



Bipartisan House bill proposes federal framework for payment stablecoins

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A draft bipartisan bill from the House Financial Services Committee (HFSC) would establish a federal regulatory framework for payment stablecoins.¹ While this draft bill could see material changes as it moves through the legislative process, it is the most comprehensive piece of payment stablecoin legislation outlined to date. We have been at the forefront of providing our perspective on stablecoin regulation as the federal stablecoin and digital assets regulatory frameworks develop.²

As drafted, this legislation would have significant impacts on the issuance and trading of payment stablecoins, materially altering the competitive landscape by introducing federal prudential standards and disallowing certain product types. The bill, along with the European Commission's Markets in Crypto-Assets (MiCA), could be a bellwether framework for stablecoin regulation internationally as Europe finalizes MiCA, which sets standards for stablecoin issuance and payments in Europe.³

What follows are key provisions of the draft HFSC bill:

- The establishment of a federal regulatory framework for payment stablecoins, overseen by the banking regulators
- Issuance authority for subsidiaries of Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA) insured entities (insured depository institution, or IDI), as well as nonbank entities (NBE)
- The preservation of a state licensing authority
- A requirement that payment stablecoins be backed one-to-one by qualified reserve assets
- A two-year moratorium on algorithmic payment stablecoins
- A prohibition on commingling of firm and customer assets
- Clarification that insured depository institutions may tokenize deposits
- Provision that payment stablecoins will **not** be FDIC-insured

This legislation, if passed and enacted, would have immediate market impacts and would change the competitive landscape, putting certain business models ahead of others. Some of these immediate impacts include:

- New issuance of algorithmic stablecoins will be prohibited for at least two years⁴
- Banks will have certainty in participating in the markets, either as issuers or infrastructure providers (including deposit taking for reserves, custody, asset management, payment rails)
- Legal stability and legitimacy for the asset class and markets
- Obtaining a federal bank regulator license (NBE) or approval (IDI subsidiary) is likely to be a long and cumbersome process and far more challenging than what nonbanks or the market may be expecting

There are a significant number of nuanced and pragmatic questions left unanswered by the bill, which we highlight at the end of our piece. Even if the bill were to be passed and enacted in its current form, many of the weighty details would be determined by a regulatory, rather than a legislative process. Leaving these unknowns aside, we hope to provide some clarity here on what the draft legislation would establish.

Fact sheet

Defined terms:

The bill reshapes the regulatory perimeter for digital assets as it defines several key terms. These definitions are the pillars of the framework established by the bill:

- **Digital asset** – Any digital representation of value that is recorded on a cryptographically secured distributed ledger or any similar technology.
- **Distributed ledger** – Technology where data is shared across a network that creates a digital ledger of verified transactions or information among network participants and where the data is typically linked using cryptography to maintain the integrity of the ledger and execute other functions.
- **Monetary value** – A national currency, deposit (as defined under section 3 of the Federal Deposit Insurance Act), or an equivalent instrument that is denominated in a national currency.⁵

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- **National currency** – US coins, a Federal Reserve note or other lawful money as the term is used in the Federal Reserve Act (12 U.S.C. 411), money issued by a central bank, or money issued by an intergovernmental organization pursuant to an agreement by one or more governments.
- **Nonbank entity (NBE)** – An entity that is not an insured depository institution.
- **Payment stablecoin** – The term “payment stablecoin”:
 - Means a digital asset:
 - That is or is designed to be used as a means of payment or settlement; and
 - The issuer of which:
 - Is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; or
 - Represents it will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value; and
 - That is not:
 - A national currency; or
 - A security issued by an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)).
- **Payment stablecoin issuer** – The term “payment stablecoin issuer” means:
 - A person approved or licensed by the appropriate federal payment stablecoin regulator, as applicable⁶; or
 - A registered state-qualified payment stablecoin issuer.
- **Payment system** – The term “payment system”:
 - Means a system for the purpose of transferring monetary value between or among participants, including a set of instruments, procedures, and rules; and
 - Includes the participants and the person or persons operating the arrangement or aspects of the arrangement.

Key features of the proposed regulatory framework:

Who are the primary regulators?

The provisions in this bill establish a federal regulatory structure overseen by the bank regulators. Issuers would be subject to increased standards for managing liquidity, risk, and governance. The primary federal regulator for an IDI subsidiary or insured credit union (ICU) subsidiary is the primary federal regulator for the subsidiary's parent company:

- Office of the Comptroller of the Currency (OCC) for national banks
- FDIC for state nonmember banks
- Federal Reserve Board (FRB) for state member banks and nonbanks
- NCUA for insured credit unions

What entities can issue payment stablecoins? What licensing is required?

Although the mechanics of obtaining a license are not specified, the bill defines several entity licensing structures that an eligible payment stablecoin issuer may fall into:

- State nonmember IDI required to issue through a subsidiary approved by the FDIC
- State member IDI required to issue through a subsidiary approved by the FRB
- National bank IDI required to issue through a subsidiary approved by the OCC
- ICU subsidiary required to issue through a subsidiary approved by the NCUA
- NBEs must obtain a license directly from the FRB or obtain a state license for payment stablecoin issuance and then register with the FRB; until FRB guidance is issued, there will be uncertainty around whether there will be any real or practical differences in the FRB's requirements for the “licensing” versus “registration” processes

The bill reserves the ability of IDIs to engage in activities including accepting or receiving deposits and issuing digital assets that represent deposits, as otherwise permitted by applicable state and federal law.⁷

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What investor protection provisions are included?

The bill's text would establish several provisions to protect consumers, bearing in mind that the payment stablecoins will not be FDIC-insured or government guaranteed, including:

- A one-to-one reserve requirement for payment stablecoin that can only be maintained in specified assets (e.g., short-term treasuries and bank deposits).
- Prohibition on pledging, rehypothecating, or reusing reserve and custody assets.
- Prohibition on commingling customer and fund assets— payment stablecoin, private keys, and customer cash must be separately accounted for and cannot be commingled with the funds of a wallet provider.
- The bill would standardize payment stablecoin redemptions by requiring issuers to establish a process to allow redemptions within a reasonable time frame, but in no case longer than one day after the request.
- The bill sets a two-year moratorium on the issuance, creation, or origination of endogenously collateralized (i.e., algorithmic) payment stablecoin not in existence on the day of enactment of this proposed legislation

What are permissible reserve assets?

The bill proposes payment stablecoins must be back on a one-to-one basis by:

- US dollars
- Insured bank demand deposits
- Short-term Treasury bills
- Short-term Treasury repos
- Central bank reserve deposits

What authority does the FRB have over state-licensed nonbank issuers?

The bill takes a nuanced approach to federal-state authorities. For example, the FRB retains meaningful oversight of state-licensed entities, including in defining the composition of reserve assets. It requires the FRB to coordinate on some supervision and enforcement activity with the states. The bill would not preempt state law, except where there are conflicts. The bill does not explicitly preempt state licensing requirements

for payment stablecoin issuers and their related supervision and enforcement authority.

Is a nonbank stablecoin issuer deemed to be a “bank” for purposes of the federal Bank Holding Company Act (BHCA)?

While the narrow answer is “no,” the bill would nonetheless apply some of the key elements of the BHCA and federal law to nonbank issuers, including:

- Prohibition on a nonfinancial company controlling the NBE
- Requirement that all affiliates of the NBE be “financial in nature”
- Imposition of sections 23A and 23B of the Federal Reserve Act on the stablecoin issuer

We expect the FRB to flesh out prudential requirements through future regulation, applying requirements from the federal banking safety and soundness playbook.

What requirements would apply to contracted vendor services to payment stablecoin issuers?

Third parties (e.g., vendors) that payment stablecoin issuers rely on via contracted services will be subject to regulation, supervision, and enforcement by federal regulators (as a licensed NBE) for those specific supporting services.

Outstanding questions

Although the draft legislation would establish a federal framework for federal payment stablecoin regulation, many details of regulatory and supervisory expectations would be established after enactment. What follows are some of the key outstanding questions:

- Will the moratorium on algorithmic payment stablecoins mean that an existing issuer’s coining and origination must stop and that no more issuances can be added?
- Do the provisions for algorithmic payment stablecoins intentionally allow for payment stablecoins partially backed by digital assets (and partially backed by fiat)?
- Who has oversight of exchanges listing payment stablecoins?
- How will the definition of “other payment systems” as it relates to interoperability between payments stablecoin payment systems and their payment systems play out in practice?

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- What will the FRB registration process entail for state-licensed issuers?
- What will reporting and attestations to the FRB look like?
- Will FRB “tailoring” regulations based on complexity be applied in terms of asset size categories? Will smaller nonbanks enjoy advantages under the regulations?
- What other activities will the IDI and ICU subsidiaries be permitted to conduct? Is the intention to regulate payments providers at the federal level?
- What state license types or regimes will allow issuers to register with the FRB rather than obtain an FRB license? How will states respond? Will more states adopt laws explicitly addressing and requiring licenses for payment stablecoin issuers?
- How will the legislation affect offshore banks and nonbank issuers?

Although preliminary, this draft legislation is significant, given that its sponsors (Congresswoman Maxine Waters, D-Calif. and Congressman Patrick McHenry, R-NC) are bipartisan leaders of the HFSC. It is the most comprehensive piece of US payment stablecoin legislation yet and could serve as the backbone of an eventual payment stablecoin package. Should legislation be passed and enacted, it would transform the regulatory expectations for payment stablecoins and create a paradigm shift in the market.

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Endnotes

1. Brendan Pedersen, "[Draft bill lets nonbanks issue stablecoins, bans algorithmic coins for two years](#)," *American Banker*, September 20, 2022.
2. Deloitte, "[Stablecoin regulatory update and enhanced framework](#)," February 2022; and, Deloitte, "[So, you want to be a stablecoin issuer?](#)" accessed October 18, 2022.
3. Deloitte UK, "[MiCA- a new crypto-asset regime for the EU](#)," October 13, 2022.
4. The draft bill does not specify what "issuance" means in the context of a stablecoin. It begs the question, does that include minting and burning or refer to the creation of new stablecoin blockchains/arrangements?
5. Note that neither the definition of "monetary value" or "national currency" is limited to US dollars.
6. The FRB, OCC, FDIC, or NCUA are considered to be federal payment stablecoin regulators. This does not include regulatory agencies such as the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), Federal Trade Commission (FTC), or Consumer Financial Protection Bureau (CFPB).
7. The draft bill appears to limit the authority to FDIC-insured depositories and to not include NCUA-insured credit unions. It is not clear whether this is a technical issue with the bill or an intentional exclusion for credit unions.

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