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Taking Tokenization from Concept to Reality
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I. Introduction

"Tokenization" has rapidly emerged as one of the most significant developments in financial market infrastructure. In this article, we examine the current state of tokenization. We begin with an overview of key tokenization concepts and the legal framework for tokenized securities, including the taxonomies set forth by the Securities and Exchange Commission (the "**SEC**"). Next, we discuss developments specific to stablecoins, including the GENIUS Act's comprehensive stablecoin regulatory regime and the Office of the Comptroller of the Currency's (the "**OCC**") proposed rulemaking thereunder.

II. Tokenization: Concepts and Legal Framework

Tokenization refers to recording ownership of an asset using a token on a distributed ledger rather than debits and credits on a centralized ledger. A distributed ledger (also known as a blockchain) is a recordation system that involves storing the relevant information on multiple, connected devices, rather than a single, centralized one.

Distributed ledgers can be public (e.g., Ethereum, Bitcoin), in that anyone can access them and operate a "node," or private, in that they are only available to certain participants. Distributed ledgers typically rely upon "keys" to allow parties to effectuate a transfer, and then a "consensus mechanism" (e.g., proof of stake, proof of work) to confirm the transfer.

Proponents of tokenization have pointed to a range of potential benefits, including: (i) the ability to effectuate off-hours transfers; (ii) autonomy for market participants to reduce reliance on intermediaries; (iii) the ability to use "smart contracts" that condition transfers on certain occurrences or optimize allocations of assets; (iv) possible cybersecurity benefits; (v) the ability to track ownership information of real world assets; and (vi) marketing opportunities for expanding the reach of new products.

A tokenized security (or other asset) could mean a number of different things, but generally would fall into one of the following categories:

> **Receipts for Securities.** In many cases, a token is simply a custodial receipt, a record representing the holder's entitlement to redeem the underlying asset, which the issuer holds on the receipt holder's behalf. This is similar to electronic documents of title for gold or an American Depositary Receipt.
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> **Synthetic Tokens.** In other cases, the token is an entirely separate instrument, such as a derivative or debt instrument that references or is backed by the underlying securities.
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> **DLT-Integrated Recordkeeping.** In some cases, the token is nothing more than a recordkeeping device. For example, an existing custodian for an asset may decide to use distributed ledger technology ("**DLT**") as its recordkeeping methodology, in which case the token is not a separate thing, but rather is simply part of the custodian's recordkeeping methodology.

Mirror Recordkeeping. A similar paradigm involves a transfer agent or custodian using a centralized ledger to record ownership of the securities but agreeing to update that ledger based on who is holding the token on chain. In this case, the token is also nothing more than a recordkeeping device.

On January 28, 2026, the SEC's Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets (the "**Divisions**") published a joint statement providing its own taxonomy for tokenized securities (the "**Guidance**").[1] The Guidance is broadly consistent with the framework above, though the Divisions curiously seemed to imply in a footnote that custodial receipts were akin to DLT-Integrated Recordkeeping.[2] In addition, the Divisions provided their definition of "tokenized security" as "a financial instrument enumerated in the definition of 'security' under the federal securities laws that is formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks."[3]

The Guidance notes that any type of security, including stocks, bonds, notes, investment contracts, options on securities, and security-based swaps, can be subject to tokenization, and it clarifies that the applicable securities laws depend in substance on what rights and obligations the token conveys.[4] In particular, if the token conveys the same rights as holding the security in a traditional format, the regulatory analysis of that token should not differ. The application of federal securities laws would differ only if there are not "substantially similar rights and privileges" between the different formats. The Divisions further clarified that a single class of securities could be issued in multiple formats (i.e., some "on-chain" as tokenized securities and some "off-chain" in a traditional format), and that an "on-chain" tokenized security could be converted to an "off-chain" security, and vice versa.[5] Moreover, if an issuer issues two different "classes" of securities but the only practical difference is how such securities are recorded (e.g., one is an "on-chain" tokenized security and one is an "off-chain" security), the two classes could be considered the same class of security under federal securities laws.

III. The GENIUS Act

Signed into law on July 18th, 2025, the Guiding and Establishing National Innovation for U.S. Stablecoins Act[6] (the "**GENIUS Act**") establishes a comprehensive federal stablecoin regulatory regime. The GENIUS Act will become effective at the earlier of 18 months after the date it was signed or 120 days after final regulations. Significant rulemaking is already in progress, with the OCC having released a comprehensive notice of proposed rulemaking[7] (the "**OCC NPRM**") and

[1] Statement on Tokenized Securities, SEC (Jan. 28, 2026), https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities.
[2] *Id*. fn. 11.
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] Guiding and Establishing National Innovation for U.S. Stablecoins Act, S. 1582, 119th Cong. (2025).
[7] Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, 91 Fed. Reg. 10202 (Mar. 2, 2026).

the Federal Deposit Insurance Corporation (the "**FDIC**")[8] and National Credit Union Administration[9] having put out preliminary rulemakings of their own.

The GENIUS Act generally makes it unlawful for anyone that is not a permitted payment stablecoin issuer to issue payment stablecoins to U.S. persons or for crypto asset service providers to make such stablecoins available to U.S. persons.[10] The process for obtaining approval to issue payment stablecoins depends on what kind of entity the prospective issuer is. An insured depository institution subsidiary, federal branch, or uninsured national trust bank must obtain approval from its primary federal regulator.[11] A non-bank entity may choose to seek approval from the OCC, or could seek licensing by a state regulator under a state regime that is "substantially similar" to U.S. federal regulation.[12] Any entity with over $10 billion in issued payment stablecoins generally must be licensed under the federal regime.[13]

All payment stablecoins must be backed on at least a 1:1 basis. Reserves are limited to cash, demand deposits at a U.S. insured depository institution, accounts at a Federal Reserve Bank, certain U.S. Treasuries with issued or remaining maturities of less than 93 days, repos on short-term U.S. Treasuries, certain investment company securities or government money market funds, and similarly liquid federal government-issued assets.[14]

Additional reserve-related requirements include: limitations on reuse of reserve assets (except for certain repos);[15] monthly reports on reserves, including examinations by registered public accountants;[16] policies providing for timely redemptions and public reporting of redemption policy;[17] and a prohibition on payment of interest on reserves to payment stablecoin holders.[18]

Permitted payment stablecoin issuers are also subject to activities restrictions, generally limiting their ability to conduct activities other than issuing and redeeming payment stablecoins, managing reserves, providing custodial or safekeeping services, and ancillary support.[19]

A. OCC Proposed Rulemaking Under the GENIUS Act

On February 25, 2026, the OCC released a notice of proposed rulemaking,[20] which would establish a comprehensive regime to implement the regulatory framework required by the GENIUS Act. The proposal applies to: (1) national banks and their subsidiaries; (2) Federal savings associations and subsidiaries; (3) Federal branches; (4) foreign payment stablecoin

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[8] Approval Requirements for Issuance of Payment Stablecoins by Subsidiaries of FDIC-Supervised Insured Depository Institutions, 90 Fed. Reg. 59409 (Dec. 19, 2025).
[9] Investments in and Licensing of Permitted Payment Stablecoins Issuers, 91 Fed. Reg. 6531 (Feb. 12, 2026).
[10] GENIUS Act, Sec. 3(a).
[11] GENIUS Act, Sec. 5(a).
[12] GENIUS Act, Sec. 4(b), (c).
[13] GENIUS Act, Sec. 4(c)(1), (d).
[14] GENIUS Act, Sec. 4(a)(1)(A).
[15] GENIUS Act, Sec. 4(a)(2).
[16] GENIUS Act, Sec. 4(a)(3).
[17] GENIUS Act, Sec. 4(a)(1)(B).
[18] GENIUS Act, Sec. 4(a)(11).
[19] GENIUS Act, Sec. 4(a)(7).
[20] OCC NPRM.

issuers ("**FPSIs**"); (5) nonbank entities seeking Federal permitted payment stablecoin issuer ("**PPSI**") status; and (6) certain state-qualified issuers within OCC authority.[21]

The proposed regulations covers wide ground, including permissible activities by issuers, key prohibitions on activities of issuers, reserve requirements, redemption standards, risk management and capital requirements, licensing and registration, supervision standards, reporting requirements, transitions of state-regulated entities, and more.

The OCC's rules are expected to be the most far-reaching among banking agency GENIUS Act rulemakings, covering OCC-supervised insured depository institution subsidiaries, federally licensed nonbank PPSIs, uninsured national banks/federal branches, and registered FPSIs. Comments are due on May 1, 2026, and given the accelerated timeline for effectiveness of the GENIUS Act, the OCC is expected to move quickly to update and finalize the rules.

1. Permissible Activities and Key Restrictions

Permitted activities for issuers include (i) issuing and redeeming payment stablecoins, (ii) managing and holding reserve assets, and (iii) providing custody/safekeeping of stablecoins, reserve assets, and private keys.

Key prohibitions for issuers include (i) deceptive naming or marketing that implies U.S. government backing or legal tender status, (ii) misrepresenting FDIC insurance, and (iii) paying interest or yield to holders solely for holding, using, or retaining a payment stablecoin. To prevent evasion of the yield ban, the OCC proposes a rebuttable presumption that certain affiliate or third-party arrangements (including "yield-as-a-service" structures) constitute prohibited yield payments.[22]

2. Reserve Requirements

The reserve requirements generally follow the mandates of the GENIUS Act, but include some additional detail, including requirements for reserve diversification. The OCC proposed two "options" for reserve diversification requirements, but noted that only one will be used for the final rule.

Under the first option, issuers must maintain reserves that are "sufficiently diverse to manage potential credit, liquidity, interest rate, and price risks."[23] An optional safe harbor supplements this principles-based standard with quantitative thresholds. To qualify, an issuer must maintain on each business day: at least 10% of reserves as demand deposits or Federal Reserve Bank balances ("daily liquidity"); at least 30% as daily liquidity plus amounts receivable within five business days; no more than 40% of reserves at any one eligible financial institution; no more

[21] *Id*. at 10288 (proposed 12 C.F.R. § 15.10(a)).
[22] *Id*. at 10288 (proposed 12 C.F.R. § 15.10(c)).
[23] *Id*. at 10216.

than 50% of daily liquidity at any one institution; and a weighted average maturity of no more than 20 days.[24]

The second option would impose the same quantitative thresholds as mandatory requirements, giving issuers less flexibility but what the OCC calls "a more transparent and readily comprehensible set of requirements."[25]

3. Redemption Standards

"Timely redemption" is defined as no later than two business days after a redemption request; discretionary limits may only be imposed by regulators.[26] If redemption demands exceed 10% of outstanding issuance value within a 24-hour period, the timely redemption window automatically extends to seven calendar days, with notice to the OCC.[27]

4. Risk Management and Capital

No standardized minimum capital requirement applies post-de novo period; during the de novo period (generally the first three years), a $5 million capital floor applies, with capital set individually by the OCC thereafter based on risk.[28] An "operational backstop" pool of high-quality liquid assets, separate from reserves and capital, must be maintained, sized at 12 months of total expenses.[29]

5. Licensing and Registration

The OCC must determine within 30 days whether an application is substantially complete; the 120-day decision clock then runs from that determination, and if no decision is issued within 120 days, the application is deemed approved.[30] Foreign PPSIs may operate in the U.S. only if they satisfy statutory conditions, including a Treasury comparability determination, OCC registration, and maintenance of U.S. reserves for U.S. customer liquidity demands.[31]

6. Ongoing Supervision and Reporting

The OCC proposes at least annual full-scope examinations of supervised PPSIs, with possible extended 18-to-36-month cycles for smaller or lower-risk issuers. PPSIs must publish monthly reserve composition reports, reviewed by a registered public accounting firm, and PPSIs with over $50 billion in outstanding issuance must obtain annual audited financials and publish such

[24] *Id*. at 10218.
[25] *Id*. at 10219.
[26] *Id*. at 10291.(proposed 12 C.F.R. § 15.11(b)(i)).
[27] *Id*. at 10291 (proposed 12 C.F.R. § 15.11(c)).
[28] *Id*. at 10301-02 (proposed 12 C.F.R. § 15.41(a)(1)).
[29] *Id*. at 10302 (proposed 12 C.F.R. § 15.41(a)(2)).
[30] *Id*. at 10233.
[31] *Id*.at 10297 (proposed 12 C.F.R. § 15.31).

financials.[32] Issuers must also provide: (i) confidential weekly reports on issuance, redemption, and reserves;[33] and (ii) quarterly financial condition reports in standardized format.[34]

[32] *Id.*at 10293 (proposed 12 C.F.R. § 15.14(l)).
[33] *Id.*at 10293 (proposed 12 C.F.R. § 15.14(h)).
[34] *Id.*at 10293 (proposed 12 C.F.R. § 15.14(i)).