Podcast: *The Consumer Finance Podcast* and *The Crypto Exchange*
Episode: GENIUS Act Countdown: Where the Rulemaking Stands and What Banks Should Do Before January 18
Host: Genna Garver
Guests: Chris Willis and David Madrazo
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Genna Garver (00:05):
Welcome to a special crossover episode of Troutman Pepper Locke's podcasts, *The Crypto Exchange* and *The Consumer Finance Podcast*. I'm Genna Garver, one of the hosts of *The Crypto Exchange* and a partner in Troutman Pepper Locke's Investment Funds and Investment Management Practice, and co-leader of the firm's Digital Assets and Blockchain team. I'm excited to be joined by two colleagues from our Consumer Financial Services practice. Chris Willis is a partner in our Atlanta office, co-leader of our Consumer Financial Services Regulatory Practice, and host of *The Consumer Finance Podcast*. David Madrazo is an attorney on our Digital Assets and Blockchain team in Dallas. Chris, David, thanks for joining.

Chris Willis (00:51):
It's great to be here with you, Genna. Thanks for doing this episode with us.

David Madrazo (00:54):
Great to be here as well, Genna. Thank you so much for having us.

Genna Garver (00:57):
Before we jump into today's episode, please let me remind you to visit our Financial Services Hub at troutmanfinancialservices.com where you can find all of our content, including blogs and podcasts. So today is the first in a series of episodes we're co-hosting with *The Consumer Finance Podcast* on the GENIUS Act, the federal framework for payment stablecoins. The GENIUS Act takes effect January 18th, 2027. That's my sister's birthday. It's an important note here. And that's only 11 weeks away from now when we're recording, which is November 4th. OCC has issued final rules. It was just last month. Treasury's state certification procedures are in effect, and most of the remaining regulatory framework is still in the proposal stage. This episode is really about where things stand and what that means for banks and their advisors. And we'll be bringing more episodes in this special crossover series to you on the GENIUS Act rollout and adoption by banks and industry participants. So keep a lookout for that. So, Chris, Congress passed the GENIUS Act over a year ago, but it feels like we're stuck in the waiting room. So apart from being my sister's birthday, what's so magical about January 18th?

Chris Willis (02:25):
Well, it was made into a magical date by the people who drafted the GENIUS Act because if you look at the statute, and particularly Section 20 of the GENIUS Act, it says that the act will take effect on the earlier of two dates, either 18 months after enactment or 120 days after the primary federal payment stablecoin regulators issue their final implementing rules. The act was signed and became law July 18th, 2025. So well more than a year ago, Genna. And 18 months from that will land us on January 18th, your sister's birthday. The alternate path in terms of effective date under the statute, 120 days from the final regulations, doesn't come into play because in order for that to happen, the OCC would have had to issue final rules before September 20th of this year. But as you said, they didn't. The rule came out on October 21st. So January 18th is the date as provided by the statute. And the fact that we're still in the sort of holding pattern on this, as you referenced in the question, doesn't matter because the Act doesn't have any kind of provision for an extension of the effective date based on the regulators not meeting the one-year rulemaking deadline that was set for them by Congress in the statute. So the assumption for planning for every bank and for every issuer is that your sister's birthday is the magical date, January 18th, whether or not the FDIC and the Fed have their rules finalized by that time.

Genna Garver (03:49):
So one rule is done. I guess that's the good news. We're at least on our way. With so few weeks remaining, David, what else needs to happen?

David Madrazo (04:01):
Well, as of today, there's two things that are final, and one of them is the big one. So the OCC issued its rule on October 21st, and it takes effect on January 18th, which is the same day as the GENIUS Act. The OCC rule covers non-bank issuers that go to the OCC, uninsured national banks, federal branches of foreign banks, national bank subsidiaries, foreign issuers registering with the OCC, and banks the OCC supervises that hold reserves in custody. The second is the Treasury's rule from September 30th, which sets the procedures for the committee that certifies state regimes. So that one is an interim final rule. So it's already in effect, but still has comments open until November 30th. Everything else is still a proposal, including the FDIC, the Fed, and the NCUA. They each still have to finish their final rules for the bank and credit union subsidiaries that they supervise. Fed was last, and its comments close on November 30th. And the Treasury also hasn't finalized its rule, which is on what makes state regimes substantially similar on its Section 3 rule on who may issue and sell. And as for the money laundering, sanctions, and customer identifications rules that are proposed, including the OCC's own, which it's left for a separate rulemaking. So there's a lot still on the table that needs to get done.

Genna Garver (05:20):
Yeah, it sounds like if you're a promising stablecoin issuer seeking a federal license, your regulatory framework is ready or near ready to go. But if you're a promising

stablecoin issuer with less than 10 billion in total consolidated assets and seeking a state license, your regulatory framework is still in the works. But let's stay on the OCC rule for a minute. David, can you please give us a high-level overview of the final OCC rule's licensing framework?

David Madrazo (05:59):
So during the application process, the OCC will assess whether an applicant can operate safely and soundly, including whether the applicant's structure addresses run risk and ensures redemption. Licensed issuers will face operating requirements that include a 5 million capital floor, high-quality liquid reserves, redemption within two business days, which are subject to limited extensions, a ban on paying yields solely for holding a stablecoin, and weekly and quarterly reporting. And so what changed in the final version of the rule from the proposed rule that an issuer bank should now know about? What changed is that the OCC kept the structure of the proposal but eased the numbers throughout. So every one of these rules gets at the same question, if everyone holding the coin wants their dollar back at once, can the issuer pay? So the rule focused on liquidity, that the OCC kept a principles-based standard and paired it with two hard numbers. At least 5% of the reserves have to be available the same day, which is down from 10% in the proposal. And then no more than 40% can be exposed to any one counterparty, with some carve-outs for Treasuries, custodians, and cleared repo.

Two other tests from the proposal, which is a weekly liquidity test and an average maturity test, are both gone. In exchange, the rule added a stress testing. So the issuer has to show that its reserves still cover every coin in a bad scenario, like a sharp jump in rates, and that they hold a buffer if they don't. On capital, the 5 million floor that was in the proposal now applies at all times, not just at launch. And issuers still need a separate cushion covering 12 months of expenses, and up to half of that can be qualifying debt. On redemption, two business days stays, but the automatic extension to seven days is gone. And if redemption requests end up topping 10% of a coin in one day, the issuer will tell the OCC within 24 hours and can ask for more time. And as for yield, the OCC ended up dropping the proposed presumption that certain affiliate deals break the ban. So the ban itself stays.

Genna Garver (08:06):
Okay, but the OCC isn't taking applications yet, and January 18th is 11 weeks away. If you are an issuer seeking a federal license with the OCC, how do you get from here to January 18th?

Chris Willis (08:27):
Yeah, and Genna, there's a timing problem, but there's also a solution. So let me tell you about both of those. So the OCC said on October 21st, when it finalized its regulations, that it isn't accepting applications at this time. It's waiting on approval from the Office of Management and Budget of the forms for the application, and it'll announce when the application process opens. So right now everybody's sort of in limbo. Once an

application is in, the statute gives the OCC 30 days to tell the applicant whether the application is substantially complete or not, and has 120 days from receiving a substantially complete application to rule on it one way or the other. And if the OCC doesn't rule on it one way or the other, it is deemed approved after the expiration of that 120-day period. So obviously those time periods won't work even if you did an application today. So what's the solution? The solution is the waiver provision in the statute and what the OCC has said about it. So if you look at Section 5(f) of the GENIUS Act, it allows the federal regulator, in this case the OCC, to waive the act's requirements for up to 12 months from the effective date for a bank subsidiary or federal issuer with an application that's pending on that date. And the OCC released a bulletin, 2026-51, that said for existing US issuers with a substantially complete application that is pending on or before January 18th, it generally expects to grant a waiver of the prior approval requirement for as long as it takes the OCC to decide on the application, but obviously no more than a year because that's what the statute allows them.

The application has to meet the rule, but if you do that and have it pending on January 18th, you are likely to get a waiver according to this public statement that the OCC made in this bulletin. So if you're already issuing, the task for you between now and January is to be ready to file the day the OCC opens the application window, both with a complete application and a waiver request, as the OCC has instructed, right along with it. Now, if you're a bank issuing through a subsidiary, it depends on your regulator. A national bank is under the OCC rule, of course, but a state non-member bank is still waiting on the FDIC, which has not finalized its regulations, and a state member bank is waiting on the Fed, and its regulations are still in the proposal stage too, as you referenced earlier in the podcast, Genna.

Genna Garver (10:50):
It sounds like that could be quite a competitive advantage to be first to the market. And there are, I believe, only a handful of existing issuers where that would be a path available to them for January 18th. So as you said, though, there are other federal regulators and prudential regulators that have not yet finalized their rules. So David, let's turn to the Treasury proposal from August, which is really about who can be in this market at all.

David Madrazo (11:26):
Yeah, so in August with the Treasury proposal, the big section within that proposal would be Section 3 of the Treasury proposal. And essentially Section 3 is the front door to the US market, and the Treasury proposal writes the rules for that front door. So the two pieces to Section 3, the first would be issuance, which once the Act takes effect, only a permitted issuer or a foreign issuer that qualifies can issue a payment stablecoin within the United States. And the second is what platforms are allowed to sell. So starting on January 18th, an exchange or custodian can keep offering a foreign coin to US customers only if the issuer can and will follow US court and agency orders, such as freezing coins if they're tied to a crime, and any cross-border arrangement that the

Treasury sets up. The broader rule comes in July 18th, 2028, and then from then on, platforms can offer US customers only coins from approved issuers. So about a year and a half from when GENIUS gets released on the, or signed into law. Because issuing without approval is a crime under this proposal, the definition of issuing matters, and that's where the Treasury's proposal comes in. So issuing would mean the first time an issuer gives someone else the right to use or move a coin. Minting it into its own wallet wouldn't count, but sending a coin to a customer would count. This also, for instance, would be crediting a customer's account or putting a redeemed coin back out. It happens in the US if either the issuer or the person receiving the coin is here. And the proposed safe harbor for an offshore issuer that meets four conditions, which with those, we can go deeper into that in a later episode down the line.

Genna Garver (13:10):
Yes, be sure to check out our future episode, which is going to cover the foreign issuer side. Chris, let's bring it back to banks. Plenty of banks have planned to issue their own stablecoin. What's the significance of January 18th to them?

Chris Willis (13:29):
Yeah, and Genna, the significance for them really can come through customers that the bank may have rather than the bank's own issuing activities. So it could happen in three ways, even if you don't issue your own coins. First, with regard to custody. The OCC's final rule applies its custody provisions to OCC-supervised institutions that are maintaining custody of stablecoin reserves, the reserves that you both were talking about earlier in the episode that the rule requires. Regardless of who supervises the issuer, if the reserve holder is an OCC-regulated institution, then it is subject to that part of the regulations, including the segregation requirements. Second, with regard to deposits. Under the FDIC's April proposal, reserve deposits held at a bank, again, not the issuer, but the reserve deposit for the issuer, would be insured as corporate deposits of the issuer, sharing the issuer's normal $250,000 limit at the bank with nothing passing through to the people holding the coins. Now, that's still a proposal that the FDIC made back in April, so it's obviously something we have to watch to see how the FDIC finalizes it, but it's a preview of what might come.

And third, with regard to anti-money laundering. The proposed money laundering and sanctions rules may change what your fintech and exchange customers need from you on top of your own Bank Secrecy Act and sanctions program. So you need to find out what customers are doing to prepare for that if they're involved in anything relating to stablecoins. And finally, the platform restriction on foreign-issued coins starts January 18th. So a bank might say its exchange customers will just have to move to a permitted coin by then and that's their problem, which, of course, it is their problem first, but their reserve accounts, their flows, and their diligence are with you as the bank that's holding those funds. So if a customer has to stop using a coin or change issuers, the money moving through your bank may change, and it's something that you'd want to know now, not in January when the requirements are upon you. So the OCC actually put out a very

helpful short fact sheet for community banks alongside the final rules that were released on October 21st. And so for a bank that's not going to issue but wants to understand what happens to it as a deposit holder, it's really worth reading that fact sheet that the OCC put out.

Genna Garver (15:42):
And for banks listening in, check out our recent episode of *The Crypto Exchange*, "Banks May Preserve the Deposit – but Lose the Depositor," where my guests John D'Agostino and Chris Kennedy really lay out strategies for banks in this multi-rail era, particularly those who are not looking to be stablecoin issuers and how they can best serve their clients who may be looking for services relating to their stablecoin adoption. David, briefly, who are the big issuers, and what are the states doing during this pre-game time, and where's Congress?

David Madrazo (16:28):
So the issuers are already at the door. Last December, the OCC conditionally approved national trust bank charters for five companies, BitGo, Circle, Fidelity Digital Assets, Paxos, and Ripple. Circle's went final in July, and Ripple's was reported final on October 27th. A trust charter isn't approval to issue a stablecoin, it just makes the company a national bank under the OCC, which makes it eligible to apply as an issuer. That application is separate, and the OCC is not taking those yet. As for the states, a state can supervise its own issuers if the Treasury Committee certifies its rules as substantially similar to the federal ones. States have until January 18th, 2028, to file, and the committee has 30 days from a complete filing to give an answer. Approval has to be unanimous, but the committee isn't taking filings yet for the same paperwork reason as the OCC. New York has proposed a rule to outline its regime next to GENIUS, but that New York rule is still proposed. And as for Congress, since the Senate failed to advance the CLARITY Act on September 15th, 49 to 50, there's been no floor action since. And between now and January, the agencies are the ones moving.

Genna Garver (17:43):
Chris, what should banks be doing between now and January?

Chris Willis (17:48):
Well, apart from preparing to celebrate your sister's birthday, which I think would be a priority...

Genna Garver (17:53):
Obviously.

Chris Willis (17:53):
There are four things that we would recommend. So banks don't have to launch a stablecoin in January, but even if they don't, what you're already doing in this space

may carry obligations, as I was talking about earlier. So make an inventory of what your bank is doing, but also particularly, do you have any customers who are going to be involved with stablecoins, and decide what compliance steps are necessary for the portions of the rules that may apply to you because of your customers' activities. Second, if you want to issue stablecoins, know that there's several different options for which path you can proceed on to do that. An insured bank issues through an approved subsidiary. Other eligible issuers go to the OCC or to a state under a certified stablecoin regime if they don't meet that $10 billion asset threshold that, Genna, you mentioned earlier in the podcast. If it goes above that $10 billion threshold, a state issuer under a state-approved regime has to either move to federal oversight within 360 days of crossing that barrier or stop issuing new coins from the day it crosses until it's back below, unless it gets a waiver. Third, a bank should consider tokenized deposits. The GENIUS Act actually carves deposits out of the definition of a payment stablecoin, including a deposit recorded on a blockchain, which is a tokenized deposit.

So a product that actually qualifies as a deposit stays that with the normal insurance limits and conditions. And a permitted issuer can't pay interest or yield for holding a stablecoin, but a bank can pay interest on a deposit, including a tokenized deposit. So for a bank with an established deposit business, moving forward along the lines of tokenized deposits may be a more natural product, and the final rules that the OCC implemented under the GENIUS Act doesn't have any impact on that. And finally, if you want to be an issuer and you're subject to the OCC or, frankly, any of the other prudential regulators, keep in mind the timing issues that we talked about earlier in the podcast. If you already issue and you need an OCC waiver, the application and the waiver request need to be ready to file as soon as the OCC opens the application process. And if you're planning a new launch, you have to work backward from your launch date and confirm when your regulator can actually take applications using the OCC rule and the 30-day and 120-day periods that I mentioned earlier as a planning reference so you can figure out when you need to have your application in and, again, make a waiver request alongside it if the regulator's going to be open to that, as the OCC has signaled that it would.

Genna Garver (20:22):
So I'm going to give another shameless plug for that prior episode with John and Chris because they lay out these specific questions bank boards should be considering about their multi-rail strategy, from tokenized deposits and stablecoins. So David, last word. What are you going to be watching between now and January?

David Madrazo (20:45):
So there are three things that I'm going to be watching. The first will be the issuer applications opening. The OCC is not able to take applications until OMB approves its forms. When the OCC announces that the window's open, that's the starting gun for every issuer that's already in the market because they need a complete application and waiver request in before January 18th in order to keep operating. The second thing I'll

be looking out for is the rules going final since we only have truly a couple, maybe one or two rules that are final. So the FDIC, the Fed, and the NCUA still have to finish their rules for the bank and credit union subsidiaries, and until they do, a state bank is planning around a draft. The question of whether they finish before January 18th and whether they look like the OCC's rules or go their own way is still up in the air. So the Treasury also has to finalize its Section 3 rule on what counts as issuing in the US, and the money laundering sanctions are still open proposals, and every issuer needs to build its compliance program to align with those. And the last thing I'll be looking for or watching in this upcoming time is the state and foreign paths. So the Treasury Committee has to start accepting state filings before any state can get certified. So until then, the state route really is not open. Finally, the Treasury still hasn't said how it will decide whether a foreign country's rules are comparable, and until it does, a foreign issuer will have no path to full approval in the United States.

Genna Garver (22:19):
So there's lots to do before my sister's birthday, and we're looking forward to January 18th and to our next episode in this special crossover series. Chris, David, thank you both for joining today. Thanks for listening to *The Crypto Exchange* and *The Consumer Finance Podcast*. And for the latest updates, please don't forget to visit our hub at troutmanfinancialservices.com. Until next time.

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