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DEPARTMENT OF THE TREASURY

12 CFR Chapter XV

[TREAS-DO-2026-0496]

RIN 1505-AC95

GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of the Treasury (Treasury) proposes to issue regulations to implement section 3 of the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act regarding the statutory prohibitions and limitations on payment stablecoin issuance, offer, and sale in the United States.

DATES: Comments on the NPRM must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through one of two methods:

- Electronic Submission: Comments may be submitted electronically through the Federal Government eRulemaking portal at https://www.regulations.gov.
- Mail: Send to U.S. Department of the Treasury, Attention: Office of General Counsel, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via https://www.regulations.gov. All comments should be captioned with “GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale.” Please include your name, organizational affiliation, address, email address, and telephone number in your comment. In general, all comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Brendan Costello and Cody Gaffney, Attorney-Advisors, Office of the General Counsel, and Jonathan Hurowitz, Senior Advisor, Office of Financial Institutions, Treasury, at OGC_GeniusAct@Treasury.gov or 202-622-0480.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The GENIUS Act, enacted on July 18, 2025, establishes a comprehensive framework for the regulation of payment stablecoins.[1] As defined in the GENIUS Act, a payment stablecoin is a digital asset[2] (i) that is, or is designed to be, used as a means of payment or settlement, and (ii) the issuer of which is obligated to convert, redeem, or repurchase for a fixed amount of monetary value (not including a digital asset denominated in a fixed amount of monetary value) and represents that the issuer will maintain, or create the reasonable expectation that it will maintain, a stable value relative to a fixed amount of monetary value.[3]

Section 3 of the Act (12 U.S.C. 5902) delineates the fundamental architecture of the payment stablecoin market in the United States, prescribing who may issue, offer, sell, or otherwise make available payment stablecoins. Section 3 "is intended to have extraterritorial effect if conduct involves the offer or sale of a payment stablecoin to a person located in the United States."[4]

With respect to issuance of payment stablecoins, section 3(a) of the Act (12 U.S.C. 5902(a)) makes it unlawful for any person other than a permitted payment stablecoin issuer to issue a payment stablecoin in the United States.[5] Knowing participation in a violation of section

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[1] *See* Pub. L. 119–27 (codified at 12 U.S.C. 5901 *et seq.*). The GENIUS Act is referred to throughout this proposal simply as "the Act."

[2] The term "digital asset" means any digital representation of value that is recorded on a cryptographically secured distributed ledger. *See* section 2(6) of the Act (12 U.S.C. 5901(6)).

[3] *See* section 2(22) of the Act (12 U.S.C. 5901(22)). Digital assets that are (i) national currencies, (ii) deposits (as defined in section 3 of the Federal Deposit Insurance Act), including deposits recorded using distributed ledger technology, or (iii) securities (as defined in certain federal securities laws) are not considered payment stablecoins. *See id.*

[4] Section 3(e) of the Act (12 U.S.C. 5902(e)).

[5] *See* section 3(a) of the Act (12 U.S.C. 5902(a)). The term "permitted payment stablecoin issuer" means a person formed in the United States that is (i) a subsidiary of an insured depository institution that has been approved to issue payment stablecoins under section 5 of the Act (12 U.S.C. 5904), (ii) a Federal qualified payment stablecoin issuer (as defined in section 2(11) of the Act (12 U.S.C. 5901(11))), or (iii) a State qualified payment stablecoin

3(a) is punishable by a fine of not more than $1 million for each violation, imprisonment for not more than five years, or both under the Act.[6]

Section 3(b) of the Act (12 U.S.C. 5902(b)) addresses the offer, sale, or otherwise making available of payment stablecoins in the United States by digital asset service providers. Under the Act, a digital asset service provider is a person (such as a digital asset exchange) that, for compensation or profit, engages in the business in the United States (including on behalf of customers or users in the United States) of exchanging digital assets for monetary value or for other digital assets, transferring digital assets to a third party, acting as a digital asset custodian, or participating in financial services relating to digital asset issuance.[7]

Section 3(b) (12 U.S.C. 5902(b)) contains two distinct prohibitions. First, under section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)), beginning on July 18, 2028 (*i.e.*, the date that is three years after the date of enactment of the GENIUS Act), it shall be unlawful for a digital asset service provider to offer or sell a payment stablecoin to a person in the United States, unless the payment stablecoin is issued by a permitted payment stablecoin issuer.[8] Second, section 3(b)(2) (12 U.S.C. 5902(b)(2))—which unlike section 3(b)(1) becomes applicable on the effective date of the Act—specifically addresses payment stablecoins issued by foreign payment stablecoin issuers,[9] providing that it shall be unlawful for any digital asset service provider to offer, sell, or otherwise make available in the United States a payment stablecoin issued by a foreign payment stablecoin issuer unless the foreign payment stablecoin issuer has the technological capability to

issuer (as defined in section 2(31) of the Act (12 U.S.C. 5901(31))). *See* section 2(23) of the Act (12 U.S.C. 5901(23)). Permitted payment stablecoin issuers are regulated by the primary Federal payment stablecoin regulators or State payment stablecoin regulators, as appropriate.

[6] Section 3(f) of the Act (12 U.S.C. 5902(f)).

[7] *See* section 2(7) of the Act (12 U.S.C. 5901(7)).

[8] *See* section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)).

[9] The term "foreign payment stablecoin issuer" means an issuer of a payment stablecoin that is organized under the laws of or domiciled in a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and is not a permitted payment stablecoin issuer. *See* section 2(12) of the Act (12 U.S.C. 5901(12)).

comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).[10]

Various provisions of the Act create exemptions from certain of these general prohibitions relating to the issuance, offer, sale, or making available of payment stablecoins. First, section 3(h) (12 U.S.C. 5902(h)) contains rules of construction that expressly exempt three categories of transactions from section 3: (i) the direct transfer of digital assets between two individuals acting on their own behalf and for their own lawful purposes, without the involvement of an intermediary, (ii) any transaction involving the receipt of digital assets by an individual between an account owned by the individual in the United States and an account owned by the individual abroad that are offered by the same parent company, and (iii) any transaction by means of a software or hardware wallet that facilitates an individual's own custody of digital assets.[11]

Second, section 18(a) of the Act (12 U.S.C. 5916(a)) provides that the prohibitions under section 3 (12 U.S.C. 5902) shall not apply to a foreign payment stablecoin issuer if certain conditions are met, including that (i) the foreign payment stablecoin issuer is subject to regulation and supervision by a foreign payment stablecoin regulator of a foreign country that has a regulatory and supervisory regime with respect to payment stablecoins that the Secretary of the Treasury determines, pursuant to section 18(b) of the Act (12 U.S.C. 5916(b)), is comparable to the regulatory and supervisory regime established under the GENIUS Act, and (ii) the foreign payment stablecoin issuer is registered with the Office of the Comptroller of the Currency (OCC).[12]

Third, section 5(f) of the Act (12 U.S.C. 5904(f)) authorizes the primary Federal payment stablecoin regulators to waive the application of the requirements of the Act for a period not to

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[10] *See* section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)). The effective date of the GENIUS Act is expected to be January 18, 2027 (*i.e.*, the date that is 18 months after the date of enactment of the GENIUS Act). *See* section 20 of the Act (Pub. L. 119–27, § 20, 139 Stat. 466, set out as a note under 12 U.S.C. 5901).

[11] *See* section 3(h) of the Act (12 U.S.C. 5902(h)).

[12] *See* section 18(a) of the Act (12 U.S.C. 5916(a)).

exceed 12 months beginning on the effective date of the Act with respect to subsidiaries of insured depository institutions and Federal qualified payment stablecoin issuers with a pending application on the Act's effective date.[13]

Finally, the Act vests Treasury with authority to issue regulations providing certain safe harbors that are consistent with the purposes of the Act, limited in scope, and apply to a de minimis volume of transactions, and to provide certain other limited safe harbors in unusual and exigent circumstances.[14]

The Act directs Treasury to issue regulations to implement section 3, including regulations to define terms.[15] On September 19, 2025, Treasury published in the Federal Register an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on questions relating to the implementation of the Act.[16] In drafting this NPRM, Treasury carefully considered comments received in response to the ANPRM that were material and relevant to the subjects addressed herein.[17]

II. Description of the Proposed Rule

A. Treasury's Approach to this Rulemaking

Consistent with its obligation to faithfully implement the GENIUS Act, in crafting this proposal, Treasury focused on the text of the GENIUS Act itself as the starting point for these

[13] *See* section 5(f) of the Act (12 U.S.C. 5904(f)). "Primary Federal payment stablecoin regulator" is defined in section 2(25) of the Act (12 U.S.C. 5901(25)) and may refer, depending on the entity in question, to the OCC, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), or the National Credit Union Administration (NCUA). "Federal qualified payment stablecoin issuer" is defined in section 2(11) of the Act (12 U.S.C. 5901(11)).

[14] *See* section 3(c) of the Act (12 U.S.C. 5902(c)).

[15] *See* section 3(d) of the Act (12 U.S.C. 5902(d)). *See also* section 13 of the Act (12 U.S.C. 5913) (requiring Treasury and other regulators to promulgate regulations to carry out the GENIUS Act).

[16] *See* 90 FR 45159 (Sep. 19, 2025). Comments on the ANPRM were originally due on October 20, 2025, but Treasury later extended the comment period by 15 days to November 4, 2025. *See* 90 FR 47251 (Oct. 1, 2025).

[17] This proposal addresses only the portions of section 3 of the Act (12 U.S.C. 5902) relating to the issuance, offer, sale, and making available of payment stablecoins. Other provisions of section 3 of the Act (12 U.S.C. 5902), such as section 3(g) of the Act (12 U.S.C. 5902(g))'s rules concerning the treatment of payment stablecoins for accounting, margining, and other purposes, are outside the scope of this proposal. In addition, conduct that would constitute an unlawful issuance, offer, or sale of a payment stablecoin under this proposal may, depending on the facts and circumstances, also lead to penalties under section 4(e)(3) of the Act. *See* 12 U.S.C. 5903(e)(3) (providing that it shall be unlawful to "market a product in the United States as a payment stablecoin unless the product is issued pursuant to" the Act and setting penalties for knowing and willful participation). While Treasury will consider whether it would be helpful or appropriate to issue guidance or procedures relating to potential penalties under section 4(e)(3) of the Act (12 U.S.C. 5903(e)(3)), that is outside the scope of this proposal.

proposed regulations and did not start from any pre-existing regulatory baseline. Nevertheless, throughout the proposal, Treasury considered certain discrete aspects of existing legal and regulatory regimes where Treasury believes these regimes may be instructive to the regulation of payment stablecoin activities under section 3 of the Act.

For example, in developing this proposal, Treasury considered several comments to the ANPRM that suggested that the federal securities laws, in addition to the text of the GENIUS Act, should serve as a reference point for implementing section 3 of the Act. Treasury recognizes that there are longstanding legal regimes that address the issue, offer, and sale of other financial instruments, such as securities, including offshore activities.

However, the GENIUS Act clearly distinguishes among payment stablecoins, securities, and commodities, expressly providing that payment stablecoins are not securities or commodities.[18] Unlike many existing financial instruments that are designed for investment and capital appreciation, payment stablecoins are, or are designed to be, used as a means of payment or settlement and are expected to maintain a stable value. Treasury believes that the Act evinces a clear intent for payment stablecoins to serve as an effective means of payment and settlement, including across borders, and application of traditional investment rules to payment stablecoins may frustrate that goal. Similarly, some operational mechanics of payment stablecoins (such as payment stablecoin minting and redemption) may differ from traditional securities and commodities in material ways that may not be properly accounted for by applying those existing regulatory regimes to payment stablecoins.[19]

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[18] Specifically, section 17 of the Act (Pub. L. 119–27, § 17, 139 Stat. 459, amending 7 U.S.C. 1a and 15 U.S.C. 77b, 78c, 78lll, 80a–2, 80a–3, and 80b–2) clarifies that payment stablecoins are not securities for purposes of the federal securities laws, nor commodities for purposes of the Commodity Exchange Act.

[19] Several commenters on the ANPRM expressed similar sentiments. For example, one commenter on the ANPRM noted that while Securities and Exchange Commission (SEC) rules may be a useful example, not all aspects of those rules are appropriate in the context of digital assets. Another commenter noted that while the territorial approach of certain SEC rules could be a possible starting point, unique issues may be presented by digital assets that would require updating that approach.

Treasury welcomes comment on whether this approach is appropriate or whether, in the alternative, these regulations should adopt an approach that is more similar to existing securities or commodities regulatory frameworks, such as Regulation S under the Securities Act.[20]

B. Overview of the Rule

This proposal would add new part 1523 to subchapter C of chapter XV of title 12 of the Code of Federal Regulations.[21] Part 1523 would define key terms and implement section 3's prohibitions related to the issuance, offer, sale, and making available of payment stablecoins.

Proposed § 1523.1 sets out the scope of Part 1523 and defines key terms. Consistent with the Act, proposed § 1523.1 makes clear that this part is intended to have extraterritorial effect if conduct involves the offer or sale of a payment stablecoin to a person located in the United States. Proposed § 1523.1 also defines terms such as "issue" and "located in the United States." Significantly, proposed § 1523.1 makes clear that a payment stablecoin issuer may also be considered a digital asset service provider, and thus, the rules that apply to issuers and the rules that apply to digital asset service providers are not mutually exclusive.

Proposed § 1523.2 implements the prohibition on payment stablecoin issuance in the United States under section 3(a) of the Act (12 U.S.C. 5902(a)). First, proposed § 1523.2(a) makes clear that foreign payment stablecoin issuers that meet the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)), including registration with the OCC, may issue payment stablecoins in the United States in addition to permitted payment stablecoin issuers. Next, proposed § 1523.2(b) provides that a person will be considered to have issued a payment stablecoin in the United States only if, at the time of issuance, the person is located in the United States (as defined in proposed § 1523.1) or the person issues the payment stablecoin to a person located in the United States (as defined in proposed § 1523.1). By contrast, proposed § 1523.2(c)

[20] *See* 17 CFR § 230.901–905.

[21] On April 3, 2026, Treasury proposed broad-based principles for determining whether a State-level regulatory regime is substantially similar to the Federal regulatory framework under section 4(c) of the Act (12 U.S.C. 5903(c)). *See* 91 FR 16844 (Apr. 3, 2026). Those principles would be codified at Part 1521 within a new Subchapter C of Chapter XV of the Code of Federal Regulations. This proposal would add new part 1523 to subchapter C, reserving part 1522 for other regulations.

describes activities that would be deemed not to be issuances of payment stablecoins in the United States. Finally, proposed § 1523.2(d) provides examples of activities that, when conducted by a person in connection with the issuance of a payment stablecoin that violates section 3(a) of the Act (12 U.S.C. 5902(a)), may constitute participation in an unlawful issuance for purposes of the criminal penalty in section 3(f) of the Act (12 U.S.C. 5902(f)), such as acting as a market maker for newly-issued payment stablecoins or coordinating with the issuer to facilitate key steps in the issuance.

Proposed § 1523.3 implements the GENIUS Act's prohibitions on the offer, sale, and making available of payment stablecoins by digital asset service providers under section 3(b) of the Act (12 U.S.C. 5902(b)). First, proposed § 1523.3(a) and (b) codify sections 3(b)(1) and 3(b)(2) of the Act (12 U.S.C. 5902(b)(1), (2)), respectively, with some clarifications. Second, proposed § 1523.3(c) describes a digital asset service provider's obligations with respect to a foreign payment stablecoin issuer's compliance with lawful orders and reciprocal arrangements. Next, proposed § 1523.3(d) enumerates examples of activities that constitute the offer or sale of payment stablecoins, such as directly soliciting a person located in the United States, advertising a payment stablecoin as available for purchase by persons located in the United States, and advising potential purchasers on how to evade generally applicable location detection or restriction mechanisms. Finally, proposed § 1523.3(e) describes activities that would be deemed not to be offers or sales of payment stablecoins to persons located in the United States.

Proposed § 1523.4 sets out exemptions and safe harbors from the section 3 framework, and Treasury requests comment on whether to create additional safe harbors.

Proposed § 1523.5 includes a severability provision. Proposed Appendix A provides a number of interpretations intended to clarify the application of proposed Part 1523 to certain common or complex scenarios.

C. Scope, Applicability, and Definitions (Proposed § 1523.1)

1. Scope and applicability

Proposed § 1523.1 sets forth the scope and applicability of Part 1523. Paragraph (a) provides that Part 1523 is issued by Treasury to implement section 3 of the Act (12 U.S.C. 5902) regarding statutory prohibitions and limitations on issuing, offering, selling, and otherwise making available payment stablecoins in the United States.

2. Extraterritorial effect

Proposed paragraph (b) makes clear that, consistent with section 3(e) of the Act (12 U.S.C. 5902(e)), proposed Part 1523 is intended to have extraterritorial effect if conduct involves the offer or sale of a payment stablecoin to a person located in the United States.

Question 1: Is the extraterritorial effect of section 3 of the Act (12 U.S.C. 5902) (as described in this proposed Part 1523) clear or should Treasury provide additional clarity? For example, should Treasury specify in regulatory text the extent to which Part 1523 has extraterritorial effect as to the issuance of payment stablecoins to persons located outside of the United States?

Question 2: Are there any scenarios in which issuing or making available a payment stablecoin would not reasonably be considered an offer or sale? If so, would such activity nonetheless fall within the extraterritorial scope of the Act and this Part? Are there any scenarios in which other conduct or transactions involving a payment stablecoin contemplated by Part 1523 would not reasonably be considered within the extraterritorial scope of the Act?

3. Definitions

Proposed paragraph (c) sets forth a number of definitions for purposes of Part 1523.[22]

[22] These definitions are proposed only for the purposes of part 1523 and this proposal does not propose to define terms that may be defined by any other statute or regulation, including other sections of the Act and regulations issued thereunder. For example, the proposed definition of "issue" is designed for and based on section 3 of the Act (12 U.S.C. 5902), which is meant to proscribe issuance by persons that are not permitted payment stablecoin issuers; this context is distinct from other contexts that may use facially similar terminology, such as the concepts of "outstanding issuance value" that are used by the primary Federal payment stablecoin regulators for purposes of prudential reserve requirements for permitted payment stablecoin issuers.

Under the proposal, the terms “digital asset,” “federal qualified payment stablecoin issuer,” “foreign payment stablecoin issuer,” “insured depository institution,” “lawful order,” “monetary value,” “offer,” “payment stablecoin,” “permitted payment stablecoin issuer,” “person,” “primary Federal payment stablecoin regulator,” “State,” and “subsidiary”[23] would be defined by cross-reference to the corresponding statutory definitions in section 2 of the Act (12 U.S.C. 5901) without further elaboration.

Question 3: Should any of the terms that would be defined solely by cross-reference to section 2 of the Act (12 U.S.C. 5901) be clarified? For example, should Treasury clarify the application of the term “person” to various entities that may be involved with payment stablecoins, including those that are or may be affiliated with a government entity. If a term’s definition depends on other defined terms in the Act, should those nested definitions be spelled out? Should any of the definitions be reproduced in the text of Part 1523 rather than by cross-reference to the Act?

Question 4: Should Treasury make any modifications to the definition of “lawful order” as proposed for part 1523, including clarifications, such as to define terms within the definition of “lawful order” as considered by FinCEN for its proposed definition of the term “lawful order” or otherwise to align more closely to FinCEN regulatory definitions? See 91 FR 18582, 18594–5 (Apr. 10, 2026).

*Question 5: For purposes of section 3 of the Act (12 U.S.C. 5902) and Part 1523, should Treasury interpret the term “payment stablecoin" and related definitions to include a digital asset that the issuer is obligated to redeem in other forms of value that may be the functional equivalent of those forms of “monetary value” enumerated in section 2(17) of the Act (12 U.S.C. 5901(17)) (*i.e.*, national currencies or deposits as defined in section 3 of the Federal Deposit Insurance Act)? For example, should a digital asset that is redeemable only in credit union*

[23] With respect to this term, proposed paragraph (c) cites both sections 2(32) and 2(33) of the Act (12 U.S.C. 5901(32), (33)) to ensure subsidiaries of insured credit unions are appropriately captured. *See* 91 FR 6531, 6532 n.13 (Feb. 12, 2026).

shares be considered a payment stablecoin within the scope of section 3 of the Act (12 U.S.C. 5902) and these proposed regulations? Does the ubiquitous convertibility of credit union shares and bank deposits in the U.S. financial system bear on this question? Similarly, should digital assets redeemable only in non-deposit liabilities of a company that are commonly viewed by the public as ubiquitously convertible to bank deposits be considered to be payment stablecoins? What are the practical or evasion risks of possible interpretations?

By contrast, the proposal would define several key terms other than solely by cross-reference to the Act either because the Act does not define the term or because Treasury has determined that additional clarity is needed to provide regulatory certainty.

Act or GENIUS Act. Proposed § 1523.1(c) would define "Act" or "GENIUS Act" to mean the Guiding and Establishing National Innovation for U.S. Stablecoins Act (12 U.S.C. 5901 et seq.).

Digital asset service provider. Proposed § 1523.1(c) would define "digital asset service provider" by cross-reference to section 2(7) of the Act (12 U.S.C. 5901(7)), with the additional clarification that the term includes a person that, for compensation or profit, engages in the business in the United States of issuing payment stablecoins.

Treasury considered whether the Act should be read as treating issuers of payment stablecoins and digital asset service providers as mutually exclusive categories, but concluded that the better reading of the Act is that issuers of payment stablecoins can simultaneously be digital asset service providers. Notably, the Act does not specify that issuers of payment stablecoins cannot be digital asset service providers, but in other instances does specify when two categories are mutually exclusive.[24] Further, some of the core activities of payment stablecoin issuers (such as the activities of permitted payment stablecoin issuers listed in section

[24] *Compare* section 2(7) of the Act (12 U.S.C. 5901(7)) (defining "digital asset service provider" without carving out issuers of payment stablecoins) *with* section 2(12) of the Act (12 U.S.C. 5901(12)) (defining "foreign payment stablecoin issuer" and clearly noting that a permitted payment stablecoin issuer is not a foreign payment stablecoin issuer).

4(a)(7) of the Act (12 U.S.C. 5903(a)(7))) clearly fall within the list of digital asset service provider activities in section 2(7) of the Act (12 U.S.C. 5901(7)). For example, redeeming payment stablecoins (section 4(a)(7)(A)(ii) of the Act (12 U.S.C. 5903(a)(7)(A)(ii))) necessarily involves exchanging digital assets for monetary value (section 2(7)(A)(ii) of the Act (12 U.S.C. 5901(7)(A)(ii))). For this reason, Treasury not only determined that the categories of payment stablecoin issuer and digital asset service provider are overlapping, but that all persons that, for compensation or profit, engage in the business in the United States of issuing payment stablecoins will constitute digital asset service providers as defined in the Act.

A contrary reading in which payment stablecoin issuers are deemed not to be digital asset service providers could further have the effect of exempting persons who engage in significant payment stablecoin offer and sale activities in the United States from the operative restrictions of section 3 (12 U.S.C. 5902) merely because they are also engaged in payment stablecoin issuance. For example, such an interpretation would, theoretically, allow a permitted payment stablecoin issuer to offer and sell a payment stablecoin that a digital asset service provider is not permitted to offer or sell, such as a payment stablecoin issued by a foreign payment stablecoin issuer that does not have the technological capability to comply, or will not comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).[25] This interpretation would likewise allow a foreign payment stablecoin issuer to offer and sell a payment stablecoin issued by another issuer that is not compliant with the GENIUS Act. Such an interpretation would facilitate the evasion of section 3's prohibitions and obviate the GENIUS Act's otherwise clear boundaries ensuring that payment stablecoins offered and sold to persons in the United States comply with the Act's requirements.

Question 6: Does Treasury's determination that all persons that, for compensation or profit, engage in the business in the United States of issuing payment stablecoins constitute digital asset service providers reflect the best reading of the statute? Assuming payment

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[25] *See* section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)).

stablecoin issuers can also be digital asset service providers, is additional clarity needed with respect to how any of section 3's prohibitions regarding the offer or sale of payment stablecoins apply to payment stablecoin issuers? Are there certain digital asset service provider restrictions that should not apply to payment stablecoin issuers, and if so, should it depend on whether the issuers are registered or unregistered under the Act? By contrast, if issuers of payment stablecoins and digital asset service providers are mutually exclusive categories, what changes would be necessary to the proposal to clarify the application of section 3?

Question 7: Should any additional clarification (beyond the one clarification proposed) be provided on the statutory definition of the term "digital asset service provider"?

Issue. The term "issue" is not defined in the Act. Proposed § 1523.1(c) defines "issue" to mean, except as required by a lawful order, the first transfer of a payment stablecoin by the issuer, whether directly or indirectly, including by crediting an account, that results or will result in a person other than the issuer having the right to use or transfer the payment stablecoin or to have the payment stablecoin converted, redeemed, or repurchased.

Because the term "issue" is not defined in the Act, in order to implement the limitation on payment stablecoin issuance in section 3(a) (12 U.S.C. 5902(a)), it is necessary for Treasury to determine when in the process of creating a new payment stablecoin the payment stablecoin should be considered to have been issued.[26] The proposed definition contains several elements designed to ensure that the definition captures the appropriate payment stablecoin activities consistent with the text and purposes of the Act. The proposed definition also contains an exception to allow for compliance with a lawful order notwithstanding proposed § 1523.2.[27]

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[26] For a description of how payment stablecoins are created, *see Strengthening American Leadership in Digital Financial Technology* at 90 (July 2025), https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf.

[27] The Act calls for compliance with lawful orders in various provisions. *See, e.g.*, sections 3(b)(2), 4(a)(6), and 8 of the Act (12 U.S.C. 5902(b)(2), 5903(a)(6), and 5907). Treasury's proposed regulatory provisions accordingly seek to implement the language provided in the GENIUS Act regarding lawful orders.

First, the proposed definition focuses on the *first transfer* of the payment stablecoin by the issuer. This element is consistent with the plain meaning of "issue"[28] as well as existing definitions of "issue" for other financial instruments.[29] A consequence of this element is that a digital asset that has been minted but is held in the issuer's treasury would not be considered to have been issued as a payment stablecoin because the digital asset has not yet been transferred to a third party.[30] However, the direct minting of a payment stablecoin to a holder's wallet would be considered a first transfer of the payment stablecoin.

Second, the proposed definition clarifies that the first transfer of the payment stablecoin may be effected *directly or indirectly* by the issuer. This element is intended to address situations where the first transfer of the payment stablecoin is effected by the issuer through an agent or intermediary acting on behalf of the issuer, such as an underwriter or distributor.

Third, the proposed definition clarifies that the transfer of a payment stablecoin includes the *crediting of an account*. This element is intended to address situations where rights associated with the payment stablecoin have been transferred to a person other than the issuer, but the payment stablecoin remains in the issuer's wallet, for example, because the issuer also serves as custodian. In this situation, even though the payment stablecoin has not transferred to a different wallet address, Treasury believes that an issuance has occurred.

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[28] *See* Black's Law Dictionary, "Issue" (12th ed., 2024) ("to be put forth officially," "to send out or distribute officially"); Merriam-Webster Online ("to put forth or distribute usually officially," "to send out for sale or circulation").

[29] *See* UCC § 3-105(a) (defining "issue" to mean "the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person"); *id.* at § 1-201(b)(15) (defining delivery, with respect to an instrument, as "voluntary transfer of possession"). Treasury believes that reference to negotiable instruments under Article 3 of the Uniform Commercial Code (UCC) is a helpful analogy because such instruments share certain characteristics with payment stablecoins—namely that they are, or are designed to be, used as a means of payment or settlement. Treasury further believes that concepts of transfer with respect to controllable electronic records under Article 12 of the UCC also serve as helpful analogies. *See, e.g.*, UCC § 12-104(d) ("A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer . . ."); *id.* at § 12-105(a) (providing that a person has control over a record if it, among other things, gives the person exclusive power to "transfer control of the electronic record to another person"). However, Treasury does not take a position in this proposal on appropriate treatment under the UCC of any transactions involving payment stablecoins, either before or after the effective date of the Act.

[30] Treasury notes that the OCC proposed to define "outstanding issuance value" to exclude payment stablecoins held in the issuer's treasury. *See* 91 FR 10202, 10208 (Mar. 2, 2026).

Fourth, the first transfer of the payment stablecoin by the issuer must result or will result in a person other than the issuer having the right to use or transfer the payment stablecoin or to have the payment stablecoin converted, redeemed, or repurchased. This element reflects the key features that make a digital asset a payment stablecoin as defined in the Act: its usability as a means of payment or settlement and its convertibility into a fixed amount of monetary value.[31] As such, in defining when a payment stablecoin is considered to have been issued, Treasury believes that it is appropriate to focus on the transaction that gives rise to these key features of a payment stablecoin.[32] Further, existing definitions of "issue" include similar language focused on the vesting of rights in a third party.[33]

Treasury proposes to include the phrase "will result" in this fourth element to make clear that the issuance of a payment stablecoin need not result in a right to use or transfer the payment stablecoin immediately, or a right to have the payment stablecoin converted, redeemed, or repurchased immediately. Treasury considered that an issuer may, by smart contract or otherwise, limit the holder of a digital asset purporting to be a payment stablecoin from redeeming or further transferring the payment stablecoin until some future time (such as a purported payment stablecoin that may not be redeemed until 6 months after issuance). In such a case, during the lockout period, the purported payment stablecoin could potentially be viewed as not having been issued because the issuer does not have an obligation at present to convert, redeem, or repurchase the purported payment stablecoin on demand or the holder of the payment stablecoin does not have the right to use or further transfer it. However, Treasury believes that such an interpretation is not compelled by section 2(22) or section 3(a) of the Act (12 U.S.C. 5901(22), 5902(a)) and would facilitate evasion of section 3(a). Instead, for example, Treasury

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[31] *See* section 2(22) of the Act (12 U.S.C. 5901(22)) (defining "payment stablecoin" as a digital asset that, among other things, 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).

[32] Treasury notes that the OCC similarly concluded that the concept of issuance should be understood consistent with the defined term "payment stablecoin." *See* 91 FR 10202, 10208 (Mar. 2, 2026) (discussing "outstanding issuance value").

[33] In particular, under Article 3 of the UCC, a negotiable instrument is not issued unless the first delivery is "for the purpose of giving rights on the instrument to any person." *See* UCC § 3-105(a).

believes that a purported payment stablecoin which the issuer is obligated to convert, redeem, or repurchase for a third party at some future time should, during the non-redemption period, be considered a payment stablecoin that has been issued.

Another aspect of the fourth element of the definition of "issue" is that it does not require that the transferee be the person who has the right to use, transfer, or redeem the payment stablecoin. For example, Treasury considered that the issuer may transfer the payment stablecoin to a custodian, but it is the custodian's customer who has the right to use, transfer, or redeem the payment stablecoin. In this case, Treasury believes that the payment stablecoin has been issued, notwithstanding the fact that the transferee does not have the right to use, transfer, or redeem the payment stablecoin. Additionally, Treasury is aware that some payment stablecoins may be, as a technical matter, redeemable only by certain persons (such as intermediaries in contractual privity with the issuer), rather than by each individual holder of the payment stablecoin. The proposed fourth element of the definition of "issue" would ensure that these payment stablecoins are considered to have been issued even though a person other than the holder has the right to redeem the payment stablecoin.

The proposed definition of "issue" contains the phrase "except as required by a lawful order" to allow for compliance with a lawful order notwithstanding proposed § 1523.2.

The proposed definition of "issue" contains one additional clarification: For the avoidance of doubt, after a payment stablecoin has been converted, redeemed, repurchased, or otherwise reacquired by the issuer, the first subsequent transfer of the payment stablecoin by the issuer that otherwise satisfies the proposed definition is considered a new issuance, whether or not the transfer is characterized as a reissuance, except as required by a lawful order. This is the case whether or not the issuer burns the digital asset or holds it on its books. Treasury believes this understanding of reissuance is appropriate, administrable, and consistent with the Act because, although the digital asset may continue to exist following the redemption or transfer back to the issuer, the issuer no longer has an obligation to a third party to convert, redeem, or repurchase the payment stablecoin. However, the subsequent transfer of the payment stablecoin to a person other than the issuer would have the economic effect of a new issuance, in that a third party would newly have the right to use or transfer the payment stablecoin, or to have the payment stablecoin converted, redeemed, or repurchased. Finally, recognizing that the terms of a lawful order requiring seizing, freezing, burning, or preventing the transfer of a payment stablecoin may additionally require reissuance of the payment stablecoin, the last clause of the clarification makes clear that issuers may reissue a payment stablecoin to comply with a lawful order notwithstanding proposed § 1523.2.

As discussed in section II.H below, Treasury is proposing to include in Appendix A several interpretations of proposed Part 1523. Some of the proposed interpretations relate to when a payment stablecoin is considered to be issued.

Question 8: Is the proposed definition of "issue" appropriate and clear as to the point in time at which an issuance occurs? Should a payment stablecoin be considered to have been issued earlier or later in the process of creating a payment stablecoin?

Question 9: Should a payment stablecoin that is minted and exists on the public blockchain be considered issued even where the issuer holds the payment stablecoin in its treasury?

Question 10: Is the phrase "first transfer" sufficiently clear in the context of payment stablecoin issuance? Should the definition incorporate other existing concepts relating to transfer, such as transfer of control or transfer of possession under the UCC?

Question 11: Should a payment stablecoin that a third party has purchased be considered issued upon offer or sale, even though it has not yet been transferred to the third party (or potentially even minted)?

Question 12: What additional clarification would be useful regarding when a payment stablecoin is transferred "indirectly" by an issuer? Should Treasury clarify that this would *cover, for example, transfers that occur automatically through smart contracts or other mechanisms?*

Question 13: How should purported restrictions on the class of holders eligible to redeem the payment stablecoin, or the time or manner in which they can do so, be considered when determining whether a payment stablecoin has been issued? For example, should a payment stablecoin be considered issued if there is no obligation at present to redeem the payment stablecoin, but there is an obligation to redeem it in the future? Should it matter whether the obligation to redeem the payment stablecoin in the future is known with certainty (e.g., the payment stablecoin can be redeemed starting six months after issuance), or whether the existence of the obligation to redeem the payment stablecoin in the future is dependent on an uncertain trigger event or condition (e.g., the payment stablecoin can be redeemed only if a particular trigger occurs)?

Question 14: How should a payment stablecoin that has been redeemed or is otherwise transferred back to the issuer be viewed? If the payment stablecoin is held by the issuer (rather than being burned) for a time and is thereafter transferred to a third party, should that constitute a new issuance or only a new offer or sale?

Question 15: Which types of activity by an issuer, or by a person acting on behalf of an issuer, including activity that could be considered to be secondary market activity, should be treated as an issuance, and which should not? Should the analysis differ for issuer buybacks and resales, market-making activity, transfers of redeemed or reacquired stablecoins, or recovered or seized tokens?

Question 16: Should an increase in the aggregate amount of payment stablecoins outstanding be a necessary condition for an activity to constitute an issuance? Are there circumstances in which the aggregate amount outstanding does not increase, but the activity should nevertheless be treated as an issuance, such as certain chain migrations, burning of *tokens, wrapped-token arrangements, or transfers of previously redeemed or reacquired stablecoins?*

Question 17: Under what circumstances should internal transfers, custody movements, treasury-management activity, or other activity by or on behalf of an issuer be treated as an issuance? How should the definition apply to transfers among issuer-controlled wallets, transfers to custodians or agents acting solely for the issuer, transfers to affiliates, transfers to omnibus accounts, or transfers to exchanges, market makers, liquidity providers, or other intermediaries that may later make the payment stablecoin available to third parties?

Question 18: How should the theft of a payment stablecoin from the issuer or the unintended transfer of a payment stablecoin to a third party by the issuer be viewed? What about a transfer in the absence of a sale (e.g., an airdrop)? Should the payment stablecoins in these examples be considered to have been issued?

Question 19: Under what circumstances, if any, should the transfer or movement of a payment stablecoin from one blockchain network to another, including through a bridge or similar cross-chain mechanism, be treated as an issuance? Should the treatment depend on the technical structure of the bridging arrangement, including whether the arrangement uses a lock-and-mint, burn-and-mint, liquidity-pool, issuer-operated bridge, third-party bridge, or other mechanism?

Question 20: Under what circumstances, if any, should a bridge provider, bridge operator, custodian, or other intermediary involved in cross-chain transfers be treated as an issuer of a payment stablecoin? What factors should be relevant to that determination, including control over minting or burning, control over reserve assets, redemption obligations, contractual rights, or the ability to create or retire tokenized claims?

Question 21: Under what circumstances should the creation, minting, distribution, or transfer of a wrapped version of a payment stablecoin, a bridged representation of a payment stablecoin, a deposit receipt, or another tokenized claim referencing a payment stablecoin be *treated as a new issuance? Should the analysis depend on the economic or legal rights embedded in the wrapped token, receipt token, or other instrument, including rights to use, transfer, redeem, convert, or obtain the underlying payment stablecoin or related reserve value?*

Question 22: Is it clear from the definition of "issue" that an issuer directly minting a payment stablecoin into a holder's account is considered an issuance? If not, how could that be made more clear?

Issuer. Although the Act defines terms such as "permitted payment stablecoin issuer" and "foreign payment stablecoin issuer," the term "issuer" itself is not defined in the Act. Proposed § 1523.1(c) would define "issuer" of a particular payment stablecoin to mean a person who (i) is obligated to convert, redeem, or repurchase the payment stablecoin for a fixed amount of monetary value, and (ii) represents that the person will maintain, or creates the reasonable expectation that the person will maintain, a stable value relative to the value of a fixed amount of monetary value.

Treasury believes that a definition of "issuer" is necessary because both the Act and the proposal refer to the "issuer" of a payment stablecoin in several instances. For example, the Act's definition of "payment stablecoin" refers to the issuer,[34] and Treasury's proposed definition of "issue" requires a transfer to a person other than the issuer. More generally, Treasury believes that there may be situations where the creation and distribution of a payment stablecoin involves multiple parties, such as in white label arrangements, and a definition of "issuer" would be useful to clarify each party's obligations and facilitate compliance with the Act.

The proposed definition of "issuer" incorporates two elements, both of which derive from the statutory definition of "payment stablecoin": the issuer is obligated to convert, redeem, or repurchase the payment stablecoin for a fixed amount of monetary value, and the issuer represents that such issuer will maintain, or creates the reasonable expectation that it will

[34] *See* section 2(22) of the Act (12 U.S.C. 5901(22)).

maintain, a stable value relative to the value of a fixed amount of monetary value. As described above with respect to the definition of "issue," Treasury interprets the obligation to convert, redeem, or repurchase the payment stablecoin broadly—imposing a lockout period or placing other conditions on redemption will not prevent a person from being considered the "issuer" of a particular payment stablecoin if the conditions for being an issuer are otherwise satisfied.

Treasury believes that relying on these core statutory functions of the issuer relating to the payment stablecoin appropriately identifies the issuer. Other persons who participate in the issuance (e.g., by performing technical functions to effectuate minting of the payment stablecoin, or by providing their branding in a white label arrangement) but do not carry out the functions identified in the statute would not be considered an issuer of the payment stablecoin for purposes of proposed Part 1523 but may still be subject to criminal penalties if they knowingly participate in an unlawful issuance, as described further in the discussion around proposed § 1523.2(d).

Question 23: Is the proposed definition of "issuer" appropriate and clear? Is a definition of "issuer" necessary at all? Should either of the proposed prongs be sufficient? For example, should having a redemption obligation be independently sufficient to be treated as an issuer, without inquiry into representations or expectations regarding maintaining a stable value, or vice versa? Should the definition of "issuer" also include a prong related to the minting or creation of the payment stablecoin? If so, how should the definition account for an issuer that contracts out the technical work of minting the payment stablecoin to a third party?

Question 24: Are there situations in which the two activities that define "issuer" under the proposal are conducted by different persons? In those cases, who should be viewed as the issuer of the payment stablecoin? Is there a risk of evasion if activities are split among persons to attempt to avoid any one of them being considered the issuer? What about a corporate structure where a single subsidiary or affiliate has the legal obligation to redeem the payment stablecoins, but the issuance activities are otherwise carried out in a separate public-facing entity?

Question 25: Can there be more than one issuer of a payment stablecoin? For example, if a parent entity functionally takes all steps to issue the payment stablecoin but the obligation is legally recorded as a liability of a subsidiary or affiliate, is only the subsidiary or affiliate considered the issuer, or has the parent also issued a payment stablecoin? Similarly, in a white label arrangement, should a person providing its branding for the payment stablecoin be considered an issuer? Does that answer change if the parent, person providing its branding, or another person has a joint or secondary obligation (e.g., through a guarantee) to redeem or repurchase the payment stablecoin (e.g., in the event that the original obligee fails to redeem or repurchase)? Is it better to treat the parent, person providing its branding, or other person as "participating" in the issuance in accordance with proposed § 1523.2(d) below, rather than as an issuer of the payment stablecoin?

Located in the United States. Section 3 of the Act (12 U.S.C. 5902) refers to a person "located in the United States" but does not define the phrase.[35] In other instances, section 3 refers to persons located or activities conducted "in the United States," but this phrase is similarly undefined.[36] As described below in connection with proposed § 1523.2 and § 1523.3, Treasury has interpreted these phrases in section 3 of the Act (12 U.S.C. 5902) consistently as referring to persons "located in the United States."

Proposed § 1523.1(c) would define "located in the United States" separately with respect to individuals and entities. With respect to an individual, "located in the United States" would mean the individual is physically present in the United States, unless the individual is not a resident of the United States and the individual's physical presence in the United States is merely temporary. The proposed definition thus generally turns on the individual's physical presence on

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[35] *E.g.*, section 3(e) of the Act (12 U.S.C. 5902(e)) (stating that section 3 is intended to have extraterritorial effect if conduct involves the offer or sale of a payment stablecoin "to a person located in the United States").

[36] *E.g.*, section 3(a) of the Act (12 U.S.C. 5902(a)) (prohibiting the issuance of certain payment stablecoins "in the United States"); section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)) (prohibiting digital asset service providers from offering or selling certain payment stablecoins "to a person in the United States").

U.S. soil,[37] but carves out temporarily present non-residents. Treasury considered an alternative approach in which all individuals who are physically present in the United States are regarded as "located in the United States," but concluded that such an approach is not compelled by the Act and could create significant administrability concerns and punitive results. For example, consider a non-U.S. resident who is issued a payment stablecoin by a foreign payment stablecoin issuer while temporarily on vacation in the United States, even if the individual has a longstanding relationship with the foreign payment stablecoin issuer, and even if the foreign payment stablecoin issuer has previously verified the foreign residency of the individual and was not aware of the individual's temporary travel plans to the United States. In this case, Treasury does not believe it would be reasonable to subject the foreign payment stablecoin issuer to all requirements relating to dealings with persons located in the United States and potential associated penalties, and the Act does not clearly require this result.

Conversely, the proposed definition of "located in the United States" would exclude U.S. residents who are not physically present in the United States, such as a U.S. resident who is temporarily abroad. Treasury does not believe that the limitation in section 3(a) of the Act (12 U.S.C. 5902(a)) on issuing a payment stablecoin "in the United States" was intended to capture, for example, a foreign payment stablecoin issuer who issues a payment stablecoin to a U.S. resident temporarily traveling abroad on vacation. Application of Part 1523 to U.S. residents abroad would also risk frustrating particular goals of the Act, such as to promote payment stablecoins as payment instruments and establish reciprocal arrangements with foreign jurisdictions, while providing an appropriately tailored regime to mitigate potential illicit finance threats. At the outer extreme, a U.S. resident traveling temporarily in a foreign country where payment stablecoins were routinely used as payment instruments would be unable to purchase a

[37] *See* Black's Law Dictionary, "Location" (12th ed. 2024) ("the specific place or position of a person or thing").

limited amount of payment stablecoins used in that country to engage in ordinary transactions within the country.

With respect to a partnership, company, corporation, association, trust, estate, cooperative organization, or other business entity, proposed § 1523.1(c) would define "located in the United States" to mean that the entity (i) is organized or incorporated under the laws of the United States or a State, or (ii) has its principal place of business in the United States. This disjunctive definition comports with traditional notions of corporate domicile,[38] and Treasury believes that this traditional definition is appropriate in the context of the Act.

As discussed in section II.H below, Treasury is proposing to include in Appendix A several interpretations of proposed Part 1523. Some of the proposed interpretations relate to when a person is considered to be located in the United States.

Question 26: Is the proposed definition of "located in the United States" appropriate and clear? Is the proposed definition underinclusive of persons who should properly be considered located in the United States? Is the proposed definition overinclusive of persons who should not properly be considered located in the United States?

Question 27: Should Treasury prescribe standards for what constitutes residence in the United States or temporary presence in the United States?

Question 28: Does Treasury's proposed definition of "located in United States" present substantial operational challenges for issuers or risk of evasion by persons to whom tokens are issued? What considerations and capabilities should Treasury take into account to address such challenges and risks?

Question 29: Should Treasury prescribe standards for what constitutes an entity's principal place of business for purposes of determining its corporate domicile? Should Treasury

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[38] *See* Black's Law Dictionary, "Domicile" (12th ed. 2024) (stating that "the legal home of a corporation" is usually "its state of incorporation or the state in which it maintains its principal place of business," and noting that for determining whether diversity jurisdiction exists in federal court, "a corporation is considered a citizen of both its state of incorporation and the state of its principal place of business").

consider alternatives to what it means to be "located in the United States" for corporate entities, such as where an entity does substantial business? Are all entities, incorporated or unincorporated, that may be issuers of payment stablecoins sufficiently captured by this definition?

Offer. Proposed § 1523.1(c) would define "offer" by cross-reference to section 2(21) of the Act (12 U.S.C. 5901(21)), with the additional clarification that the term includes making available for purchase, sale, or exchange a payment stablecoin that has not yet been issued. Treasury believes that the plain meaning of "offer" includes presales of payment stablecoins that have not yet been issued, and that making this interpretation explicit in proposed § 1523.1(c) would promote clarity and facilitate compliance with the Act's requirements related to offers and sales of payment stablecoins.

Question 30: Should the term "offer" be defined to expressly state that presales of payment stablecoins that have not yet been issued constitute offers of payment stablecoins?

United States. The term "United States" is not defined in the GENIUS Act. Proposed § 1523.1(c) would define "United States" to mean each of the several States (defined in the Act to include the District of Columbia and each territory of the United States), the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Insular Possessions of the United States.[39] Together with the statutory definition of "State," Treasury intends the proposed definition of "United States" to include the full territory subject to U.S. jurisdiction.

Question 31: Is the proposed definition of "United States" (together with the statutory definition of "State") clear? Is the proposed definition underinclusive of geographies that should properly be considered part of the United States for purposes of Part 1523? Is the proposed definition overinclusive of geographies that should not properly be considered part of the United States for purposes of Part 1523?

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[39] The proposed definition is based on the definition of "United States" in 31 CFR 1010.100(hhh), except that the reference to U.S. territories has been removed because the statutory definition of "State" already includes U.S. territories.

Question 32: Are there any additional statutory or non-statutory terms that should be defined in Part 1523?

D. *Payment Stablecoin Issuance (Proposed § 1523.2)*

Proposed § 1523.2 implements the limitation in section 3(a) of the Act (12 U.S.C. 5902(a)) on payment stablecoin issuance in the United States. Proposed paragraph (a) codifies the statutory limitation with certain clarifications. Proposed paragraph (b) clarifies when a person will be considered to have issued a payment stablecoin in the United States. Proposed paragraph (c) clarifies when a person will be considered to not have issued a payment stablecoin in the United States. Finally, proposed paragraph (d) clarifies when a person has participated in a violation of section 3(a) of the Act (12 U.S.C. 5902(a)) for purposes of the penalty imposed by section 3(f) of the Act (12 U.S.C. 5902(f)).

1. *Limitation on payment stablecoin issuance in the United States (proposed § 1523.2(a))*

Section 3(a) of the Act (12 U.S.C. 5902(a)) generally provides that it shall be unlawful for any person other than a permitted payment stablecoin issuer to issue a payment stablecoin in the United States. Proposed § 1523.2(a) implements this provision and provides that, except in accordance with the exemptions and safe harbors in proposed § 1523.4, it shall be unlawful for any person to issue a payment stablecoin in the United States unless the person is a permitted payment stablecoin issuer, or a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)).

The text of proposed § 1523.2(a) differs from the text of section 3(a) of the Act (12 U.S.C. 5902(a)) in two key ways. First, the inclusion of the qualifying language "[e]xcept in accordance with § 1523.4" makes clear from the outset that certain exemptions and safe harbors may apply. These exemptions and safe harbors are addressed in proposed § 1523.4.

Second, while the text of section 3(a) (12 U.S.C. 5902(a)) only expressly contemplates issuance of payment stablecoins in the United States by permitted payment stablecoin issuers, proposed § 1523.2(a) additionally states that foreign payment stablecoin issuers that meet the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) may lawfully issue payment stablecoins in the United States.

Treasury believes that the best reading of the Act, considered as a whole, is that foreign payment stablecoin issuers that meet the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) may issue payment stablecoins in the United States. This conclusion is principally based on two key provisions of the statute. First, section 18(a) of the Act (12 U.S.C. 5916(a)) provides that the "prohibitions under section 3" shall not apply to a foreign payment stablecoin issuer meeting certain criteria. Treasury believes that the plain meaning of this phrase is that the prohibition in section 3(a) of the Act (12 U.S.C. 5902(a)) shall not apply to a foreign payment stablecoin issuer meeting the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)).[40]

Second, section 4(a)(12)(C) of the Act (12 U.S.C. 5903(a)(12)(C)) expressly states that certain companies not domiciled in the United States or its Territories may not issue payment stablecoins without the approval of the Stablecoin Certification Review Committee (SCRC). This section of the statute would be in direct tension with section 3 if foreign payment stablecoin issuers were outright prohibited from issuing payment stablecoins in the United States.

Treasury further believes that practical considerations reinforce the conclusion, based on the text of the statute, that foreign payment stablecoin issuers that meet the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) may issue payment stablecoins in the United States. The Act clearly contemplates secondary market transactions in the United States involving payment stablecoins issued by foreign payment stablecoin issuers.[41] Thus, construing the Act as prohibiting direct issuance of payment stablecoins in the United States by foreign payment stablecoin issuers would require extra steps before these payment stablecoins are made available

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[40] Treasury acknowledges that the heading of section 3(a) of the Act (12 U.S.C. 5902(a)) refers to this paragraph as a "limitation" rather than a "prohibition" (unlike section 3(b) of the Act (12 U.S.C. 5902(b))). However, Treasury does not believe that paragraph headings are determinative. The limitation in section 3(a) is, in substance, a prohibition on issuance of payment stablecoins in the United States by persons not authorized to do so, and is therefore among the prohibitions referenced in section 18(a) of the Act (12 U.S.C. 5916(a)).

[41] *See, e.g.,* section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)) and section 18(c)(1)(A) of the Act (12 U.S.C. 5916(c)(1)(A)).

in U.S. markets.[42] Treasury believes that these extra steps would create inefficiencies, potentially obscure from U.S. regulators certain key steps in the creation of payment stablecoins intended for persons located in the United States, and may create an unintended uneven playing field as between permitted payment stablecoin issuers and foreign payment stablecoin issuers that meet the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) that ultimately discourages payment stablecoin and broader digital asset innovation in the United States relative to foreign countries. Treasury believes this result would be inconsistent with the purposes of the Act and does not reflect the best reading of the Act.[43]

Treasury notes that proposed § 1523.2(a) addresses generally which categories of persons may issue a payment stablecoin in the United States and does not exhaustively list all potentially applicable prerequisites to issuing payment stablecoins in the United States. For example, a permitted payment stablecoin issuer or a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) may need to obtain the approval of the SCRC prior to issuing a payment stablecoin pursuant to section 4(a)(12) of the Act (12 U.S.C. 5903(a)(12)).[44]

Question 33: Does Treasury's interpretation that foreign payment stablecoin issuers that meet the criteria set out in section 18(a) may issue payment stablecoins in the United States reflect the best reading of the Act? What would be the practical effects if foreign payment

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[42] Specifically, a foreign payment stablecoin issuer would need to issue the payment stablecoin to a person not located in the United States, such as a foreign exchange, which in turn would need to then act as a digital asset service provider to offer or sell the payment stablecoins to persons in the United States or transfer the payment stablecoin to a digital asset service provider to do so.

[43] Treasury also considered, in the alternative, whether the Act contemplates that payment stablecoins issued by foreign payment stablecoin issuers would only be traded on the secondary market in the United States, rather than being directly issued in the United States. *See, e.g.*, section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)) (expressly focusing on the offer and sale of such stablecoins); section 18(c)(1)(A) of the Act (12 U.S.C. 5916(c)(1)(A)) (providing that a foreign payment stablecoin issuer may offer or sell payment stablecoins using a digital asset service provider if certain requirements are met). However, Treasury believes that these other isolated references cannot overcome the plain text reading of section 18(a) of the Act (12 U.S.C. 5916(a)), as described above.

[44] Treasury expects that the Stablecoin Certification Review Committee will issue separate regulations or guidance to implement section 4(a)(12) of the Act (12 U.S.C. 5903(a)(12)).

stablecoin issuers were instead permitted to offer and sell payment stablecoins to persons in the United States but not issue payment stablecoins in the United States?

Question 34: Should § 1523.2(a) address generally which categories of persons may issue a payment stablecoin in the United States (as proposed), or should it list some or all potentially applicable prerequisites to issuing payment stablecoins in the United States (such as the need to obtain the approval of the SCRC pursuant to section 4(a)(12) (12 U.S.C. 5903(a)(12)))?

2. *Issuance in the United States (proposed § 1523.2(b))*

The Act does not define when a person has issued a payment stablecoin "in the United States." Proposed § 1523.2(b) provides that a person will be considered to have issued a payment stablecoin in the United States only if, at the time of issuance, the person is located in the United States, or the person issues the payment stablecoin to a person located in the United States.

Treasury first determined that a standard based on the location of the parties to the transaction is consistent with the text of the Act and would be administrable and promote clarity and compliance with the requirements of the Act. In particular, the proposed approach would be simpler for all payment stablecoin market participants to understand, relative to other approaches that considered, for example, a broader conception of U.S. nexus, and thus better facilitate compliance with the requirements of the Act, especially in light of criminal penalties associated with violations of section 3(a) (12 U.S.C. 5902(a)).[45] Similarly, the proposed approach would be more administrable for Treasury and other implementing agencies.

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[45] Unlike other Federal financial regulatory frameworks, such as Federal securities law frameworks or Federal banking law frameworks, which have existed for decades, the Federal payment stablecoin framework has not yet even become effective. Treasury believes that adopting regulations that clarify the criminal penalties associated with participations in issuances in violation of section 3(a) of the Act (12 U.S.C. 5902(a)) as provided in section 3(f) of the Act (12 U.S.C. 5902(f)) should be set forth as simply as practicable. Treasury further believes this approach comports with the spirit of Executive Order 14294, *Fighting Overcriminalization in Federal Regulations*, 90 FR 20363 (May 14, 2025) (stating that the "status quo… privileges large corporations, which can afford to hire expensive legal teams to navigate complex regulatory schemes and fence out new market entrants, over average Americans" and that "[a]gencies promulgating regulations potentially subject to criminal enforcement should explicitly describe the conduct subject to criminal enforcement"). Therefore, in accordance with Executive Order 14294, participating in violations of section 3(a) and the proposed implementing regulations, if finalized, may be subject to criminal penalties with *mens rea* of knowingly as an element pursuant to 12 U.S.C. 5902(f).

Treasury next considered whether issuance in the United States should be determined based on the location of the issuer or based on the location of the third party to which the payment stablecoin has been issued.[46] In the former case, a payment stablecoin would be considered issued in the United States if the issuer is located in the United States, even if the third party to which the payment stablecoin has been issued is located abroad. In the latter case, a payment stablecoin would be considered issued in the United States if the third party is located in the United States, even if the issuer is located abroad.

Various provisions of the Act suggest that Congress was concerned with *both* the issuance of payment stablecoins to persons located in the United States *and* the issuance of payment stablecoins by issuers located in the United States.[47] However, Treasury believes that the Act does not evidence any intent to capture issuances where neither the issuer *nor* the recipient of the payment stablecoin is located in the United States. Extending the reach of part 1523 to such issuances could raise questions about the extraterritorial application of the Act.

As discussed in section II.H below, Treasury is proposing to include in Appendix A several interpretations of proposed Part 1523. Some of the proposed interpretations relate to when a payment stablecoin is considered to be issued in the United States.

Question 35: Should issuance in the United States be determined based on the location of the parties to the transaction? Alternatively, should Treasury consider other, broader measures of nexus to the United States during the issuance process, such as the use of U.S. financial institutions, payment rails, or other infrastructure?

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[46] Treasury's interpretation of "located in the United States" is discussed above in connection with proposed § 1523.1(c).

[47] By contrast, Treasury interprets the Act's offer and sale provisions as squarely focused on protecting U.S. markets. For example, section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)) and section 3(e) of the Act (12 U.S.C. 5902(e)) both explicitly refer to the offer or sale of a payment stablecoin "to a person [located] in the United States." *See also* section 4(e)(3) of the Act (12 U.S.C. 5903(e)(3)) (making it unlawful "to market a product in the United States as a payment stablecoin" unless issued pursuant to the Act). In comparison, the issuance provision in section 3(a) of the Act (12 U.S.C. 5902(a)) uses broader language ("in the United States" rather than "to a person [located] in the United States"), which suggests a broader focus on issuance activities based in the United States, even if the person to whom a payment stablecoin is issued is located abroad. Other provisions of the Act related to issuers, such as section 4(a) of the Act (12 U.S.C. 5903(a))'s standards for permitted payment stablecoin issuers, evince a Congressional concern for issuers of payment stablecoins located in the United States and relying on the U.S. financial system for their operations.

Question 36: Is the proposed standard for when a payment stablecoin is considered to have been issued in the United States appropriate? For example, should the location of a payment stablecoin issuance be determined based solely on the location of the issuer, or based solely on the location of the third party to which the payment stablecoin has been issued?

Question 37: Are there other situations covered by proposed § 1523.2 for which Treasury should also not deem an issuance in the United States to have occurred in furtherance of the purposes of this Act? For example, should issuances resulting from certain types of reverse solicitations involving payment stablecoins issued by foreign payment stablecoin issuers not be deemed to violate the prohibition?

3. *Activities deemed not to be issuance in the United States (proposed § 1523.2(c))*

Whereas proposed § 1523.2(b) is intended to provide clarity about what constitutes payment stablecoin issuance in the United States for purposes of section 3(a) of the Act (12 U.S.C. 5902(a)), proposed § 1523.2(c) describes when a person not located in the United States will be deemed *not* to issue a payment stablecoin in the United States. In this way, proposed § 1523.2(c) is intended to provide clarity and promote compliance with the Act by describing what a foreign issuer must do to avoid any potential liability under section 3(a) of the Act (12 U.S.C. 5902(a)). Significantly, a person that meets the requirements of proposed § 1523.2(c) will be deemed not to have violated section 3(a) of the Act (12 U.S.C. 5902(a)) even if the person's activities would otherwise constitute, for example, the inadvertent issuance of an unregistered payment stablecoin to a person located in the United States.

To benefit from the protection of proposed § 1523.2(c), a person must meet four conditions. First, the person must not be located in the United States as defined in proposed § 1523.1(c). Second, the person must reasonably believe that each person to whom the payment stablecoin is issued is not located in the United States. Treasury acknowledges that what constitutes a reasonable belief may depend on the facts and circumstances. However, Treasury intends this requirement to exclude situations where the issuer knows, has reason to know, or should know, based on the facts and circumstances, including representations of the person to whom the payment stablecoin is issued or other information reasonably accessible to the issuer, that the person is located in the United States.

Third, the issuer must have adopted and implemented policies, procedures, and controls reasonably designed to avoid issuing the payment stablecoin to any person located in the United States. Treasury emphasizes that these policies, procedures, and controls must not only be adopted on paper, but actually implemented in the issuer's operations, in order for the issuer to benefit from proposed § 1523.2(c). In addition, Treasury believes that policies, procedures, and controls cannot be said to be reasonably designed if they are static; rather, Treasury expects issuers to periodically review and update their policies, procedures, and controls as warranted by changing circumstances, such as when the payment stablecoin market matures, technology evolves, the issuer gains experience in issuing payment stablecoins, and in response to discovery of any inadvertent issuance to persons located in the United States.

Finally, the issuer must not engage in advertising or solicitation activities that target, or could be reasonably expected to have the effect of targeting, any person located in the United States. Treasury believes this condition is necessary to avoid a situation where an issuer is not knowingly issuing payment stablecoins to a person located in the United States, but is engaged in activities that could foreseeably have this result.

Proposed § 1523.2(c) reflects certain concepts that are similar to concepts reflected in Regulation S under the Securities Act, including determination of the non-U.S. status of the relevant person and prohibition against U.S.-targeted advertising or solicitation.[48] Proposed § 1523.2(c), however, would operate within the proposed definition of "located in the United

[48] Regulation S clarifies the extraterritorial application of the registration provisions of the Securities Act of 1933. It provides generally that any offer or sale of securities that occurs outside the United States is not subject to registration under the Securities Act, and includes two safe harbors for specified transactions. *See* Release No. 33-6863 (April 24, 1990). The safe harbors require that offers and sales of securities occur in offshore transactions (which includes not being made to U.S. persons), and that no directed selling efforts are made in the United States. The term "offshore transaction" is defined in Rule 902(c) and the term "directed selling efforts" is defined in Rule 902(h) of Regulation S. While proposed part 1523 is similar in certain ways to Regulation S, Treasury does not intend to formally incorporate any portion of that regulation or any interpretations thereof.

States" and would not adopt Regulation S's offshore-transaction framework. In particular, proposed § 1523.2(c) would not determine whether an entity acquirer is outside the United States by reference to the location from which an authorized employee or other authorized person originates the relevant transaction instruction.

Question 38: What policies, procedures, or controls should support a reasonable belief that the acquiring person is outside the United States? Should Treasury identify specific controls, such as customer identification and due diligence, account-opening information, geographic access restrictions, device- or network-location checks, contractual representations, transaction monitoring, or other controls? Would this diligence take the form of self-attestations, IP address checking, identification document checking, or something else? If the issuer only directly distributed to a digital asset service provider or other intermediary to make the market or otherwise facilitate the transfer of newly-issued payment stablecoins to the ultimate purchasers, should the issuer's obligations be limited to checking whether the intermediary is located in the United States? Or should the issuer be required or expected to work with the intermediary to confirm whether the ultimate purchasers of newly-issued payment stablecoins are located in the United States? Does a reasonableness standard provide sufficient guidance? Should the policies, procedures, and controls be reviewed and updated on a particular cadence?

4. *Participation in violation of section 3(a) of the Act (proposed § 1523.2(d))*

Section 3(f) (12 U.S.C. 5902(f)) imposes certain penalties on persons who knowingly participate in a violation of section 3(a) (12 U.S.C. 5902(a)). The Act does not define what it means to participate in a violation of section 3(a)'s limitation on payment stablecoin issuance. To promote clarity on the scope of this penalty provision and prevent evasion of the Act, Treasury is proposing three specific but non-exclusive examples in proposed § 1523.2(d) of when a person would be considered to participate in a violation of section 3(a) in connection with a payment stablecoin issued in violation of section 3(a). These proposed examples do not represent all situations where a person would be considered to participate in a violation of section 3(a), but rather Treasury enumerates these examples to provide a principled framework in implementing regulations with respect to section 3(a).

First, proposed § 1523.2(d)(1) provides that a person would participate in a violation of section 3(a) if, in connection with a payment stablecoin issued in violation of section 3(a), the person incurs an obligation to a third party to convert, redeem, or repurchase a payment stablecoin, including a secondary obligation to convert, redeem, or repurchase on behalf of the original issuer. This example is intended to capture the issuer itself, as well as others who effectively function as a joint issuer or guarantor insofar as they are obligated to redeem a payment stablecoin issued in violation of section 3(a).

Second, proposed § 1523.2(d)(2) provides that a person would participate in a violation of section 3(a) if, in connection with a payment stablecoin issued in violation of section 3(a), the person coordinates with the issuer to facilitate key steps in the issuance, such as soliciting customers or minting the payment stablecoins. This example is intended to capture persons who provide substantial assistance to the issuer in issuing a payment stablecoin in violation of section 3(a), and where such assistance was provided prior to or at the point at which the payment stablecoins are considered issued. For example, in a white label arrangement, the person providing its branding may be considered to facilitate key steps in the issuance process even though such person may not itself be the issuer of the payment stablecoin.

Third, proposed § 1523.2(d)(3) provides that a person would participate in a violation of section 3(a) if, in connection with a payment stablecoin issued in violation of section 3(a), the person acts as a market maker for newly issued payment stablecoins, distributes the newly issued payment stablecoins to purchasers of newly issued payment stablecoins, or otherwise makes the newly issued payment stablecoins available for secondary market trading. This example is intended to capture persons who provide substantial assistance in issuing a payment stablecoin in violation of section 3(a), and where such assistance was provided at or around the point of issuance. Treasury expects, for example, that this would cover a digital asset service provider making an initial listing of an unregistered payment stablecoin shortly after issuance, in effect supporting the mass initial distribution of the unlawful issuance. Treasury generally does not intend for proposed § 1523.2(d)(3) to cover persons who merely purchase a smaller subset of the unlawfully issued payment stablecoins in the issuance for their own use (as opposed to for immediate resale in a dealer capacity), nor is proposed § 1523.2(d)(3) intended to capture secondary market trading activities that do not have a close temporal nexus to the initial issuance. Of course, secondary market trading activities of unregistered payment stablecoins at any time may implicate the prohibitions on offer and sale in section 3(b) of the Act (12 U.S.C. 5902(b)), as described further below.

Treasury emphasizes that the proposed examples are not intended to be exhaustive, and that other persons not covered by these examples may be found to have knowingly participated in a violation of section 3(a).

As discussed in section II.H below, Treasury is proposing to include in Appendix A several interpretations of proposed Part 1523. Some of the proposed interpretations relate to when a person may have participated in a violation of section 3(a) of the Act (12 U.S.C. 5902(a)).

Question 39: Are the proposed examples of when a person would be considered to participate in a violation of section 3(a) appropriate and clear?

Question 40: What additional examples of when a person would be considered to participate in a violation of section 3(a) should Treasury adopt?

Question 41: Should the situations covered by proposed § 1523.2(d) be non-exhaustive examples of participating in an unlawful issuance, or should they be an exhaustive set? What is the value and risk of providing complete certainty of activities that constitute participation versus preserving flexibility to capture participation in unlawful issuances in ways that are unanticipated or structured to evade proposed rule?

Question 42: Are there situations covered by proposed § 1523.2(d) for which Treasury should grant foreign payment stablecoin issuers or related parties relief in furtherance of the purposes of this Act? If so, what would be the appropriate form(s) of such relief?

Question 43: Should Treasury set requirements, guidance, or safe harbors relating to how a person should determine if it is participating in an unlawful issuance in accordance with proposed § 1523.2(d)? If so, would they be similar to or different from the requirements, guidance, or safe harbors contemplated in the prior question relating to proposed § 1523.2(c)? Should the requirements differ based on whether the participant in the issuance is the issuer itself, a person providing its branding in a white label arrangement, a market maker, a service provider, or something else? Should one participant be permitted to rely on the representations of another participant that the issuance is lawful? Are such requirements, guidance, or safe harbors appropriate and necessary for § 1523.2 or should § 1523.2 focus instead on the factual contours of participating in an issuance to a person located in the United States, and reserve questions of knowledge or due diligence to the determination of a "knowing" violation under section 3(f)?

5. *Alternative approaches*

In lieu of the proposal discussed above, Treasury is also considering alternative approaches under which proposed § 1523.2 would deem any issuance of a payment stablecoin by a person other than a permitted payment stablecoin issuer or a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) to a person who is located in the United States to be unlawful, regardless of whether the issuer knew or should have known that the recipient was actually located in the United States. Such an alternative would involve narrowing or removing proposed § 1523.2(c). This alternative approach would provide a clear, unambiguous line as to whether payment stablecoins were issued in the United States that depends only on factually verifiable locations of the issuer and the person to whom the payment stablecoins were issued. The lawful or unlawful nature of the issuance, therefore, would not depend on other facts and circumstances, such as the level of due diligence performed by the issuer.

Treasury acknowledges that this outcome may be viewed as overly strict, particularly where the issuer took reasonable steps to ensure that the recipient was not located in the United States and reasonably believed that the recipient was not located in the United States at the time of the issuance. However, under this approach, the due diligence steps that the issuer took or its reasonable belief with respect to the location of the recipient would not be relevant considerations as to whether an issuance has occurred in the United States in the first instance; rather, these factors are most relevant to the question of whether the issuer or another person "knowingly" participated in an unlawful issuance, which is a required element for the criminal penalties under section 3(f) of the Act (12 U.S.C. 5902(f)).

As a second alternative, Treasury is considering whether to align proposed § 1523.2 more directly to the territorial concepts reflected in Regulation S under the Securities Act by adopting a broader offshore transaction framework. Under this alternative, for example, the term "located in the United States" would not be defined based on an individual or entity's status (e.g., residency or jurisdiction of organization), and a foreign payment stablecoin issuer would be deemed not to issue a payment stablecoin in the United States if (i) the issuance is made in an offshore transaction and (ii) no directed selling efforts are made in the United States by the foreign payment stablecoin issuer or any person acting on its behalf. Proposed § 1523.2(c) similarly incorporates certain Regulation S-like concepts, but it would not adopt Regulation S's offshore-transaction framework nor its specific definitions.

In such an alternative, an offshore transaction could be defined to require that no offer be made to a person in the United States and that, at the time the acquisition request or other transaction instruction is originated, the person acquiring the payment stablecoin is outside the United States, or the foreign payment stablecoin issuer and any person acting on its behalf reasonably believe that the person acquiring the payment stablecoin is outside the United States.

Similar to proposed § 1523.2(c), the reasonable belief standard could be supported by reasonably designed, implemented, and maintained policies, procedures, and controls, which may include customer identification and due diligence, account-opening information, geographic access restrictions, device- or network-location tools, contractual representations, transaction monitoring, and other controls reasonably designed to identify whether the person acquiring the payment stablecoin is outside the United States.

Unlike proposed § 1523.2(c), when the person acquiring the payment stablecoin is a legal entity, if an authorized employee places the acquisition request or other transaction instruction while abroad, the requirement that the person acquiring the payment stablecoin be outside the United States would be satisfied, regardless of the place of incorporation or principal place of business of the entity.

As compared to proposed § 1523.2(c), the alternative would more directly incorporate the concept of directed selling efforts from Regulation S, which could be defined as any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for the payment stablecoin. In applying that concept to payment stablecoins, Treasury could consider whether activity is undertaken for the purpose of, or could reasonably be expected to have the effect of, promoting, soliciting, or creating demand in the United States for the payment stablecoin. Such activity could include advertising or solicitation directed at the United States, liquidity incentives directed at U.S. use, merchant-enablement activity in the United States, U.S.-facing wallet or platform integrations, or other ecosystem-development activity intended to facilitate the use or circulation of the payment stablecoin in the United States, even if the formal issuance occurs outside the United States.

While informed by Regulation S concepts, such an approach need not import Regulation S wholesale. For example, Regulation S's category structure, distribution compliance periods, and offering restrictions may not be necessary.

Treasury recognizes that this alternative may better address certain cross-border fact patterns than the proposed approach, which defines when a payment stablecoin has been issued "in the United States" based on the location of the issuer and acquirer. For example, a nominally offshore issuance may be structured to place newly issued payment stablecoins into U.S. circulation through an affiliate, distributor, market maker, platform, or other intermediary. Conversely, an issuance may involve a U.S.-organized entity acting through non-U.S. personnel, accounts, and operations for non-U.S. customers, with no U.S.-directed activity. More closely aligning with Regulation S may provide more clarity for certain financial institutions that are already familiar with this well-established framework and have controls designed for it, though it may provide more complexity for payment stablecoin actors that are not already familiar with Regulation S. Treasury requests comment on whether an offshore-transaction framework would better distinguish between those fact patterns, or whether the proposed approach, including the proposed definition of "located in the United States" and proposed § 1523.2(b)–(d), provides greater administrability and certainty.

Treasury also requests comment on whether the alternative frameworks would create undue complexity or increase or decrease evasion risk or risk of flowback of large volumes of payment stablecoins to the U.S. market.

Question 44: Should Treasury adopt the first alternative described above, wherein an issuance is per se unlawful if any payment stablecoins are issued to persons located in the United States, where knowledge and procedures are relevant only for the secondary question of whether criminal penalties may attach?

Question 45: Should Treasury adopt an offshore transaction framework more similar to Regulation S, such as the approach described in the second alternative above, under which a foreign payment stablecoin issuer would be deemed not to issue a payment stablecoin in the United States for purposes of section 3(a) of the Act (12 U.S.C. 5902(a)) if the issuance is made *in an offshore transaction and no directed selling efforts are made in the United States by the issuer or any person acting on its behalf?*

Question 46: Should any offshore transaction framework apply only to foreign payment stablecoin issuers? Should such a framework replace proposed § 1523.2(b)–(d), supplement proposed § 1523.2(b)–(d), or be structured as a safe harbor under § 1523.4?

Question 47: Should a foreign payment stablecoin issuer be unable to rely on offshore treatment if the issuer or any person acting on its behalf knows that the transaction has been prearranged with a person in the United States?

Question 48: What conduct should Treasury identify as inconsistent with offshore treatment or as evidence of directed selling efforts in the United States? For example, should such conduct include advertising the payment stablecoin as available to persons in the United States, advising persons how to evade location-detection or restriction mechanisms, providing U.S.-directed liquidity incentives, supporting U.S.-facing wallet or platform integrations, or facilitating U.S. merchant acceptance?

Question 49: What conduct should Treasury identify as ordinarily not constituting directed selling efforts standing alone? For example, should such conduct include legally required notices with no promotional content; factual communications to existing holders; processing conversion, redemption, or repurchase requests; ordinary custody or safekeeping; and ordinary technical support?

Question 50: Are there additional concepts, conditions, limitations, interpretations, or exceptions from Regulation S or other areas of law that Treasury should consider incorporating into any offshore transaction framework for payment stablecoin issuance? For example, should Treasury consider a category structure, distribution compliance periods, offering restrictions, purchaser certifications, transfer restrictions, notice or platform-control requirements, special treatment for discretionary accounts or similar accounts held for the benefit or account of non-U.S. persons by others, such as fiduciaries, organizations, or affiliates? Should Treasury also *incorporate anti-evasion principles, such as rules for transactions specifically targeted at identifiable groups of U.S. persons abroad, prearranged transactions with persons in the United States, or transactions that are formally offshore but part of a plan or scheme to evade section 3(a) of the Act (12 U.S.C. 5902(a))?*

E. Payment Stablecoin Offer and Sale (Proposed § 1523.3)

Proposed § 1523.3 implements the prohibitions in section 3(b) of the Act (12 U.S.C. 5902(b)) on offers and sales of payment stablecoins by digital asset service providers. Proposed paragraphs (a) and (b) codify the statutory prohibitions in sections 3(b)(1) and 3(b)(2) of the Act (12 U.S.C. 5902(b)(1), (2)) with certain clarifications. Proposed paragraph (c) clarifies a digital asset service provider's obligations with respect to a foreign payment stablecoin issuer's compliance with lawful orders and reciprocal arrangements. Proposed paragraph (d) provides examples of activities that constitute an offer or sale of a payment stablecoin to a person in the United States. Proposed paragraph (e) describes when a digital asset service provider will be deemed not to violate the prohibitions in section 3(b) of the Act (12 U.S.C. 5902(b)).

In developing proposed regulations to implement section 3(b) of the Act (12 U.S.C. 5902(b)), Treasury first considered the relationship between the prohibitions in section 3(b)(1) and section 3(b)(2). As a preliminary matter, Treasury notes that the prohibitions in section 3(b)(1) and section 3(b)(2) of the Act (12 U.S.C. 5902(b)(1), (2)) are similar in language, structure and effect: Both prohibitions declare it to be unlawful for a digital asset service provider to engage in certain proscribed activities related to a payment stablecoin, unless the payment stablecoin is issued by a person meeting certain criteria. The most obvious differences between the two prohibitions are the date on which each becomes applicable and the criteria that must be met for a digital asset service provider not to violate each prohibition.

Beyond these obvious differences, there are two more subtle differences between the prohibitions in sections 3(b)(1) and 3(b)(2) of the Act (12 U.S.C. 5902(b)(1), (2)). First, whereas section 3(b)(1) proscribes the "offer or [sale]" of certain payment stablecoins, section 3(b)(2) proscribes the "offer, [sale], or otherwise mak[ing] available" of certain payment stablecoins. With respect to "make available," Treasury acknowledges that different terms in a statute are ordinarily presumed to have different meanings, in which case, "make available" should be understood to refer to a distinct set of activities that are not "offer" or "sale," but that general rule is not dispositive.[49] In this case, the Act defines "offer" as "to make available for purchase, sale, or exchange."[50] For this reason, Treasury does not believe that the statutory terms "offer," "sell," and "make available" are mutually exclusive, and they may significantly overlap. Further, at least for purposes of the proposed rule, Treasury believes that the value of reducing redundancy and promoting clarity to digital asset service providers on the scope of prohibited activities counsels against providing separate and distinct examples of what constitutes the "mak[ing] available" of a payment stablecoin, which may create confusion among the legal obligations that apply to digital asset service providers. For this reason, proposed § 1523.3(d) enumerates a single set of activities that, when conducted by a digital asset service provider, would violate either section 3(b)(1) or section 3(b)(2), as applicable. Treasury notes that these examples are not exhaustive, and that other activities may constitute the offer, sale, or making available of a payment stablecoin.

Second, section 3(b)(1) applies to the offer or sale of certain payment stablecoins "to a person in the United States," but section 3(b)(2) applies to the offer, sale, or otherwise making available "in the United States" of certain payment stablecoins. As discussed above, Treasury acknowledges that different terms in a statute are ordinarily presumed to have different meanings. However, Treasury believes that whatever the outer boundaries of this phrase in section 3(b)(2), offering, selling, or otherwise making available a payment stablecoin "in the

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[49] *See, e.g.*, WILLIAM ESKRIDGE, INTERPRETING LAW (2016) (noting that the presumption against interpreting a provision of a statute in a way that would render other provisions superfluous or redundant "must give way when offset by other evidence of statutory meaning"); *King v. Burwell*, 576 U.S. 473, 491 (2015) (noting with respect to a particular statute that "rigorous application of the canon does not seem a particularly useful guide to a fair construction of the statute"); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013) (observing that "[t]he canon against surplusage is not an absolute rule").

[50] *See* section 2(21) of the Act (12 U.S.C. 5901(21)).

United States" must include offering or selling *to a person located in the United States*. Thus, in this respect, section 3(b)(2) at least includes, if it is not coextensive with, section 3(b)(1). This reading is consistent with section 3(e) of the Act (12 U.S.C. 5902(e)), which provides extraterritorial treatment for conduct involving an offer or sale of a payment stablecoin to a "person located in the United States." As noted above, Treasury believes that the value of promoting clarity and reducing redundancy counsels against an overly complex proposed rule. Accordingly, proposed § 1523.3(b) specifies that the prohibition in section 3(b)(2) extends to offers or sales to persons located in the United States, and all of the examples enumerated in proposed § 1523.3(d) that would violate section 3(b)(1) or section 3(b)(2), as applicable, are activities conducted with respect to persons located in the United States.

Question 51: Does Treasury's interpretation of the relationship between section 3(b)(1) and section 3(b)(2) reflect the best reading of the Act? In particular, does the phrase "make available" include activities not already covered by "offer" or "sell," and if so, what are specific examples of such activities? Is offering or selling "in the United States" meaningfully different from offering or selling "to a person in the United States"?

1. *Offer and sale activities on and after July 18, 2028 (proposed § 1523.3(a))*

Section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)) provides that, except as provided in section 3(c) (12 U.S.C. 5902(c)) and section 18 (12 U.S.C. 5916), beginning on the date that is three years after the date of enactment of the Act, it shall be unlawful for a digital asset service provider to offer or sell a payment stablecoin to a person in the United States, unless the payment stablecoin is issued by a permitted payment stablecoin issuer. Proposed § 1523.3(a) implements section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)) and provides that beginning on July 18, 2028, except in accordance with § 1523.4, it shall be unlawful for a digital asset service provider to offer or sell a payment stablecoin to a person located in the United States unless the payment stablecoin is (i) issued by a permitted payment stablecoin issuer, or (ii) issued by a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)).

The text of proposed § 1523.3(a) codifies the substance of section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)) without change but Treasury has included certain ministerial clarifications in the regulatory text. First, proposed § 1523.3(a) specifies that the prohibition in section 3(b)(1) becomes applicable on July 18, 2028, which is the date that is three years after the date of enactment of the Act. Second, the inclusion of the qualifying language "except in accordance with § 1523.4" makes clear from the outset that certain exemptions and safe harbors may apply. These exemptions and safe harbors are addressed below in connection with proposed § 1523.4. Third, whereas section 3(b)(1) merely cross-references section 18 of the Act (12 U.S.C. 5916) as providing an exemption, proposed § 1523.3(a) more clearly spells out that the prohibition does not apply to a payment stablecoin issued by a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)).

2. *Offer and sale of payment stablecoins issued by foreign payment stablecoin issuers (proposed § 1523.3(b))*

Section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)) provides that it shall be unlawful for any digital asset service provider to offer, sell, or otherwise make available in the United States a payment stablecoin issued by a foreign payment stablecoin issuer unless the foreign payment stablecoin issuer has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916). Proposed § 1523.3(b) implements section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)) and provides that, except in accordance with § 1523.4, it shall be unlawful for a digital asset service provider to offer or sell to a person located in the United States, or otherwise offer, sell, or make available in the United States, a payment stablecoin issued by a foreign payment stablecoin issuer unless the foreign payment stablecoin issuer has the technological capability to comply with, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).

The text of proposed § 1523.3(b) differs from the text of section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)) in two respects. First, the inclusion of the qualifying language "except in accordance with § 1523.4" makes clear from the outset that certain exemptions and safe harbors may apply. These exemptions and safe harbors are addressed below in connection with proposed § 1523.4. Second, proposed § 1523.3(b) makes clear that, as discussed above, the statutory phrase "offer, sell, or otherwise make available in the United States" includes offering or selling to a person located in the United States.

Treasury considered whether section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)) is applicable to a payment stablecoin issued by a foreign payment stablecoin issuer meeting the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)). Treasury does not believe that sections 18(a) and 3(b), when read together, were intended to relieve foreign payment stablecoin issuers meeting the criteria in section 18(a) of the Act (12 U.S.C. 5916(a)) of the obligations to comply with lawful orders and reciprocal arrangements, or to authorize the offer or sale of payment stablecoins issued by non-compliant issuers. Instead, Treasury believes that sections 18(a) and 3(b), when read together, relieve foreign payment stablecoin issuers meeting the criteria of section 18(a) of the Act (12 U.S.C. 5916(a)) from the general prohibition on offers and sales of their payment stablecoins, while retaining the obligations to comply with lawful orders and reciprocal arrangements. Treasury notes that these obligations of foreign payment stablecoin issuers arise under or are reinforced by other provisions of the Act, namely section 8(a)(1) of the Act (12 U.S.C. 5907(a)(1)) (regarding lawful orders) and sections 18(a) (12 U.S.C. 5916(a)) and 18(d) of the Act (12 U.S.C. 5916(d)) (regarding reciprocity).

3. *Compliance with lawful orders and reciprocal arrangements (proposed § 1523.3(c))*

As described above, section 3(b)(2) and proposed § 1523.3(b) each refer to limitations on digital asset service providers' ability to offer, sell, or make available in the United States a payment stablecoin issued by a foreign payment stablecoin issuer. In particular, in order for the payment stablecoin to be lawfully offered, sold, or made available by a digital asset service provider, the foreign payment stablecoin issuer must have the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916). Recognizing the importance of providing clarity to digital asset service providers on how to avoid unlawful offers and sales of payment stablecoins issued by foreign payment stablecoin issuers, proposed § 1523.3(c) clarifies a digital asset service provider's obligations with respect to these requirements. It provides that, for purposes of proposed § 1523.3(b), a digital asset service provider may rely on a representation by a foreign payment stablecoin issuer that the foreign payment stablecoin issuer has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916), subject to two constraints. First, the digital asset service provider may not rely on such representation unless it conducts reasonable due diligence regarding the representation. Second, the digital asset service provider may not rely on such representation if, based on such due diligence or other information reasonably available to it, the digital asset service provider knows, has reason to know, or should know that the representation is false or that the foreign payment stablecoin issuer does not have the technological capability to comply, or will not comply, with the terms of any lawful order or any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).

In considering the requirements of section 3(b)(2) of the Act (12 U.S.C. 5902(b)(2)), Treasury notes that, as a practical matter, a digital asset service provider may not know, and may not be able to ascertain without prohibitively onerous inquiry, the full extent of a foreign payment stablecoin issuer's technological capabilities to comply with lawful orders and reciprocal arrangements. More significantly, a digital asset service provider can never know with certainty whether a foreign payment stablecoin issuer "will comply" at all times in the future with the terms of any lawful order or any reciprocal arrangement. Thus, a strict reading of these provisions of the Act would effectively foreclose the offer or sale by digital asset service providers of payment stablecoins issued by foreign payment stablecoin issuers in all cases because it would be impossible for the digital asset service provider to meet these exacting standards. Treasury believes this strict reading is not compelled by the text of the statute and would frustrate the purpose of the Act, which clearly contemplates the offer or sale by digital asset service providers of payment stablecoins issued by foreign payment stablecoin issuers, at least in some cases.

Instead, Treasury proposes a more practical approach that permits a digital asset service provider to rely in certain circumstances on a foreign payment stablecoin issuer's representation that the foreign payment stablecoin issuer has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916). To be entitled to rely on such a representation, however, the digital asset service provider must meet two criteria.

First, the digital asset service provider may not rely on a foreign payment stablecoin issuer's representation unless it conducts reasonable due diligence on the foreign payment stablecoin issuer. Treasury acknowledges that what constitutes a reasonable level of due diligence may vary depending on the facts and circumstances. In all cases, however, Treasury expects this due diligence to include confirming that no prohibition on secondary trading pursuant to section 8 of the Act (12 U.S.C. 5907) is in effect with respect to the foreign payment stablecoin issuer. Section 8 of the Act (12 U.S.C. 5907) authorizes the Secretary to designate any foreign payment stablecoin issuer as noncompliant with the requirement that the foreign payment stablecoin issuer has the technological capability to comply and complies with the terms of any lawful order.[51] The Secretary's designation is made public via the process laid out in section 8 of the Act (12 U.S.C. 5907), including publication in the Federal Register, along with a prohibition

[51] *See* section 8(a) of the Act (12 U.S.C. 5907(a)).

on secondary trading of the foreign payment stablecoin issuer's payment stablecoins in the United States by digital asset service providers.[52]

Treasury considered whether confirming the absence of any prohibition on secondary trading should alone constitute a sufficient level of due diligence on the part of a digital asset service provider. However, other evidence of a foreign payment stablecoin issuer's noncompliance with, for example, a lawful order may be readily available from public or non-public sources accessible to the digital asset service provider, even when no prohibition on secondary trading under section 8 is yet in effect. In such a situation, Treasury believes that a digital asset service provider should not be able to rely on the foreign payment stablecoin issuer's representation. As such, the proposed requirement that a digital asset service provider must conduct reasonable due diligence is intended to go beyond merely confirming that no prohibition on secondary trading is in effect. Rather, the digital asset service provider should consider all reasonably available sources of information regarding the foreign payment stablecoin issuer.

Second, the digital asset service provider may not rely on a foreign payment stablecoin issuer's representation if, based on such due diligence or other information reasonably available to it, the digital asset service provider knows, has reason to know, or should know that the representation is false or that the foreign payment stablecoin issuer does not have the technological capability to comply, or will not comply, with the terms of any lawful order or any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916). Treasury intends this language to include, in addition to actual knowledge of falsity, a situation where the digital asset service provider is aware of facts that would cause a reasonable person to conclude that the foreign payment stablecoin issuer does not have the technological capability to comply, or will not comply, with the terms of any lawful order or any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).

[52] *See* section 8(b) of the Act (12 U.S.C. 5907(b)).

Question 52: What due diligence should be required of a digital asset service provider in order for the digital asset service provider to be entitled to rely on the representation of a foreign payment stablecoin issuer that the foreign payment stablecoin issuer has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916)? Should the rule be more prescriptive about the form of the representation, such as requiring it to be in writing, contain certain language, or be updated with some frequency? Is the requirement to conduct reasonable due diligence clear and appropriate? Should the proposed rule be more prescriptive about the specific steps a digital asset service provider must take? For example, should the rule address certain public representations or advertisements made by foreign payment stablecoin issuers, such as that their payment stablecoins are resistant to freezing? Should the rule require digital asset service providers to retain records of the representation and due diligence, and if so, which records and for how long? For example, should a digital asset service provider be required to audit or examine smart contracts relating to a payment stablecoin? If so, should a digital asset service provider be required to verify the existence and/or efficacy of smart contract functions designed to comply with lawful orders, such as "seize," "freeze," and "burn" functions? Would such requirement effectively prevent digital asset service providers from offering, selling or otherwise making available payment stablecoins whose code is not fully open source?

Question 53: Is the proposed "knows, has reason to know, or should know" standard appropriate and clear? Alternatively, should digital asset service providers be held to a more exacting standard—such as not having any reason to suspect that a foreign payment stablecoin issuer does not have the technological capability to comply, or will not comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916)—before being entitled to rely on the foreign payment stablecoin issuer's representation?

Question 54: Should the proposed due diligence requirements be different for lawful orders vs. reciprocal arrangements? For example, for reciprocal arrangements, should the requirements specify the extent to which the digital asset service provider should obtain and review the terms of any reciprocal arrangement with a jurisdiction that is the foreign payment stablecoin issuer's domicile?

Question 55: Is there any difference in the obligations of digital asset service providers with respect to lawful orders or reciprocity agreements before or after July 18, 2028, or with respect to payment stablecoins issued by foreign payment stablecoin issuers in compliance with section 18(a) of the Act (12 U.S.C. 5916(a))?

4. *Offer and sale activities prescribed (proposed § 1523.3(d))*

Whereas proposed § 1523.3(a) and proposed § 1523.3(b) aim generally to codify the text of the statutory prohibitions in section 3(b)(1) and section 3(b)(2), respectively, proposed § 1523.3(d) provides further clarity to digital asset service providers regarding these prohibitions by enumerating examples of activities that constitute the offer or sale of a payment stablecoin to a person located in the United States. Treasury emphasizes that the proposed examples are not intended to be exhaustive, and that other activities by digital asset service providers may constitute a violation of proposed § 1523.3(a) or proposed § 1523.3(b), as applicable, depending on the facts and circumstances.

First, proposed § 1523.3(d)(1) provides that a digital asset service provider offers or sells a payment stablecoin to a person located in the United States if the digital asset service provider directly solicits a person located in the United States to purchase the payment stablecoin.

Second, proposed § 1523.3(d)(2) provides that a digital asset service provider offers or sells a payment stablecoin to a person located in the United States if the digital asset service provider advertises the payment stablecoin as available for purchase by persons located in the United States.

Third, proposed § 1523.3(d)(3) provides that a digital asset service provider offers or sells a payment stablecoin to a person located in the United States if the digital asset service provider responds to an unsolicited inquiry from a person located in the United States by indicating willingness to sell the payment stablecoin. In this example, Treasury believes that an offer has occurred because the digital asset service provider has made a payment stablecoin available for purchase, sale, or exchange, regardless of the circumstances that gave rise to the offer.

Fourth, proposed § 1523.3(d)(4) provides that a digital asset service provider offers or sells a payment stablecoin to a person located in the United States if the digital asset service provider advises potential purchasers of the payment stablecoin on how to evade generally applicable location detection or restriction mechanisms that would otherwise detect or block purchases by persons located in the United States, such as IP address checkers. This example is intended to prevent digital asset service providers from evading the Act by facilitating a potential purchaser's use of technology to evade the limitation on purchasers located in the United States.

Fifth, proposed § 1523.3(d)(5) provides that a digital asset service provider offers or sells a payment stablecoin to a person located in the United States if the digital asset service provider enters into a contract for the sale of a payment stablecoin with a person located in the United States, regardless of the form of consideration provided in return for the payment stablecoin or the timing of delivery of the payment stablecoin. Treasury believes that a sale should be considered to have occurred regardless of the form of consideration provided in return for the payment stablecoin or the timing of delivery of the payment stablecoin.

Question 56: Are the proposed examples of activities that, when conducted by a digital asset service provider, constitute the offer or sale of a payment stablecoin to a person located in the United States appropriate and clear?

Question 57: What additional examples of activities that, when conducted by a digital asset service provider, constitute the offer or sale of a payment stablecoin to a person located in the United States should be provided?

Question 58: Should the scenarios included in proposed § 1523.3(d) be an exhaustive list of violations of proposed § 1523.3(a) or proposed § 1523.3(b) rather than a non-exhaustive list of examples?

Question 59: Is an airdrop of a payment stablecoin considered an offer, such as on the basis that the payment stablecoin is being made available for exchange, even in the absence of a sale for consideration? Or are such airdrops outside the scope of proposed § 1523.3?

Question 60: How should the use of payment stablecoins in traditional financial instruments and markets, including funds, implicate or not implicate the provisions governing offer or sale of payment stablecoins by digital asset service providers? For example, if a financial instrument pays dividends in the form of payment stablecoins, should the offer or sale of the underlying instrument be considered the offer or sale of a payment stablecoin? Should the answer depend on whether the dividend has already been declared at the time the underlying instrument is offered or sold? Regardless of the treatment of the offer or sale of the underlying instrument, should the payment of the dividend itself be considered an offer or sale of payment stablecoins?

Question 61: Is it clear how proposed § 1523.3 relates to participation in an issuance under proposed § 1523.2? In what scenarios would a digital asset service provider violate one, the other, or both?

5. *Activities deemed not to be offers or sales (proposed § 1523.3(e))*

Whereas proposed § 1523.3(d) is intended to provide clarity to digital asset service providers about what offer and sale activities violate the prohibitions in section 3(b)(1) and 3(b)(2) of the Act (12 U.S.C. 5902(b)(1), (2)), proposed § 1523.3(e) describes when a digital asset service provider will be deemed *not* to offer or sell a payment stablecoin to a person located in the United States, and will be deemed not to offer, sell, or otherwise make available in the United States a payment stablecoin. In this way, proposed § 1523.3(e) is intended to provide clarity and promote compliance with the Act by describing what a digital asset service provider must do to avoid potentially violating section 3(b) of the Act (12 U.S.C. 5902(b)). Significantly, a digital asset service provider that meets the requirements of proposed § 1523.3(e) will not be considered to have violated section 3(b) of the Act (12 U.S.C. 5902(b)) even if the digital asset service provider's activities would otherwise constitute, for example, the inadvertent sale of an unregistered payment stablecoin to a person located in the United States.

To benefit from the protection of proposed § 1523.3(e), a digital asset service provider must meet three conditions. First, the digital asset service provider must reasonably believe that the person to whom the payment stablecoin is offered, sold, or otherwise made available is not located in the United States. Treasury acknowledges that what constitutes a reasonable belief on the part of the digital asset service provider may depend on the facts and circumstances. Similar to the proposed due diligence requirements in proposed § 1523.3(c), however, Treasury intends this requirement to exclude situations where the digital asset service provider knows or has reason to know, based on the representations of the person to whom the payment stablecoin is offered, sold, or otherwise made available or other information reasonably accessible to the digital asset service provider, that the person is located in the United States.

Second, the digital asset service provider must have adopted and implemented policies, procedures, and controls reasonably designed to avoid offering, selling, or making available the payment stablecoin to any person located in the United States. Treasury emphasizes that these policies, procedures, and controls must not only be adopted in form, but actually implemented in the digital asset service provider's operations, in order for the digital asset service provider to benefit from proposed § 1523.3(e). In addition, Treasury believes that policies, procedures, and controls cannot be said to be reasonably designed if they are static; rather, Treasury expects digital asset service providers to periodically review and update their policies, procedures, and controls as the payment stablecoin market matures, technology evolves, as the digital asset service provider gains experience in offering and selling payment stablecoins, and in response to any identified instances of offers or sales to persons located in the United States.

Finally, the digital asset service provider must not engage in advertising or solicitation activities that target, or could be reasonably expected to have the effect of targeting, any person located in the United States. Treasury believes this condition is necessary to avoid a situation where a digital asset service provider is not knowingly offering, selling, or making payment stablecoins available to a person located in the United States, but is engaged in activities that could foreseeably have this result.

Like proposed § 1523.2(c), proposed § 1523.3(e) incorporates certain concepts that are similar to concepts reflected in Regulation S under the Securities Act, but would operate within the proposed definition of "located in the United States" and would not adopt Regulation S's offshore-transaction framework.

Question 62: What policies, procedures, or controls should support a reasonable belief that the acquiring person is outside the United States? Should Treasury identify specific controls, such as customer identification and due diligence, account-opening information, geographic access restrictions, device- or network-location checks, contractual representations, transaction monitoring, or other controls? Would this diligence take the form of self-attestations, IP address checking, identification document checking, or something else? Should the policies, procedures, and controls be reviewed and updated on a particular cadence?

Question 63: Are there other situations covered by proposed § 1523.3 for which Treasury should also not deem an offer or sale to a person located in the United States to have occurred in furtherance of the purposes of this Act? For example, should offers or sales resulting from certain types of reverse solicitations involving payment stablecoins issued by foreign payment stablecoin issuers not be deemed to violate the prohibition?

6. *Alternative approaches*

As with payment stablecoin issuance, discussed in section II.D.5, Treasury is also considering several alternative approaches for § 1523.3. First, Treasury is considering an alternative approach under which proposed § 1523.3 would deem any offer or sale of a payment stablecoin that is not issued by a permitted payment stablecoin issuer or a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)) to a person who is located in the United States to be unlawful, regardless of whether the digital asset service provider knew or should have known that the recipient or offeree was actually located in the United States. Such an alternative would involve narrowing or removing proposed § 1523.3(e). This alternative approach would provide a clear, unambiguous line that depends only on factually verifiable location of the person to whom the payment stablecoins were offered or sold. The lawful or unlawful nature of the offer or sale, therefore, would not depend on other facts and circumstances, such as the level of due diligence performed by the digital asset service provider.

Treasury acknowledges that this outcome may be viewed as overly strict, particularly where the digital asset service provider took reasonable steps to ensure that the recipient was not located in the United States and reasonably believed that the recipient was not located in the United States at the time of the offer or sale.

As a second alternative, Treasury is considering whether to align proposed § 1523.3 more directly to the territorial concepts reflected in Regulation S under the Securities Act by adopting a broader offshore transaction framework. Under this alternative, for example, the term "located in the United States" would not be defined based on an individual's or entity's status (e.g., residency or jurisdiction of organization), and a digital asset service provider would be deemed not to offer or sell a payment stablecoin to a person located in the United States if (i) the offer or sale is made in an offshore transaction and (ii) no directed selling efforts are made in the United States by the digital asset service provider or any person acting on its behalf. Proposed §

1523.3(e) similarly incorporates certain Regulation S-like concepts, but it would not adopt Regulation S's offshore-transaction framework nor its specific definitions.

In such an alternative, an offshore transaction could be defined to require that no offer be made to a person in the United States and that, at the time the acquisition request or other transaction instruction is originated, the person acquiring the payment stablecoin is outside the United States, or the digital asset service provider and any person acting on its behalf reasonably believe that the person acquiring the payment stablecoin is outside the United States. Similar to proposed § 1523.3(e), the reasonable belief standard could be supported by reasonably designed, implemented, and maintained policies, procedures, and controls, which may include customer identification and due diligence, account-opening information, geographic access restrictions, device- or network-location tools, contractual representations, transaction monitoring, and other controls reasonably designed to identify whether the person acquiring the payment stablecoin is outside the United States.

Unlike proposed § 1523.3(e), when the person acquiring the payment stablecoin is a legal entity, if an authorized employee places the acquisition request or other transaction instruction while abroad, the requirement that the person acquiring the payment stablecoin be outside the United States would be satisfied, regardless of the place of incorporation or principal place of business of the entity.

As compared to proposed § 1523.3(e), the alternative would more directly incorporate the concept of directed selling efforts from Regulation S, which could be defined as any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for the payment stablecoin. In applying that concept to payment stablecoins, Treasury could consider whether activity is undertaken for the purpose of, or could reasonably be expected to have the effect of, promoting, soliciting, or creating demand in the United States for the payment stablecoin. Such activity could include advertising or solicitation directed at the United States, liquidity incentives directed at U.S. use, merchant-enablement activity in the United States, U.S.-facing wallet or platform integrations, or other ecosystem-development activity intended to facilitate the use or circulation of the payment stablecoin in the United States, even if the formal issuance occurs outside the United States.

While informed by Regulation S concepts, such an approach need not import Regulation S wholesale. For example, Regulation S's category structure, distribution compliance periods, and offering restrictions may not be necessary.

Similar to the alternative considered and described in section II.D.5 above, Treasury recognizes that this alternative may better address certain cross-border fact patterns than the proposed approach. More closely aligning with Regulation S may provide more clarity for certain financial institutions that are already familiar with this well-established framework and have controls designed for it, though it may provide more complexity for payment stablecoin actors that are not already familiar with Regulation S. Treasury requests comment on whether an offshore-transaction framework would better distinguish between those fact patterns, or whether the proposed approach, including the proposed definition of "located in the United States" and proposed § 1523.3(b)–(e), provides greater administrability and certainty.

Treasury also requests comment on whether the alternative frameworks would create undue complexity or increase or decrease evasion risk or risk of flowback of large volumes of payment stablecoins to the U.S. market.

Question 64: Should Treasury adopt the first alternative described above, wherein an offer or sale is per se unlawful if any payment stablecoins are offered or sold to persons located in the United States, where knowledge and procedures are not relevant? Does this alternative reflect the better reading of the statute?

Question 65: Should Treasury adopt an offshore transaction framework more similar to Regulation S, such as the approach described in the second alternative above, under which a digital asset service provider would be deemed not to offer or sell a payment stablecoin in the United States for purposes of section 3(b) of the Act (12 U.S.C. 5902(b)) if the offer or sale is *made in an offshore transaction and no directed selling efforts are made in the United States by the digital asset service provider or any person acting on its behalf?*

Question 66: Should any offshore transaction framework apply only to payment stablecoins issued by foreign payment stablecoin issuers, only to offshore digital asset service providers, or only to some other subset of payment stablecoins or digital asset service providers? Should such a framework replace proposed § 1523.3(e), supplement proposed § 1523.3(e), or be structured as a safe harbor under § 1523.4?

Question 67: Should a digital asset service provider be unable to rely on offshore treatment if it or any person acting on its behalf knows that the transaction has been prearranged with a person in the United States?

Question 68: What conduct should Treasury identify as inconsistent with offshore treatment or as evidence of directed selling efforts in the United States? For example, should such conduct include advertising the payment stablecoin as available to persons in the United States, advising persons how to evade location-detection or restriction mechanisms, providing U.S.-directed liquidity incentives, supporting U.S.-facing wallet or platform integrations, or facilitating U.S. merchant acceptance?

Question 69: What conduct should Treasury identify as ordinarily not constituting directed selling efforts standing alone? For example, should such conduct include legally required notices with no promotional content; factual communications to existing holders; processing conversion, redemption, or repurchase requests; ordinary custody or safekeeping; and ordinary technical support?

Question 70: Are there additional concepts, conditions, limitations, or exceptions from Regulation S or other areas of law that Treasury should consider incorporating into any offshore transaction framework for payment stablecoin offer and sale? For example, should Treasury consider a category structure, distribution compliance periods, offering restrictions, purchaser certifications, transfer restrictions, notice or platform-control requirements, special treatment *for discretionary accounts or similar accounts held for the benefit or account of non-U.S. persons by others, such as fiduciaries, organizations or affiliates? Should Treasury also incorporate anti-evasion principles, such as rules for transactions specifically targeted at identifiable groups of U.S. persons abroad, prearranged transactions with persons in the United States, or transactions that are formally offshore but part of a plan or scheme to evade section 3(b) of the Act (12 U.S.C. 5902(b))?*

F. Exemptions and Safe Harbors (Proposed § 1523.4)

Proposed § 1523.4 implements various provisions of the Act that provide for exemptions and safe harbors from section 3(a)'s limitation on payment stablecoin issuance and section 3(b)'s prohibition on payment stablecoin offers or sales. Proposed paragraph (a) codifies the exemption in section 5(f) of the Act (12 U.S.C. 5904(f)) applicable to certain persons with a pending application to become a permitted payment stablecoin issuer. Proposed paragraph (b) addresses those limited safe harbors that the Secretary may provide in unusual and exigent circumstances pursuant to section 3(c)(2) of the Act (12 U.S.C. 5902(c)(2)). Proposed paragraph (c) codifies the exemptions for specific transactions in section 3(h)(1) of the Act (12 U.S.C. 5902(h)(1)).

1. Safe harbor for pending applications (proposed § 1523.4(a))

Section 5(f) of the Act (12 U.S.C. 5904(f)) provides that the primary Federal payment stablecoin regulators may waive the application of the requirements of the Act for a period not to exceed 12 months beginning on the effective date of the Act with respect to the subsidiary of an insured depository institution, if the insured depository institution has an application pending for the subsidiary to become a permitted payment stablecoin issuer on that effective date, or a Federal qualified payment stablecoin issuer with a pending application on that effective date. Proposed § 1523.4(a) implements this provision and provides that the prohibitions in proposed § 1523.2 (relating to payment stablecoin issuance) and § 1523.3 (relating to payment stablecoin offer and sale) shall not apply to a subsidiary of an insured depository institution or a person applying to be a Federal qualified payment stablecoin issuer with a pending application to become a permitted payment stablecoin issuer on the effective date of the Act, but only if a waiver is granted by the primary Federal payment stablecoin regulator under section 5(f) of the Act (12 U.S.C. 5904(f)), and only to the extent such waiver by its terms waives the provisions of section 3 of the Act (12 U.S.C. 5902).

Treasury believes that the authority granted to the primary Federal payment stablecoin regulators in section 5(f) of the Act (12 U.S.C. 5904(f)) authorizes those regulators to waive the provisions of section 3 of the Act (12 U.S.C. 5902) for pending applicants. The statutory phrase "the requirements of this Act" plainly encompasses *all* of the requirements of the Act, including section 3's requirements regarding the issuance, offer, and sale of payment stablecoins.

Although such waivers granted by the primary Federal payment stablecoin regulators could be viewed as self-executing, Treasury believes that expressly recognizing these waivers in proposed § 1523.4(a) would promote clarity for the industry and for potential purchasers of payment stablecoins during the period of any such waiver. Treasury emphasizes, however, that such waivers are intended to be temporary in duration and limited in scope. As such, the relief recognized in proposed § 1523.4(a) would apply only for the period of the waiver. Further, such waiver provides an exemption from proposed § 1523.2 or § 1523.3 only to the extent such waiver by its terms waives section 3(a) or 3(b) of the Act (12 U.S.C. 5902(a), (b)), respectively.

Question 71: Should proposed § 1523.4(a) provide any additional guidance regarding the effect on section 3 of the Act (12 U.S.C. 5902) of any waivers granted by the Federal payment stablecoin regulators pursuant to section 5(f) of the Act (12 U.S.C. 5904(f))?

2. *Limited safe harbors in unusual and exigent circumstances (proposed § 1523.4(b))*

Section 3(c) of the Act (12 U.S.C. 5902(c)) authorizes the Secretary to adopt limited safe harbors from section 3(a)'s limitation on payment stablecoin issuance in two circumstances. First, section 3(c)(1) (12 U.S.C. 5902(c)(1)) authorizes the Secretary to issue regulations providing safe harbors that are consistent with the purposes of the Act, limited in scope, and apply to a de minimis volume of transactions. Second, section 3(c)(2) of the Act (12 U.S.C.

5902(c)(2)) authorizes the Secretary to provide limited safe harbors if the Secretary determines that unusual and exigent circumstances exist.[53] Proposed § 1523.4(b) implements section 3(c)(2) of the Act (12 U.S.C. 5902(c)(2)) and provides that the prohibitions in proposed § 1523.2 and proposed § 1523.3 shall not apply to the extent that the Department of the Treasury determines that unusual and exigent circumstances exist in accordance with section 3(c)(2) of the Act (12 U.S.C. 5902(c)(2)).

Treasury believes that the textual differences between the safe harbor authorities in section 3(c)(1) and section 3(c)(2) of the Act (12 U.S.C. 5902(c)(1), (2)) indicate that the latter paragraph authorizes the Secretary to adopt safe harbors in unusual and exigent circumstances other than by rulemaking. In particular, section 3(c)(1)'s general grant of authority to the Secretary to adopt safe harbors specifies that such safe harbors must be issued *by regulation*, but there is no similar specification in section 3(c)(2) of the Act (12 U.S.C. 5902(c)(2)). Further, Treasury believes that it would frustrate the purpose of section 3(c)(2) of the Act (12 U.S.C. 5902(c)(2)) to allow Treasury to rapidly respond to unusual and exigent circumstances if the Secretary were required to provide such safe harbors by notice-and-comment rulemaking. While proposed § 1523.4(b) does not specify the exact procedural mechanism by which Treasury would provide limited safe harbors in unusual and exigent circumstances, Treasury generally expects to provide such limited safe harbors by order.

Question 72: The prohibition on offers and sales in section 3(b)(1) of the Act (12 U.S.C. 5902(b)(1)) states that it is "except as provided in subsection (c)," but the text of subsection (c)

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[53] Prior to issuing a limited safe harbor, Treasury must submit to the chairs and ranking members of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a justification for the determination of the unusual and exigent circumstances, which may be contained in a classified annex. *See* section 3(c)(2)(B) of the Act (12 U.S.C. 5902(c)(2)(B)). For the avoidance of doubt, the determination that "unusual and exigent circumstances" exist for purposes of section 3(c)(2) of the GENIUS Act and any associated regulations, orders, justifications, or interpretations do not constitute a determination or interpretation for purposes of other provisions of law that reference unusual or exigent circumstances. For example, the context for the Secretary's determination that "unusual and exigent circumstances" exist for purposes of section 3(c)(2) of the GENIUS Act (12 U.S.C. 5902(c)(2)) is distinct from the Secretary's approval of any program or facility established under section 13(3) of the Federal Reserve Act (12 U.S.C. 343). Any interpretation of "unusual and exigent circumstances" for purposes of section 3(c)(2) of the GENIUS Act would not constitute an interpretation of that term under section 13(3) of the Federal Reserve Act.

itself only expressly references safe harbors from subsection (a). Is section 3(c) (12 U.S.C. 5902(c)) best read to authorize standalone safe harbors for offer and sale unrelated to an issuance of payment stablecoins? Or is it best read to only authorize safe harbors for offer and sale incidental to issuance?

Question 73: Should Treasury issue any regulatory safe harbors under section 3(c)(1) of the Act (12 U.S.C. 5902(c)(1)) at this time? If so, how would Treasury determine that those safe harbors were limited to a de minimis volume of transactions? For example, should any safe harbors be time based (e.g., providing safe harbors for all issuances for some period of time following the effective date of the Act or providing safe harbors for all offers and sales for some period of time following July 18, 2028)? Alternatively, should any safe harbors be transaction size limited (e.g., providing safe harbors for all issuances, offers, and sales below a certain volume of transactions, such as $1 million dollars per year)? Or instead should any safe harbors be limited to particular industries or use cases? Should any safe harbors apply only to transactions in payment stablecoins issued by domestic issuers, foreign issuers, or both? What are the costs and benefits, including any incentive effects, of such safe harbors?

Question 74: Should Treasury issue any regulatory safe harbors relating to, or otherwise address, State qualified payment stablecoin issuers that are licensed in a State for some period prior to the State submitting a certification to the Stablecoin Certification Review Committee under section 4(c) of the Act (12 U.S.C. 5903(c)) or while such a certification is pending? Should Treasury issue any regulatory safe harbors relating to, or otherwise address, State qualified payment stablecoin issuers that are licensed in a State that may fail to submit the certification or annual recertification required under section 4(c) of the Act (12 U.S.C. 5903(c)) in a timely manner or have a certification or recertification that is denied by the Stablecoin Certification Review Committee under section 4(c) of the Act (12 U.S.C. 5903(c))? Would any such safe harbors be consistent with the purposes of the Act, limited in scope, and apply to only a de minimis volume of transactions? Should the issuance, offer, or sale of payment stablecoins *issued by such a State qualified payment stablecoin issuer be deemed unlawful under section 3 of the Act (12 U.S.C. 5902) if the State qualified payment stablecoin issuer does not obtain a Federal license or a license in another State within a certain period of time?*

Question 75: What effect, if any, will Treasury's interpretation of the prohibitions under section 3 (12 U.S.C. 5902) have on the ability of U.S. financial institutions to participate in cross-border payments or other bona fide foreign exchange transactions that include foreign-issued, foreign currency-denominated payment stablecoins? What changes could support this use case by U.S. financial institutions, while still preserving foreign jurisdiction and issuer interest in achieving comparability under Section 18 of the Act (12 U.S.C. 5916)?

Question 76: Should proposed § 1523.4(b) provide any additional guidance regarding the effect of any safe harbors adopted by the Secretary on section 3 of the Act (12 U.S.C. 5902)?

3. *Exempt transactions (proposed § 1523.4(c))*

Section 3(h)(1) of the Act (12 U.S.C. 5902(h)(1)) provides that section 3 (12 U.S.C. 5902) shall not apply to three categories of exempt transactions. Proposed § 1523.4(c) implements this provision nearly verbatim and provides that the prohibitions in proposed § 1523.2 and proposed § 1523.3 shall not apply to (i) the direct transfer of digital assets between two individuals acting on their own behalf and for their own lawful purposes, without the involvement of an intermediary; (ii) any transaction involving the receipt of digital assets by an individual between an account owned by the individual in the United States and an account owned by the individual abroad that are offered by the same parent company; and (iii) any transaction by means of a software or hardware wallet that facilitates an individual's own custody of digital assets.

Question 77: Are the categories of transactions exempt from section 3 of the Act (12 U.S.C. 5902) pursuant to section 3(h)(1) (12 U.S.C. 5902(h)(1)) clear?

G. Severability (Proposed § 1523.5)

Proposed § 1523.5 provides that the provisions of this part are separate and severable from one another. If any provision, clause, or phrase of this part is stayed or determined to be invalid, it is Treasury's intention that the remaining provisions shall continue in effect.

Treasury is proposing to include a severability clause so that in the event any particular provision of the proposed rule is held to be invalid, the remainder of the rule would remain in effect, providing clarity for all participants in the payment stablecoin market. In particular, even if the portions of this rule regarding issuance were held to be invalid, the restrictions on offer and sale would generally operate independently and continue to function as intended, as the former is directed at the conduct of issuers and the latter is directed at the conduct of digital asset service providers more broadly. Similarly, even if the portions of this rule regarding offer and sale were held to be invalid, the restrictions on payment stablecoin issuance would generally operate independently and continue to function as intended. This regulation would have been proposed independently of any provision that may be determined to be invalid.

H. Interpretations (Proposed Appendix A)

In addition to the provisions of proposed Part 1523 discussed above, Treasury is proposing to include in Appendix A interpretations of proposed Part 1523 to further clarify and illustrate the application of various aspects of the proposed rule.

Proposed Interpretation 1 considers a U.S. resident who is issued a payment stablecoin while on vacation in a foreign country. This interpretation is intended to illustrate when a person is considered to be located in the United States as defined in proposed § 1523.1(c), and when a payment stablecoin is considered to have been issued in the United States as described in proposed § 1523.2.

Proposed Interpretation 2 considers the airdropping of a new payment stablecoin absent any sale.[54] The interpretation is intended to illustrate when a payment stablecoin is considered to have been issued in the United States as described in proposed § 1523.2.

Proposed Interpretation 3 considers a situation in which a digital asset service provider that operates an exchange coordinates with an issuer to list a newly issued payment stablecoin for sale. The interpretation is intended to illustrate how the digital asset service provider's activities may be viewed for purposes of proposed Part 1523.

Proposed Interpretation 4 considers a digital asset that is not redeemable by the issuer for a period of time after issuance. The interpretation is intended to illustrate when a payment stablecoin is considered to have been issued as described in proposed § 1523.2(b).

Question 78: Is the inclusion of interpretations useful?

Question 79: Should the interpretations be codified in Appendix A to Part 1523 as proposed, or should the interpretations be published in another location or format?

Question 80: Should Treasury adopt other interpretations that illustrate the application of other aspects of proposed Part 1523, and if so, which aspects?

III. Regulatory Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[55] requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the *Federal Register*. Treasury's preliminary view is that the proposed rule would not have a

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[54] While proposed interpretation 2 does not address offer and sale, note that the definition of offer includes making a payment stablecoin available for exchange.

[55] 5 U.S.C. 601 *et seq.*

significant economic impact on a substantial number of small entities, but requests comment on the impact of its proposed rule on small entities. Additional analysis about the effect of the proposed rule on small entities is available in the regulatory impact analysis which will be posted to the docket on the website www.regulations.gov.

B. *Unfunded Mandates Reform Act*

Treasury has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[56] Under this analysis, Treasury considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). Pursuant to section 202 of the UMRA,[57] if a proposed rule meets this UMRA threshold, Treasury would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal. This requirement does not apply to regulations to the extent they incorporate requirements specifically set forth in law.[58]

Treasury's cost-benefit analysis of this proposal is summarized in section III.E below and described in more detail in the regulatory impact analysis which will be posted to the docket on the website www.regulations.gov.

C. *Providing Accountability Through Transparency Act of 2023*

The Providing Accountability Through Transparency Act of 2023, 5 U.S.C. 553(b)(4), requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the website www.regulations.gov.

Treasury is proposing to issue regulations to implement section 3 of the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act (12 U.S.C. 5902), regarding the statutory prohibitions and limitations on payment stablecoin issuance, offer, and

[56] 2 U.S.C. 1531 *et seq.*
[57] 2 U.S.C. 1532.
[58] 2 U.S.C. 1532.

sale in the United States. The proposal and the required summary can be found at https://www.regulations.gov.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Treasury's preliminary view is that this proposed rule does not contain any information collections within the meaning of the Paperwork Reduction Act, but requests comment on whether any aspect of the proposal raises information collection burdens.

E. Regulatory Planning and Review

The Office of Information and Regulatory Affairs (OIRA) in OMB has determined that this proposed rule is a significant regulatory action under section 3(f)(1) of Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. Treasury's analysis conducted in connection with Executive Order 12866 is summarized below and Treasury's detailed regulatory impact analysis will be posted to the docket on the website www.regulations.gov. This proposed rule is not anticipated to be an EO 14192 regulatory action.

As described in more detail in the detailed regulatory impact analysis, the proposed rule's estimated benefits substantially exceed the estimated costs. The quantified benefits of this proposal comprise: regulatory clarity and avoided depegging losses and consumer protection from avoided issuer failures. Non-quantified benefits include preservation of dollar dominance in digital payment markets, enhanced market integrity and investor confidence, innovation incentives from clear regulatory "rules of the road", and improved U.S. competitive positioning in global digital payments.

The direct costs of this proposed rule are expected to be primarily transitional: market concentration costs and switching costs. The analysis also contemplates annual digital asset service provider compliance costs, and requests comment on whether issuer compliance costs should be quantified separately, given the overlap described throughout this proposal among issuers and digital asset service providers, as well as among issuance, offer, and sale. Qualitative costs include reduced product choice.

As described in the previous sections and in the more detailed regulatory impact analysis, Treasury also considered several alternatives to the proposed rule. In particular, Treasury considered a less stringent extended transition period (e.g., 36 months) with a safe harbor permitting unregistered foreign-issued stablecoins with a de minimis volume (e.g., less than $1 billion in U.S.-held capitalization) to continue U.S. issuance, but concluded that this safe harbor would result in delayed benefits (e.g., consumer protection) that far exceed the reduced transition and other costs. Treasury next considered a more stringent approach (e.g., removing the proposed § 1523.2(c) and § 1523.3(e) clarifications, elimination of the residency prong of the located in the United States definition, or removing the "reasonable belief" standard for DASPs), but concluded that the additional compliance burden and offshore-migration risk exceed the marginal gains from broader regulatory coverage. Finally, Treasury considered an approach that was more similar to Regulation S, as described in the previous sections, but concluded that such an approach would provide substantially less regulatory clarity and would be more difficult to administer and enforce.

Treasury requests comment on all aspects of the regulatory impact analysis, including the data, assumptions, methods, and estimates used to assess the costs, benefits, transfers, distributional effects, and alternatives associated with the proposed rule.

Question 81: Does the regulatory impact analysis use an appropriate baseline for evaluating the effects of the proposed rule? In particular, does the analysis appropriately distinguish between effects attributable to the GENIUS Act itself and effects attributable to the proposed rule?

Question 82: What data, studies, or other information should Treasury consider to assess the costs and benefits of section 3 of the Act (12 U.S.C. 5902) as proposed in part 1523?

Question 83: What are the potential costs and benefits of the implementation of section 3 of the Act (12 U.S.C. 5902) as proposed in part 1523, beyond costs and benefits imposed by the Act itself? Are Treasury's estimates of costs and benefits appropriate? To what extent does Treasury have discretion within the boundaries of the Act to further reduce costs or increase benefits?

Question 84: Are the potential costs and benefits of the implementation of section 3 of the Act (12 U.S.C. 5902) as proposed in part 1523 sufficiently analyzed as distinct from the costs and benefits of other sections of the Act and associated current or expected regulatory proposals, such as the registration and prudential regulatory frameworks proposed by the primary Federal payment stablecoin regulators, FinCEN, and OFAC? To what extent should Treasury consider these costs and benefits or avoid double counting in its analysis of proposed part 1523?

Question 85: How should Treasury evaluate the costs and benefits of the alternatives discussed in this proposal, including a per se location-based approach, an offshore-transaction framework modeled more closely on Regulation S, more or less prescriptive due diligence requirements, and additional safe harbors? Are there other alternatives that should be considered, and what are their respective costs and benefits?

Question 86: What is the estimated impact on compliance efficiency, market participation, and demand for payment stablecoins due to clearer regulatory guidance?

Question 87: Are there information collection burdens associated with the proposed rule that Treasury has not identified? If so, what entities would bear those burdens, and what would be the estimated time and cost associated with them?

List of Subjects in 12 CFR Part 1523

Banks, banking, Consumer protection, Digital assets, Digital asset service provider, Non-bank entity, Payment stablecoins, Permitted payment stablecoin issuer, State and local governments, State qualified payment stablecoin issuer, foreign payment stablecoin issuer.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 12 CFR chapter XV subchapter C by adding part 1523 to read as follows:

Subchapter C—Regulation of Payment Stablecoins

PART 1523—PAYMENT STABLECOIN OFFER, SALE, AND ISSUANCE

Sec.

Authority: 12 U.S.C. 5901 *et seq.*

§ 1523.1 Scope, Applicability, and Definitions.

(a) This part is issued by the U.S. Department of the Treasury to implement section 3 of the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act (12 U.S.C. 5902) regarding the statutory prohibitions and limitations on issuing, offering, selling, and otherwise making available payment stablecoins in the United States.

(b) Consistent with section 3(e) of the Act (12 U.S.C. 5902(e)), this part is intended to have extraterritorial effect if conduct involves the offer or sale of a payment stablecoin to a person located in the United States.

(c) For purposes of this part, the following definitions apply:

Act or *GENIUS Act* means the Guiding and Establishing National Innovation for U.S. Stablecoins Act (12 U.S.C. 5901 et seq.).

Digital asset has the meaning set forth in section 2(6) of the Act (12 U.S.C. 5901(6)).

Digital asset service provider has the meaning set forth in section 2(7) of the Act (12 U.S.C. 5901(7)). For the avoidance of doubt, a person that, for compensation or profit, engages in the business in the United States of issuing payment stablecoins is a digital asset service provider.

Federal qualified payment stablecoin issuer has the meaning set forth in section 2(11) of the Act (12 U.S.C. 5901(11)).

Foreign payment stablecoin issuer has the meaning set forth in section 2(12) of the Act (12 U.S.C. 5901(12)).

Insured depository institution has the meaning set forth in section 2(15) of the Act (12 U.S.C. 5901(15)).

Issue means the first transfer of a payment stablecoin by the issuer, except as required by a lawful order, whether directly or indirectly, including by crediting an account, that results or will result in a person other than the issuer having the right to use or transfer the payment stablecoin or to have the payment stablecoin converted, redeemed, or repurchased. For the avoidance of doubt, after a payment stablecoin has been converted, redeemed, repurchased, or otherwise reacquired by the issuer, the first subsequent transfer of the payment stablecoin by the issuer that otherwise satisfies this definition is considered a new issuance, whether or not the transfer is characterized as a reissuance, except as required by a lawful order.

Issuer means a person who (i) is obligated to convert, redeem, or repurchase the payment stablecoin for a fixed amount of monetary value, and (ii) represents that the person will maintain, or creates the reasonable expectation that the person will maintain, a stable value relative to the value of a fixed amount of monetary value.

Lawful order has the meaning set forth in section 2(16) of the Act (12 U.S.C. 5901(16)).

Located in the United States means:

(1) With respect to an individual, the individual is physically present in the United States, unless the individual is not a resident of the United States and the individual's physical presence in the United States is merely temporary; or

(2) With respect to a partnership, company, corporation, association, trust, estate, cooperative organization, or other business entity, the entity:

(i) Is organized or incorporated under the laws of the United States or a State; or

(ii) Has its principal place of business in the United States.

Offer has the meaning set forth in section 2(21) of the Act (12 U.S.C. 5901(21)). For the avoidance of doubt, the term includes making available for purchase, sale, or exchange a payment stablecoin that has not yet been issued.

Monetary value has the meaning set forth in section 2(17) of the Act (12 U.S.C. 5901(17)).

Payment stablecoin has the meaning set forth in section 2(22) of the Act (12 U.S.C. 5901(22)).

Permitted payment stablecoin issuer has the meaning set forth in section 2(23) of the Act (12 U.S.C. 5901(23)).

Person has the meaning set forth in section 2(24) of the Act (12 U.S.C. 5901(24)).

Primary Federal payment stablecoin regulator has the meaning set forth in section 2(25) of the Act (12 U.S.C. 5901(25)).

State has the meaning set forth in section 2(28) of the Act (12 U.S.C. 5901(28)).

Subsidiary has the meaning set forth in sections 2(32) and 2(33) of the Act (12 U.S.C. 5901(32), (33)), as applicable.

United States means each of the several States, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act, 25 U.S.C. 2703(4)), and the Insular Possessions of the United States.

§ 1523.2 Payment Stablecoin Issuance.

(a) Except in accordance with § 1523.4, it shall be unlawful for any person to issue a payment stablecoin in the United States unless the person is:

(1) A permitted payment stablecoin issuer; or

(2) A foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)).

(b) A person will be considered to have issued a payment stablecoin in the United States only if, at the time of issuance:

(1) The person is located in the United States; or

(2) The person issues the payment stablecoin to a person located in the United States.

(c) Notwithstanding any other provision of this section, a person will be deemed not to issue a payment stablecoin in the United States, if:

(1) The person is not located in the United States;

(2) The person reasonably believes that each person to whom the payment stablecoin is issued is not located in the United States;

(3) The person has adopted and implemented policies, procedures, and controls reasonably designed to avoid issuing the payment stablecoin to any person located in the United States; and

(4) The person does not engage in advertising or solicitation activities that target, or could be reasonably expected to have the effect of targeting, any person located in the United States.

(d) The following are examples of activities that, when conducted by a person in connection with the issuance of a payment stablecoin that violates paragraph (a), constitute participation by the person in the violation for purposes of the penalty in section 3(f) of the Act (12 U.S.C. 5902(f)):

(1) The person incurs an obligation to a third party to convert, redeem, or repurchase a payment stablecoin, including a secondary obligation to convert, redeem, or repurchase on behalf of the original issuer;

(2) The person coordinates with the issuer to facilitate key steps in the issuance, such as soliciting customers or minting the payment stablecoins; or

(3) The person acts as market maker for the newly issued payment stablecoin, distributes the newly issued payment stablecoin to purchasers of the newly issued payment stablecoin, or otherwise makes the newly issued payment stablecoin available for secondary market trading.

§ 1523.3 Payment Stablecoin Offer and Sale.

(a) Beginning on July 18, 2028, except in accordance with § 1523.4, it shall be unlawful for a digital asset service provider to offer or sell a payment stablecoin to a person located in the United States unless the payment stablecoin is:

(1) Issued by a permitted payment stablecoin issuer; or

(2) Issued by a foreign payment stablecoin issuer that meets the criteria set out in section 18(a) of the Act (12 U.S.C. 5916(a)).

(b) Except in accordance with § 1523.4, it shall be unlawful for a digital asset service provider to offer or sell to a person located in the United States, or otherwise offer, sell, or make available in the United States, a payment stablecoin issued by a foreign payment stablecoin issuer unless the foreign payment stablecoin issuer has the technological capability to comply with, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).

(c) For purposes of paragraph (b) of this section, a digital asset service provider may rely on a representation by a foreign payment stablecoin issuer that the foreign payment stablecoin issuer has the technological capability to comply with, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916), provided that:

(1) The digital asset service provider may not rely on such representation unless it conducts reasonable due diligence regarding the representation; and

(2) The digital asset service provider may not rely on such representation if, based on such due diligence or other information reasonably available to it, the digital asset service provider knows, has reason to know, or should know that the representation is false or that the foreign payment stablecoin issuer does not have the technological capability to comply, or will not comply, with the terms of any lawful order or any reciprocal arrangement pursuant to section 18 of the Act (12 U.S.C. 5916).

(d) The following are non-exhaustive examples of activities that constitute an offer or sale of a payment stablecoin to a person located in the United States:

(1) Directly soliciting a person located in the United States to purchase the payment stablecoin;

(2) Advertising the payment stablecoin as available for purchase by persons located in the United States;

(3) Responding to an unsolicited inquiry from a person located in the United States by indicating willingness to sell the payment stablecoin;

(4) Advising potential purchasers of the payment stablecoin on how to evade generally applicable location detection or restriction mechanisms that would otherwise detect or block purchases by persons located in the United States, such as IP address checkers; or

(5) Entering into a contract for the sale of a payment stablecoin with a person located in the United States, regardless of the form of consideration provided in return for the payment stablecoin or the timing of delivery of the payment stablecoin.

(e) Notwithstanding any other provision of this section, a digital asset service provider will be deemed not to offer or sell a payment stablecoin to a person located in the United States, and will be deemed not to offer, sell, or otherwise make available in the United States a payment stablecoin, if:

(1) The digital asset service provider reasonably believes that the person to whom the payment stablecoin is offered, sold, or otherwise made available is not located in the United States;

(2) The digital asset service provider has adopted and implemented policies, procedures, and controls reasonably designed to avoid offering, selling, or making available the payment stablecoin to any person located in the United States; and

(3) The digital asset service provider does not engage in advertising or solicitation activities that target, or could be reasonably expected to have the effect of targeting, any person located in the United States.

§ 1523.4 Exemptions and Safe Harbors.

(a) The prohibitions in § 1523.2 and § 1523.3 shall not apply to a subsidiary of an insured depository institution or a person applying to be a Federal qualified payment stablecoin issuer with a pending application to become a permitted payment stablecoin issuer on the effective date of the Act, but only if a waiver is granted by the primary Federal payment stablecoin regulator under section 5(f) of the Act (12 U.S.C. 5904(f)), and only to the extent such waiver by its terms waives the provisions of section 3 of the Act (12 U.S.C. 5902).

(b) The prohibitions in § 1523.2 and § 1523.3 shall not apply to the extent that the Department of the Treasury determines that unusual and exigent circumstances exist in accordance with section 3(c)(2) of the Act (12 U.S.C. 5902(c)(2)).

(c) The prohibitions in § 1523.2 and § 1523.3 shall not apply to:

(1) The direct transfer of digital assets between two individuals acting on their own behalf and for their own lawful purposes, without the involvement of an intermediary;

(2) Any transaction involving the receipt of digital assets by an individual between an account owned by the individual in the United States and an account owned by the individual abroad that are offered by the same parent company; and

(3) Any transaction by means of a software or hardware wallet that facilitates an individual's own custody of digital assets.

§ 1523.5 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is Treasury’s intention that the remaining provisions shall continue in effect.

Appendix A to Part 1523: Interpretations.

1. **While vacationing in a foreign country, a U.S. resident is issued a payment stablecoin by an issuer that (a) is both incorporated under the laws of and has its principal place of business in the foreign country and (b) does not meet the criteria set out in section 18(a) of the GENIUS Act (12 U.S.C. 5916(a)). Has the issuer violated § 1523.2(a)?**
   No. As described in § 1523.2(b), a person will be considered to have issued a payment stablecoin in the United States only if, at the time of issuance, the person issuing the payment stablecoin is located in the United States, or the person issues the payment stablecoin to a person located in the United States. The foreign payment stablecoin issuer is not located in the United States because it is not organized or incorporated under the laws of the United States or a State and does not have its principal place of business in the United States. Similarly, at the time of the issuance, the U.S. resident is not located in the United States because he or she is not physically present in the United States.

   Although the foreign payment stablecoin issuer has not violated § 1523.2(a) in this scenario, foreign payment stablecoin issuers should take care to avoid offers or sales to

U.S. residents while such residents are located in the United States. For example, if the foreign payment stablecoin issuer directly solicited the U.S. resident (while he or she was physically located in the United States) to purchase the payment stablecoin, this conduct would likely violate § 1523.3, unless the conditions in § 1523.3(e) were satisfied.

2. **As part of its marketing strategy for a new payment stablecoin, an issuer, for no consideration and without previously advertising the payment stablecoin, mints and airdrops a payment stablecoin to a U.S. resident who is physically present in the United States. Following the airdrop, the U.S. resident has or will have the right to transfer, use, or redeem the payment stablecoin. Has a payment stablecoin been issued in the United States for purposes of § 1523.2(a)?**
Yes, because the airdrop meets the definition of "issue" in § 1523.1(c), and because, as described in § 1523.2(b), a payment stablecoin has been issued in the United States because the person to whom the payment stablecoin was issued was located in the United States at the time of issuance.

3. **A digital asset service provider that operates an exchange coordinates with an issuer to list newly issued payment stablecoins on the digital asset service provider's exchange for purchase by persons located in the United States. The digital asset service provider does not have an obligation to convert, redeem, or repurchase the payment stablecoins. Has the digital asset service provider issued the payment stablecoins within the meaning of § 1523.2(a)?**
No. The digital asset service provider is not considered the issuer as defined in § 1523.1(c) because the digital asset service provider does not have an obligation to convert, redeem, or repurchase the payment stablecoins. However, depending on the facts and circumstances, the digital asset service provider may have participated in the issuance as described in § 1523.2(d) and may be offering or selling the payment stablecoins as described in § 1523.3.

4. **An issuer mints and transfers a digital asset to a person located in the United States. The digital asset is designed to be used as a means of payment or settlement, and the issuer represents that it will maintain a stable value relative to the value of a fixed amount of monetary value. However, the issuer provides (by smart contract or otherwise) that the digital asset is not redeemable by the issuer until a future date. Has a payment stablecoin been issued within the meaning of § 1523.2?**
Yes. As described in § 1523.1(c), an issuer is considered to have issued a payment stablecoin if the first transfer of the payment stablecoin will result in a person other than the issuer having the right to redeem a payment stablecoin, even if the redemption obligation does not mature until some period after the transfer.

Rachel Miller,

Executive Secretary.

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