Banking Committee Democratic Staff Analysis on Latest GENIUS Act Draft

Current draft paves the way for more Trump crypto corruption; expands giant national security loophole for Tether; permits Big Tech companies to issue their own stablecoins; and fails to address several other fundamental flaws

The Senate Banking Committee Democratic Staff analyzed the latest draft of the GENIUS Act circulating online. This preliminary analysis concludes that the draft includes no provisions prohibiting President Trump and his family from lining their pockets through corrupt crypto schemes and accepting payoffs from foreign governments. In fact, the bill will turbocharge this kind of corruption by expanding the reach of President Trump's USD1 stablecoin and giving him the authority to regulate his own financial product. The latest draft blows open the Tether loophole, making it easier for terrorists and cartels to have access to our financial system. It also allows private Big Tech companies like Elon Musk's X to issue their own stablecoin, and includes various loopholes for other Big Tech companies to do the same. Additional changes would be required to address the central policy concerns raised previously by Democrats regarding the GENIUS Act.

Under the latest revised draft text:

Elected officials and their families, including President Trump and his family, are not prohibited from owning or participating in stablecoin business ventures. Instead, the bill will turbocharge President Trump's ability to benefit from his crypto deals. Congress is writing a law expected to massively increase the size of the stablecoin market and increase the value of stablecoin businesses. The Trump family currently owns a majority stake in one of the largest stablecoins in the world. Nothing in the draft would prohibit the President from engaging in any of his current outrageous stablecoin-related activities; instead, it would grow the market and fuel his crypto profits. The draft merely restates existing ethics rules that exempt the President and the Vice President.

Big Tech companies are still allowed to issue their own stablecoins. For centuries, to prevent the American economy from being entirely controlled by a handful of enormous companies, the United States has prohibited commercial companies from issuing their own currencies. While the current draft contains new language limiting *public* commercial companies' ability to issue stablecoins, it would still allow *private* Big Tech companies and other conglomerates to issue their own stablecoins – concentrating control of our money in the hands of a few privately-held giants and actually providing a competitive advantage to people like Elon Musk who is seeking to issue "X Money" through X, a private company. The public company restrictions are also riddled with loopholes. Regulators can waive the prohibition, the prohibition doesn't apply to all of the companies' affiliates and subsidiaries, and it only applies to entities that are not *predominantly* engaged in financial activities. The draft bill still paves the way for Mark Zuckerberg, Jeff Bezos, and other Big Tech billionaires to pursue their own currencies - fueling conflicts of interest, undermining competition, threatening financial stability, and eroding financial privacy.

Terrorists, cartels, and criminals will access funding more easily through a newly expanded loophole for offshore issuers like Tether. Stablecoins have been called "the new kingpin of illicit crypto activity" and can make it easier to finance terrorism, evade sanctions, and pay criminals. The bill should prevent offshore companies like Tether – with its track record of facilitating criminal activity – from evading regulations imposed on U.S. companies. But the most recent draft would allow a company to issue a stablecoin offshore and avoid the bill's minimal rules, while still allowing these foreign stablecoins like Tether to be traded on decentralized exchanges in the United States. In fact, the text has gotten worse – allowing these exchanges to trade stablecoins even if issued by offshore companies that refuse to comply with U.S. court orders to stop terrorist financing and money laundering. New language in the draft bill imposing restrictions on when foreign companies can issue stablecoins in the United States makes no material difference, given that the coins could still be issued offshore and moved through domestic decentralized exchanges accessed by terrorists and criminals.

No additional safeguards to protect the financial system from a potential meltdown. Stablecoin issuers advertise their products as safe, backed one-to-one by assets like dollars. But the latest draft would still allow issuers to actually invest their reserves in riskier assets, hold them in offshore accounts, engage in dangerous financial and commercial activities, and prevent regulators from applying strong safeguards – inviting a future crash and costly bailouts. Regulators still have no authority to block dangerous mergers, acquisitions, or changes in control, even if the new owners have a history of financial fraud. For example, regulators could not block Sam Bankman-Fried from buying an existing stablecoin company, even while he is still in prison.

Many of the new changes are fig leaves for significant flaws that jeopardize consumer protection and national security.

- The latest draft includes a clause restating the existence of consumer protection laws, but does nothing to clarify that those laws actually apply to stablecoin transactions or that the Consumer Financial Protection Bureau has oversight over the stablecoin market – meaning consumers may have fewer protections when using stablecoins than when using Venmo or their bank account.
- It purports to bar the use of misleading names for stablecoins that suggest they are backed by the government, but it conveniently carves out the "USD" acronym used by Trump's own USD1 and almost every other major stablecoin.
- It requires a study of how customers may be harmed when failed issuers go through bankruptcy, but does nothing to address those harms.
- It includes a provision requiring a study of the (already well-documented) terrorism and sanctions risks posed by crypto mixers, but does nothing to actually impose basic obligations on those entities to prevent illicit finance.
- It includes a clause restating existing sanctions authority, but does nothing to address the Treasury Department's concern that existing law allows terrorists to evade that authority by switching from dollars to dollar-backed stablecoins.