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What the GENIUS Act Means for Trust-Held Assets: Stablecoin Treatment Under Existing IDGT Structures and Where the Ambiguity Creates Exposure

Abstract

The Guiding and Establishing National Innovation for U.S. Stablecoins Act, signed into law on July 18, 2025, establishes the first federal regulatory framework for payment stablecoins in the United States. The Act creates a new legal category: neither a security under federal securities law, nor a commodity under the Commodity Exchange Act, nor a bank deposit eligible for Federal Deposit Insurance Corporation protection. It does not amend the Internal Revenue Code. The Treasury Department's advance notice of proposed rulemaking, issued September 19, 2025, confirmed this with statutory precision: the Act "does not address the federal income tax characterisation of payment stablecoins or any other issues relevant to the application of the Internal Revenue Code to payment stablecoin transactions" (Federal Register, 2025). The consequence for trust-held assets is immediate and, in most of the estate planning community, unacknowledged. Intentionally Defective Grantor Trusts drafted before July 2025 contain investment authorisation

language, trustee authority provisions, and asset classification frameworks that do not contemplate a federally recognised payment instrument that is simultaneously not a security, not a commodity, not a deposit, and not legal tender, yet is required to maintain one-for-one reserve backing with United States dollars and short-term Treasury instruments. This paper maps four specific exposure points in existing IDGT structures: definitional gaps in investment authorisation language; transactional tax event exposure borne by the grantor; trustee authority and fiduciary risk under ambiguous document language; and the substitution mechanics that are the IDGT's structural centrepiece. The paper concludes by describing what forward-looking counsel has already begun inserting into new and amended documents.

Introduction

The GENIUS Act passed the Senate on June 17, 2025, by a vote of 68 to 30. It passed the House on July 17, 2025, by a vote of 308 to 122. President Trump signed it into law the following day. Seventeen Democratic senators joined fifty-one Republican senators in the Senate vote, which made the bipartisan character of the legislation as significant as its substance. The Trump administration positioned the Act as the centrepiece of its commitment to establish the United States as the preeminent jurisdiction for digital asset activity, and specifically as a mechanism for reinforcing dollar primacy through the global payment layer (White House, 2025).

None of the substantial analysis produced in the months following enactment was directed at the estate planning community. The commentary, from law firms, federal agencies, and financial regulators alike, focused on issuer licensing, reserve requirements, banking agency jurisdiction, and the competitive implications for fintech firms seeking a regulatory home. This is the correct first-order analysis for those audiences. It is also incomplete.

The clients that estate planners serve are not issuers. They are holders; ultra-high-net-worth individuals and family offices that have accumulated stablecoin positions within existing wealth structures, or that are now being asked by their advisers and bankers to consider payment stablecoins as part of a modernised liquidity and

distribution infrastructure. Those holdings sit, in many cases, inside trust documents drafted before the relevant asset class existed as a matter of federal law.

The GENIUS Act did not create stablecoins. It created a defined legal category: the payment stablecoin, issued by a permitted payment stablecoin issuer, explicitly excluded from both the Securities Exchange Act's definition of "security" and the Commodity Exchange Act's definition of "commodity," backed one-for-one with United States dollars and short-term Treasury instruments, and prohibited from paying interest or yield to holders. This new category does not map onto the asset classification language in existing IDGT documents. That gap is the subject of this paper.

The analysis proceeds in four sections. Section I examines the GENIUS Act's definitional architecture and locates the statutory silence on IRC characterisation. Section II analyses the investment authorisation and asset classification language common to IDGT structures and identifies where the document fails. Section III maps the transactional tax event problem as it operates inside the grantor trust structure. Section IV addresses trustee authority and fiduciary risk under the Act's new compliance requirements. The conclusion describes what the forward-looking document already contains.

I. The GENIUS Act's Definitional Architecture: A New Asset Class Without an IRC Home

The GENIUS Act defines a payment stablecoin as a digital asset designed to be used as a means of payment or settlement, which the issuer is obligated to convert, redeem, or repurchase for a fixed monetary value, and which the issuer represents will maintain, or creates the reasonable expectation that it will maintain, a stable value (Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025, Sec. 2). Three statutory exclusions follow from this definition, each of which carries consequences for the trust document.

The first exclusion removes payment stablecoins from the category of "security" under federal securities laws. A payment stablecoin issued by a permitted payment stablecoin issuer falls outside the definitional scope of the Securities Exchange Act of 1934, the

Securities Act of 1933, and the Investment Company Act of 1940. It requires no registration with the Securities and Exchange Commission. The no-interest and no-yield prohibition built into the Act is itself structural here; by foreclosing any return to holders from the mere act of holding the instrument, Congress eliminated the "expectation of profit" element of the *Howey* test and thereby ensured the securities exclusion would hold (Winston & Strawn, 2025). The SEC Chair acknowledged the implications directly upon enactment, tasking staff to consider whether additional guidance or rulemaking would be necessary to accommodate payment stablecoins in securities industry operations (Atkins, 2025).

The second exclusion removes payment stablecoins from the category of "commodity" under the Commodity Exchange Act. CFTC oversight does not extend to GENIUS-compliant payment stablecoins. The Latham & Watkins analysis of the enacted text characterises this dual exclusion as creating a "jurisdictional carve-out": a recognised financial instrument subject to banking agency oversight rather than capital markets regulation (Latham & Watkins, 2025).

The third exclusion, structural rather than explicit, removes payment stablecoins from the category of bank deposits. They are not eligible for FDIC deposit insurance. They do not have direct Federal Reserve account access. Brookings Institution analysis notes that GENIUS-regulated stablecoins occupy "a distinct regulatory category separate from both capital-market instruments and traditional banking products" (as cited in Wikipedia contributors, 2025). The Act does, however, amend the United States Bankruptcy Code to grant payment stablecoin holders first priority over all other creditors in an issuer insolvency proceeding, and it explicitly excludes required reserve assets from the debtor's estate in such proceedings (Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025, Sec. 11; Mayer Brown, 2025). This bankruptcy priority represents a meaningful structural protection, though its relevance to the trust document analysis is limited to the specific question of counterparty risk assessment, addressed in Section IV.

What the Act does not do is the operative point for this paper. The GENIUS Act does not amend the Internal Revenue Code. The Treasury Department confirmed this in its September 19, 2025 advance notice of proposed rulemaking with a directness unusual for regulatory language: "The GENIUS Act does not address the federal income tax characterisation of payment stablecoins or any other issues relevant to the application of

the Internal Revenue Code to payment stablecoin transactions" (Federal Register, 2025). The ANPRM went further, specifically soliciting public comment on whether IRS guidance on the classification of payment stablecoins would be "necessary or helpful to taxpayers" and identifying the tax characterisation question as a priority item for future guidance.

The IRS position established in Notice 2014-21 therefore remains operative. Digital assets, including payment stablecoins, are treated as property for federal income tax purposes (IRS, 2014). This means that every disposition of a payment stablecoin, whether exchange for fiat currency, use in a payment transaction, or transfer between accounts in different beneficial ownership, is a taxable event requiring recognition of gain or loss based on the difference between fair market value at the time of disposition and adjusted basis. The GENIUS Act created, as a matter of federal law, a recognised payment instrument designed to function as a dollar equivalent. The IRS continues to tax it as though it were a parcel of real estate. These positions are not irreconcilable in principle; the tax code has always permitted Congress to create regulatory categories that do not map onto tax categories. But the combination creates operational complexity for any structure that holds payment stablecoins for transactional purposes. For the Intentionally Defective Grantor Trust, that complexity is compounded by the specific mechanics of how grantor trust taxation operates.

II. The IDGT Document and Its Silence

The Intentionally Defective Grantor Trust derives its utility from a deliberate structural tension in the Internal Revenue Code. Under IRC sections 671 through 679, the trust is structured to be "defective" for income tax purposes: the grantor is treated as the owner of trust assets and bears the income tax liability on all trust income. For estate tax purposes, the trust is effective: assets transferred to it are removed from the grantor's taxable estate. The grantor's payment of income tax on trust earnings is itself a tax-free wealth transfer to the trust's beneficiaries, because it depletes the grantor's estate without constituting a taxable gift (Rev. Rul. 85-13; Blattmachr & Gans, 2002). This is the mechanism's structural elegance; and it is also the source of the exposure the GENIUS Act has now created.

Transactions between the grantor and an IDGT are treated as transactions between a taxpayer and himself and are generally not recognised as taxable events. A grantor can sell

an appreciating asset to an IDGT in exchange for a promissory note at the applicable federal rate without triggering gain recognition. Future appreciation occurs inside the trust, outside the grantor's estate. This freeze technique is the IDGT's primary function (Akers, Miller & Boyle, 2004).

The document analysis begins with the investment authorisation language, which in existing IDGT structures takes one of three forms.

The first, standard in documents drafted before approximately 2010, authorises the trustee to hold "stocks, bonds, cash, and other securities." A payment stablecoin is not a stock. It is not a bond. It is not, as of the GENIUS Act's enactment, a security. Whether it constitutes "cash" depends on interpretation; but cash as a term of art in trust administration and financial accounting refers to currency and demand deposits with banking institutions, and a payment stablecoin is neither. A trust document authorising holdings in "stocks, bonds, cash, and other securities" does not, on its face, authorise holdings in a federally defined payment instrument that has been expressly excluded from the securities classification.

The second form, common in documents drafted between 2010 and 2022, adds "cash equivalents" to the authorised categories. In financial practice, cash equivalents are short-maturity instruments convertible to a known cash amount with negligible risk of change in value: Treasury bills, commercial paper, money market fund shares. The GENIUS Act's reserve requirement means that permitted payment stablecoin issuers must back outstanding stablecoins one-for-one with precisely these instruments (Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025, Sec. 4). The payment stablecoin is, in economic substance, a claim on a pool of cash equivalents. But the stablecoin is not the underlying instrument; it is a claim against the issuer to convert at par. Whether that claim constitutes a "cash equivalent" for purposes of trustee authority under a document drafted in 2018 is an interpretive question, not a settled one, and it is the kind of interpretive question that becomes a surcharge proceeding if the trust suffers a loss and a beneficiary decides to examine the trustee's authority.

The third form, increasingly present in documents drafted after 2020, includes an explicit "digital asset" or "cryptocurrency" authorisation. These provisions are heterogeneous. Some use definitions derived from IRS Notice 2014-21 and refer to "virtual currency."

Others track applicable state law definitions, which vary materially across jurisdictions. Almost none anticipated the creation of a federally recognised payment stablecoin that is explicitly not a security, not a commodity, and not a deposit, while being required to maintain one-for-one dollar backing and subject to mandatory asset-freezing capability at the issuer level. Whether a payment stablecoin issued by a permitted payment stablecoin issuer under the GENIUS Act qualifies as a "cryptocurrency" under a provision drafted in 2021 to address Bitcoin and Ether is an interpretive question. The answer may be yes. But "may be yes" is not "is," and trustees do not administer trusts in the subjunctive.

Interpretive questions in trust administration are not academic exercises. They are fiduciary decisions. A trustee who concludes, without adequate legal support, that existing authorisation language covers payment stablecoin holdings has made a determination challengeable by beneficiaries, examinable in surcharge proceedings, and scrutinisable by taxing authorities. The document silence is not merely an administrative inconvenience; it is a liability.

III. Transactional Exposure Within the Grantor Trust

The IDGT's income tax mechanics interact with the IRS's property treatment of digital assets in a manner not addressed in existing trust documents and not resolved by the GENIUS Act.

Under grantor trust rules, the trust's income, deductions, and credits are reported on the grantor's individual tax return. Transactions between the grantor and the trust are disregarded for federal income tax purposes; a sale of an asset from grantor to trust in exchange for a promissory note does not trigger gain recognition because the transaction is treated as a transfer between a taxpayer and his own extended tax persona (Rev. Rul. 85-13).

This feature does not, however, eliminate the tax event problem created by the property treatment of payment stablecoins when the trust transacts with third parties.

The mechanism operates as follows. When the trust holds payment stablecoins and uses them to make payments to third parties, whether for trust expenses, distributions in-kind,

or settlement of obligations, the IRS requires recognition of gain or loss at the time of each disposition, based on the difference between fair market value at disposition and adjusted tax basis. Because GENIUS-compliant payment stablecoins are designed and required to maintain stable value, the gain or loss on any individual transaction is, in most cases, negligible. The compliance obligation, however, is not.

The numerical illustration is straightforward. An IDGT holds 10,000 units of a GENIUS-compliant payment stablecoin acquired at an average cost of \$0.9998 per unit. The trust uses those stablecoins to settle a payment obligation to a third-party service provider. At the moment of disposition, the fair market value is \$1.0000 per unit. The gain is \$0.0002 per unit, or \$2.00 on the transaction. Across 500 such transactions in a calendar year, the aggregate taxable gain is \$1,000. The gain itself is not the problem. The problem is the obligation to identify the cost basis of each lot disposed, calculate the gain or loss at the transaction level, aggregate the results, and report them on the grantor's individual return, an obligation that the trust document did not contemplate, that the grantor did not price when the structure was established, and that no one has allocated between the grantor and the trust in the existing document.

The GENIUS Act did nothing to relieve this burden. The Act's reserve requirements and monthly public disclosure obligations apply to issuers, not to holders (Cohen & Company, 2025). The IRS has not issued simplified gain or loss treatment for transactional use of payment stablecoins. The Treasury's September 2025 ANPRM specifically invited comment on whether such guidance would be appropriate, but acknowledged explicitly that no guidance had been issued and that the property characterisation under Notice 2014-21 remains operative (Federal Register, 2025).

For the grantor of an IDGT that holds payment stablecoins for transactional purposes, the practical consequence is a recurring, administratively intensive compliance obligation that accumulates proportionally to transaction volume. The obligation falls on the grantor personally, because the IDGT is by design a grantor trust. The trust document contains no mechanism for allocating the administrative cost, no basis-tracking protocol, and no disclosure to beneficiaries that this cost exists.

A second dimension of transactional exposure concerns the instalment note structure common to IDGT funding transactions. Where a grantor has sold an appreciating asset to

the IDGT in exchange for a promissory note, and the trust subsequently acquires a payment stablecoin position, the question arises whether note payments made in stablecoins rather than dollars constitute a taxable disposition by the trust. The answer under current IRS guidance is that they do; the stablecoin is property, and its transfer in satisfaction of a debt obligation is a realisation event. The grantor trust rules do not eliminate this treatment because the counterparty to the note is the grantor individually, not the grantor in the trust's tax persona; and even within the grantor trust framework, dispositions to third parties trigger normal gain recognition rules. The interaction between the IDGT's instalment structure, the grantor trust rules, and the property treatment of payment stablecoins is not addressed in existing trust documents and has not yet been the subject of IRS guidance or published rulings.

IV. Trustee Authority, Fiduciary Duty, and the GENIUS Act's New Compliance Requirements

The trustee authority question has two distinct dimensions: the authority to acquire payment stablecoins and the authority to use them transactionally once held. The GENIUS Act adds a third: the obligation to assess and document the compliance risks specific to the new statutory framework.

On acquisition authority, the document analysis in Section II applies. A trustee who concludes, in the absence of a legal opinion and without an amendment or non-judicial settlement agreement supporting the conclusion, that existing investment authorisation language covers payment stablecoin holdings has made a legal determination that carries full fiduciary weight. Corporate trustees operating under regulatory examination are not in a position to make that determination informally.

The Uniform Prudent Investor Act, adopted in substantially similar form across forty-seven states, requires trustees to invest and manage trust assets as a prudent investor would, considering the purposes, terms, distribution requirements, and other circumstances of the trust (Uniform Prudent Investor Act, 1994). The standard is contextual and not categorical. A prudent investor analysis of a payment stablecoin position in 2026 requires, at minimum: assessment of the absence of FDIC deposit

insurance; review of the issuer's reserve composition and monthly public disclosure; evaluation of the counterparty risk associated with the specific permitted payment stablecoin issuer; analysis of the bankruptcy priority structure created by Section 11 of the GENIUS Act; and examination of the operational risk associated with digital asset custody in the trust's existing custody infrastructure.

None of these considerations appears in a trust document drafted before July 18, 2025. The document does not preclude the analysis; but the trustee who performs it has no documentary basis for the conclusion in the governing instrument.

On transactional use, the authority question is more acute. The GENIUS Act defines payment stablecoins precisely as instruments of payment and settlement. If a trustee uses trust-held payment stablecoins to effect in-kind distributions, settle obligations, or pay trust expenses, the trustee is not merely managing an investment; the trustee is operating a payment function. Most IDGT documents structure investment authorisation and distribution authorisation as distinct provisions with different standards and different trustee discretions. A trustee who uses payment stablecoins transactionally may be acting within investment authorisation but outside the distribution provision's parameters, or vice versa, depending on the document's construction. That overlap is almost never addressed in existing instruments.

The custody dimension introduces a third layer. The GENIUS Act permits payment stablecoin holdings to be custodied at trust companies and insured depository institutions, and explicitly provides that custodians may not be required to record custodied stablecoins as liabilities on their balance sheets; a reversal of the SEC's prior position under Staff Accounting Bulletin 121 (Covington & Burling, 2025). This matters to the trustee because the custody relationship for a payment stablecoin differs structurally from a custody relationship for a conventional securities portfolio. Private keys, issuer-specific redemption mechanics, and the technical requirement that issuers maintain the capability to freeze, seize, or burn tokens pursuant to a lawful order all create operational characteristics with no analogue in custody agreements drafted for equity portfolios or bond positions (White House, 2025).

The freezing and burning provision is the specific fiduciary exposure that deserves the clearest statement. Permitted payment stablecoin issuers are legally required to maintain

the technical capability to render a payment stablecoin position inoperable, without notice to the holder and without the triggering event being within the holder's control or knowledge, upon receipt of a lawful government order (White House, 2025). This is a systemic compliance mechanism, not an investment risk in the conventional sense. For a trustee holding payment stablecoins in a trust, however, it creates a category of asset-level risk for which most trust documents contain no assessment framework, no disclosure mechanism, and no standard of care. A trustee who holds payment stablecoins without having identified and documented this risk, and without having made required disclosures to beneficiaries where the document's terms require disclosure of material asset risks, has created a gap in the fiduciary record. That gap does not constitute a breach until the event materialises and the trustee cannot demonstrate prior identification of the risk. The GENIUS Act made that risk a feature of the instrument on July 18, 2025; existing trust documents do not reflect it.

V. What Forward-Looking Counsel Is Already Drafting

The four exposure points identified in the preceding sections each have a documentary response. Sophisticated estate planning counsel did not wait for IRS guidance or judicial precedent before beginning to address them; those who advise clients with digital asset exposure recognised immediately that the GENIUS Act had created a class of document amendment work, and the drafting has been underway since the Act's enactment.

New IDGT documents prepared by current practice include four provisions that were absent from templates in use before July 2025.

The first is an explicit payment stablecoin authorisation clause. The provision tracks the GENIUS Act's statutory definitions directly, authorising the trustee to acquire, hold, and transfer payment stablecoins issued by a permitted payment stablecoin issuer, each as defined in the Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025, as amended from time to time. The "as amended" formulation is deliberate; it captures both the current statutory definitions and any revisions to those definitions that may follow implementing regulations or legislative amendment. Some practitioners extend the clause to encompass payment stablecoins issued under substantially similar

foreign regulatory frameworks, anticipating the GENIUS Act's provisions for reciprocal foreign-issuer arrangements.

The second is a digital asset custody protocol provision. This provision specifies the custody standard applicable to digital asset holdings, requires the trustee to document the identity of the qualified custodian and the terms of the custody arrangement, imposes a periodic review obligation, and establishes the standard of care applicable to the trustee's monitoring of issuer compliance with the GENIUS Act's reserve and disclosure requirements. Within this provision, or as a separate disclosure schedule, the better practice is to acknowledge explicitly the asset-freezing and burning risk as a known category of regulatory exposure and to establish the information-gathering standard the trustee is required to meet with respect to the issuance of freezing orders by governmental authorities.

The third is a transactional tax administration clause. This provision identifies the grantor's obligation to track and report gain or loss on payment stablecoin transactions conducted by the trust, designates responsibility for cost basis record-keeping, establishes the allocation of professional fees associated with digital asset tax compliance between the trust and the grantor, and anticipates that IRS guidance on the tax characterisation of payment stablecoins may be issued in a form that alters these obligations. The provision does not resolve the underlying characterisation question; it allocates the administrative burden arising from the current property treatment while that question remains open, and builds in a mechanism to reassess the allocation if and when guidance is issued.

The fourth is a substitution mechanics clarification. The power of substitution, which permits the grantor to exchange assets of equivalent value into and out of the trust, is a provision commonly used to create grantor trust status under IRC section 675(4)(C). In a trust that holds payment stablecoins, the substitution mechanics require specification: what constitutes "equivalent value" when the asset being substituted is a payment stablecoin whose redemption value is by regulatory design one United States dollar, but whose adjusted tax basis may differ from that value as a result of acquisition cost or prior disposition history? The forward-looking document addresses this by specifying the valuation methodology applicable to substitutions involving payment stablecoin positions and confirming that the grantor's substitution right extends to those positions, subject to the basis-tracking requirement established in the tax administration clause.

These four provisions represent the current state of document practice for newly established IDGTs with anticipated digital asset exposure. For existing documents, the remediation path depends on the trust's jurisdiction and the document's amendment provisions. Where non-judicial settlement agreements are available, as they are in Delaware, Nevada, South Dakota, and a number of other trust situs jurisdictions with developed silent trust and decanting statutes, the amendment can be accomplished without court involvement and without triggering gift or estate tax consequences from the modification. Where the document's terms or the applicable state law require court involvement, the cost-benefit analysis depends on the size of the digital asset position and the probability of the exposure points materialising. For trusts with significant payment stablecoin holdings, the analysis almost always supports amendment.

What is occurring, without announcement, in the private wealth practices of firms that advise this client category is a systematic review of IDGT portfolios for digital asset exposure. The review focuses on investment authorisation language, trustee discretion standards, and distribution provisions. Where the document is silent, counsel is preparing trust modifications, trustee consent agreements, and, where permitted, non-judicial settlement agreements to close the gap. The clients who will not benefit from this review are those whose advisers have not yet determined that the legislative event of July 18, 2025 had implications beyond the issuer and fintech community.

Conclusion

The GENIUS Act's significance for the estate planning community is not located in its framework for permitted issuers. Issuer regulation is not this Institute's subject. The significance lies in what the Act accomplished by exclusion: it created a federally recognised category of payment instrument that is explicitly not a security, not a commodity, and not a bank deposit, without amending the Internal Revenue Code and without providing a legal home for that instrument within the asset classification frameworks of trust documents drafted under existing law.

The structural consequence is a set of gaps in existing IDGT documents that became operationally relevant on the date of the Act's enactment. The gaps are not uniformly

material; their materiality depends on whether a specific trust holds payment stablecoins, whether the trustee is using them transactionally, and whether the document's investment authorisation language is broad enough to cover them without amendment. For trusts where the answer to the first question is yes, the second and third questions require professional determination, not assumption.

The Treasury's September 2025 ANPRM identified the IRC characterisation question as unresolved and invited public comment on the priority items for future guidance. As of the date of this paper, that guidance has not been issued. The IRS property treatment under Notice 2014-21 remains operative. The fiduciary framework for trustee authority over payment stablecoins is being established not by regulation but by document practice, case by case, client by client.

This is, for practitioners familiar with the long history of trust law's accommodation of new asset classes, a recognisable pattern. The document has always preceded the regulation. In every prior instance where a new class of financial instrument entered the estate planning landscape, the advisory community resolved the definitional gap through document drafting before the legislature or the courts provided a definitive answer. The GENIUS Act has created that gap in a specific and precisely mappable form.

The clients who navigate it successfully will be those whose advisers understood, before the examination or the dispute, that a federal statute governing the payment stablecoin infrastructure layer had made their existing trust documents incomplete.

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