, that authority only applies to centralized exchanges. The timeline for finalizing a delisting decision, as outlined in the bill, is so long that terrorists and cartels can and will easily move funds out of the identified wallets before a stablecoin issuer is required to act, making the system ineffective against criminal actors.

Illicit finance: The final bill references a variety of illicit finance issues but contains no provisions that meaningfully expand national security protections to cover the risks of illicit finance and sanctions evasion introduced by stablecoins.

For example, the bill restates the existing legal requirement for stablecoin issuers to comply with anti-money laundering requirements but fails to apply any additional BSA/AML obligations – such as requiring issuers to monitor the blockchain for downstream illicit payment activity – and fails to extend any obligations to the crypto exchanges and other entities that facilitate stablecoin transactions for cartels, terrorists, and criminals. Concerningly, as noted above, the final bill carves out decentralized exchanges entirely from the definition of "digital asset service provider," enabling unauthorized foreign stablecoins like Tether to circulate on those exchanges in the U.S. while evading basic illicit finance and national security safeguards.

The bill also fails to close loopholes that will enable sanctions evasion, including one that prevents Treasury from targeting "mixers" like Tornado Cash that North Korea has used to launder hundreds of millions of dollars to fund its weapons programs. The bill also fails to make clear that terrorists cannot evade U.S. sanctions enforcement simply by conducting their transactions in dollar-backed stablecoins rather than actual U.S. dollars.

Offering interest, yield, or rewards: As the Independent Community Bankers of America has warned, the bill lacks a clear prohibition on direct and indirect interest and related inducements, which could accelerate the movement of capital away from community banks and reduce funds available for small business and consumer lending. For example, the language allows stablecoin issuers to partner with exchanges, wallet providers, or other intermediaries to pay yield on stablecoins – blessing the current Circle-Coinbase partnership in which Coinbase pays 4.1% on USDC held at Coinbase.

Additionally, the bill merely prohibits direct interest payments "solely in connection with the holding, use, or retention of such payment stablecoin," meaning stablecoin issuers could roll out rewards programs that pay interest as long as the consumer signs up for a mailing list, fills out a survey, or takes some other related action. The interest in that scenario would not be based "solely" in connection with holding the stablecoin.