INDEPENDENT POLICY BRIEF

May 6, 2026

Narrowing the Section 404 Prohibition

A Quantitative Framework for Distinguishing User-Initiated Routing from Disguised Yield Under the Tillis–Alsobrooks Compromise to the Digital Asset Market Clarity Act

Yunjie Fan
Independent Policy Analyst
yunjiefan.research@gmail.com

Prepared for distribution to Senate Banking Committee staff ahead of anticipated markup of H.R. 3633, week of May 11, 2026.

Executive Summary

On May 1, 2026, two senators ended a year-long fight over stablecoin yield with a single sentence: no rewards “economically or functionally equivalent” to bank-deposit interest. Four days later, five banking trade associations rejected that sentence as a loophole. A day after that, the senators said the text was final.[1]

The fight is no longer about the statute. It is about the Committee Report.

§404 prohibits passive yield on payment stablecoins but preserves rewards tied to “bona fide activities,” a term it does not define. The text directs the SEC, CFTC, and Treasury to jointly issue rules within twelve months identifying a non-exhaustive list of permitted activities. Civil penalties run up to $5 million per violation, assessed by Treasury. Senate Banking markup is anticipated as early as the week of May 11; President Trump has publicly committed to sign on receipt.[2]

Whichever interpretation the agencies reach in their first-year rule will draw substantially from legislative history. After the senators’ May 5 commitment to the text as final, the Committee Report is the only available upstream input.

This brief proposes that the Committee Report identify user-initiated routing of payment-stablecoin balances into registered tokenized money market funds as a recognized “bona fide activity,” anchored in two activity categories the agencies are expected to encompass (“transfers” and “market-making”), and tested by six factors any party can verify on chain (Table 1, §VI). Committee staff seeking immediate utility may turn directly to §VIII for proposed Report language.

---

[1] Digital Asset Market Clarity Act, H.R. 3633, 119th Cong. § 404 (Tillis–Alsobrooks Compromise Text, May 1, 2026; affirmed final May 5, 2026). The operative prohibition has two prongs: a covered party may not pay any form of interest or yield to a U.S. customer (A) solely in connection with the holding of payment stablecoins, or (B) on a payment stablecoin balance in any manner economically or functionally equivalent to interest on an interest-bearing bank deposit. “Covered parties” are digital asset service providers and their affiliates; the term excludes permitted payment stablecoin issuers and registered foreign issuers, both already barred from paying direct interest under the GENIUS Act of 2025. The text preserves “activity-based or transaction-based rewards and incentives” tied to “bona fide activities,” and directs the SEC, CFTC, and Treasury Secretary to jointly issue rules within one year of enactment defining a non-exhaustive list of permitted activities. Civil penalties run up to $5 million per violation, assessed by Treasury. Operative text reported in The Block, “Coinbase says deal reached on Clarity Act stablecoin yield” (May 2, 2026).

[2] Galaxy Digital, market commentary by Alex Thorn (May 1–5, 2026); Polymarket contract on “Clarity Act signed into law in 2026” (crowd-implied probability approximately 70 percent as of May 5, 2026, up from approximately 46 percent prior to release of the compromise text on May 1, 2026). Senate Banking Committee markup is anticipated as early as the week of May 11, 2026; Chairman Tim Scott reported on April 30, 2026 that all 13 Republican committee members had committed to advancing the bill. President Trump has publicly committed to sign the CLARITY Act on receipt; see AMBCrypto and Finbold reporting (May 4–5, 2026). On April 17, 2026, Patrick Witt, Executive Director of the President’s Council of Advisers on Digital Assets at the White House, posted on X that continued banking-industry lobbying against the compromise was difficult to explain by anything other than “greed or ignorance.”

Recommendations

1. Affirm in the Committee Report that user-initiated routing into 1940 Act registered investment products operates within existing securities law, and that §404 does not displace that framework.
2. Anchor the affirmation in two activity categories the joint rulemaking is already expected to encompass ("transfers" and "market-making") rather than a novel exception.
3. Adopt a NAV pass-through threshold drawn from Reves v. Ernst & Young, which screens out arrangements that return principal at par regardless of fund performance.
4. Replace the qualitative "user activity" inquiry with four on-chain auditable metrics: Authorization Density (ADI), Disclosure Granularity (DGS), User Control (UCC), and Activity Coupling (ACR).
5. Direct the joint SEC/CFTC/Treasury rulemaking, in coordination with the OCC, to develop standardized on-chain reporting formats for compliance attestation.
6. Confirm that arrangements satisfying these conditions are not deposit-equivalent within the meaning of §404, because the user, not the operator, bears principal risk, and federal tax reporting on Form 1099-DIV (rather than 1099-INT) is itself a federal characterization of that allocation.

The framework forecloses what the banking industry is right to worry about: graduated rewards calibrated to encourage idle holding. It also preserves what the SEC has already permitted: retail access to FOBXX and WTGXX, registered investment-company shares with full NAV-based pricing and Form 1099-DIV tax reporting. §404 should be read to recognize the difference.

Contents

I. What §404 Leaves Unresolved
II. What the Compromise Already Tells Us
  A. Yield Begins With a Signature
  B. Tokenized MMFs Are Already Lawful
  C. The Prohibition Reaches Less Than It Claims
III. Routing Already Operates Under Existing Law
IV. Who Bears the Loss: A Threshold Test
V. Four Metrics for Distinguishing Active From Passive
VI. The Six-Factor Test, Consolidated
VII. Answering the Banking Industry
VIII. Draft Language for the Committee Report
IX. Why This Should Pass Committee
X. Conclusion
Appendix A: Glossary of Proposed Metrics
Appendix B: Authorities Cited
References
About the Author / About This Brief

I. What §404 Leaves Unresolved

The Tillis–Alsobrooks compromise resolved the largest political dispute over stablecoin yield by drawing a binary line. Covered parties, digital asset service providers and their affiliates, may not pay interest or yield to U.S. customers solely for holding payment stablecoins, or in any manner economically or functionally equivalent to a bank deposit. They may, however, offer rewards tied to “bona fide activities.” The prohibition runs against intermediaries; permitted stablecoin issuers and registered foreign issuers are excluded from the definition of covered parties because they are already barred from paying direct interest under the GENIUS Act. The compromise therefore rests on an issuer-versus-intermediary distinction. The 1940 Act framework draws a parallel but distinct line, between investment products and deposits, that operates on the products themselves rather than on the parties handling them.

The text does not define bona fide activities. It directs the SEC, CFTC, and Treasury Secretary to jointly issue rules within twelve months identifying a non-exhaustive list, expected to include payments, transfers, market-making, staking, governance, and loyalty programs. As of May 5, Senators Tillis, Alsobrooks, and Lummis have publicly affirmed that the text is final and will not be reopened, despite continued banking-industry opposition.[3]

That leaves three problems for the Committee.

The first is scope. The prohibition reaches all digital asset market participants, not just issuers. The Crypto Council for Innovation has flagged this publicly while urging the Committee to advance the bill; its CEO Ji Hun Kim said the language “goes very far beyond” the GENIUS Act framework.[4] The breadth creates a real risk that the prohibition sweeps in user-facing access layers to registered investment products that have nothing to do with the deposit-flight concern animating §404.

The second is the undefined term. The agencies will resolve “bona fide activities” in their first-year rule. Whichever industry coalition files the most extensive comment record will substantially shape the resolution. Coinbase Chief Legal Officer Paul Grewal has already publicly described the mechanics as “left uncertain.”[5] Without a

[3] Joint statement of Senators Thom Tillis (R-N.C.) and Angela Alsobrooks (D-Md.) (May 5, 2026): “Some in the banking industry may not want either of these things to happen, and we respectfully agree to disagree.” Senator Cynthia Lummis (R-Wyo.) joined the defense (May 4, 2026), characterizing the text as “finalized” and as “the culmination of months of hard work to deliver a compromise on yield we can all live with.”

[4] Crypto Council for Innovation (CCI), public statement by CEO Ji Hun Kim (May 2, 2026): the prohibition “goes very far beyond” the GENIUS Act framework by reaching all digital asset market participants rather than only issuers, but “the north star is to ensure that the U.S. can lead on crypto—this is the future. We respectfully ask Senate Banking to move to mark up.”

[5] Statement of Paul Grewal, Chief Legal Officer of Coinbase (May 2026), describing as “left uncertain” the mechanics of determining activity-based stablecoin rewards. Coinbase’s broader institutional position is supportive: CEO Brian Armstrong stated “Mark it up” on May 1, 2026; Chief Policy Officer

definitional anchor in legislative history, the rulemaking is the only venue. Committee Report language now is the lowest-cost mechanism for shaping the rulemaking record before it begins.

The third is enforcement. Civil penalties under §404 run to $5 million per violation, assessed by Treasury. With penalty exposure that high and a definitional standard that vague, enforcement disputes are predictable. Every borderline arrangement will be litigated against the May 4 banking-industry framing of “duration, balance, and tenure” rewards as a loophole that “must be addressed.” A clear ex ante standard reduces that litigation cost. An unclear one guarantees it.

The framework offered here is structured to remain administrable under either reading. Even under the broadest defensible enforcement reading of §404, arrangements satisfying the Factor 0 threshold in §IV are clearly outside the prohibition’s concern, because they are not deposit-equivalent at the structural level. That property is the central reason this brief proposes addressing the question through a structural test rather than through a definitional carve-out.

The Committee Report is the principal upstream input into how the agencies will resolve all three problems. The remainder of this brief proposes specific language for that input.

II. What the Compromise Already Tells Us

Three observations about the compromise are useful before reaching technical standards. The first locates the decision-making in the user. The second locates that user inside an existing legal architecture. The third bounds where §404 can effectively reach.

A. Yield Begins With a Signature

A user opens her Coinbase wallet at 9:47 a.m. She taps to route $500 of USDC into the Franklin OnChain Money Fund. The interface shows the fund’s current NAV: $1.0001 per share. She signs. That signature is the yield event. There is no other.

Every yield event in a properly designed routing architecture begins this way: a user, a screen, a number, a signature. The user picks the denominating currency and the underlying product. Each routing transaction requires a fresh signature. Market risk in the underlying fund stays with the user, not the operator, who makes no return promise, takes no spread on yield, and runs no common enterprise with the user.

Faryar Shirzad stated that the compromise “protected what matters—the ability for Americans to earn rewards based on real usage.” Coinbase reported $1.35 billion in stablecoin revenue in 2025, a substantial portion tied to rewards-driven distribution payments under its USDC partnership with Circle.

These are testable conditions. When all of them hold, the arrangement bears no "family resemblance" to a deposit under *Reves v. Ernst & Young*.[6] Reves asks four questions: the motivations of buyer and seller; the plan of distribution; the reasonable expectations of the investing public; and whether some other regulatory regime renders application of the securities laws unnecessary. Run those questions against the scene above. The user's motivation is investment exposure. The plan of distribution is broker-dealer principal trading at NAV (for WTGXX) or transfer-agent record-keeping on chain (for FOBXX). The reasonable expectations are that yield reflects fund performance and may go negative. And the 1940 Act regulatory regime applies, comprehensively, to the underlying instrument.

This is a stronger claim than the standard "decentralization" defense. It does not depend on the absence of a promoter, or on the dispersion of validators. It depends on whether decision-making, risk-bearing, and economic upside have been allocated to the user in a way that is verifiable on chain. The Factor 0 threshold in §IV operationalizes that allocation as a structural check on principal-risk. The four metrics in §V operationalize the user-authorization condition as on-chain audit. Without this scene, both are floating standards. With it, both are direct expressions of the legal substance §404 is meant to capture.

B. Tokenized MMFs Are Already Lawful

The SEC has already approved retail access to tokenized money market funds. Franklin Templeton's OnChain U.S. Government Money Fund (FOBXX) is available to retail investors through the Benji mobile application, with no accredited-investor threshold; one share equals one BENJI token, and the fund's transfer agent maintains the official record on chain.[7] WisdomTree's Treasury Money Market Digital Fund (WTGXX) received SEC exemptive relief in February 2026, together with FINRA approval permitting its affiliated broker-dealer to trade fund shares as principal at a fixed $1 intraday price on a 24/7 basis on chain. WTGXX continues to operate as a registered open-end mutual fund under the 1940 Act and Rule 2a-7, with approximately $858 million in assets and an annualized 7-day yield of about 3.43 percent as of April 28, 2026.[8] Industry-wide, tokenized money market fund AUM

---

[6] Reves v. Ernst & Young, 494 U.S. 56, 64–67 (1990). The Reves "family resemblance" test asks (1) the motivations of buyer and seller, (2) the plan of distribution, (3) the reasonable expectations of the investing public, and (4) whether some other regulatory regime renders application of the securities laws unnecessary. Reves is the controlling Supreme Court precedent for distinguishing securities from non-securities (including deposits) under the federal securities laws and is therefore the appropriate doctrinal anchor for the § 404 "economically or functionally equivalent" test.

[7] Franklin Templeton, OnChain U.S. Government Money Fund (FOBXX) prospectus and Benji platform documentation. FOBXX is offered to retail investors without an accredited-investor or qualified-purchaser threshold; one share of the fund is represented by one BENJI token, with the transfer agent maintaining the official record on chain.

[8] WisdomTree Treasury Money Market Digital Fund (WTGXX) received SEC exemptive relief under the 1940 Act on February 24, 2026, together with FINRA approval permitting WisdomTree Securities to engage in principal trading of WTGXX shares at a fixed $1 intraday price on a 24/7 basis with on-chain

reached approximately $15 billion by the end of April 2026, up from roughly $9 billion at the start of the year and $770 million at the end of 2023.[9]

These are not anticipated future products. They exist today, under existing law.

The interpretive question is therefore narrow. If a user may purchase FOBXX through a broker-dealer interface without violating any provision of the CLARITY Act, on what statutory basis would the same user be prohibited from accessing the identical product through a stablecoin wallet interface? The product, legal characterization, and economic position are identical across the two access paths. Only the user interface differs.

Interface-based distinctions of registered investment products lack statutory anchor in either the 1940 Act or §404. The 1940 Act regulates the product, not the means of access. §404 regulates yield on payment stablecoins, not access to registered securities. A regulatory line drawn at the user-interface layer would have no textual support in either statute.

The deposit-flight question

The strongest version of the banking-industry counterargument is that convenient routing facilities, even into registered MMFs, will accelerate deposit flight: the migration of household balances out of insured deposits and into the digital-asset ecosystem. The argument deserves a direct response, because it is what animated the May 4 joint statement and what has driven the banking lobby's posture since the GENIUS Act.

Here is the response. If deposit flight occurs, it occurs at the moment a user converts a bank deposit into a payment stablecoin, not at the moment a user routes that stablecoin into a registered MMF. The first conversion moves balances from the insured banking system to the digital-asset perimeter. The second moves balances

---

settlement. WTGXX continues to operate as a registered open-end mutual fund subject to Rule 2a-7. As of late April 2026, the fund held approximately $858 million in total assets and reported an annualized 7-day yield of approximately 3.43 percent. Available across Ethereum, Arbitrum, Avalanche, Base, Optimism, Plume, Stellar, and (announced January 28, 2026) Solana. See WisdomTree press release (Feb. 24, 2026); CoinDesk and Bloomberg coverage (Feb. 24, 2026).

[9] RWA.xyz, tokenized U.S. Treasuries dashboard (data as of April 29, 2026); aggregate category value approximately $15.07 billion, up from approximately $9 billion at the end of January 2026 and $770 million at the end of 2023. The five largest tokenized money market funds by AUM as of April 29, 2026: Circle's USYC (approximately $2.9 billion), BlackRock's BUIDL (approximately $2.58 billion), Ondo Finance's USDY (approximately $2.14 billion), Franklin Templeton's BENJI (approximately $2.05 billion), and Janus Henderson Anemoy Treasury Fund (JTRSY, issued via the Centrifuge platform) (approximately $1.24 billion). USDY and BENJI both crossed $2 billion in late April 2026; JTRSY had been larger earlier in April but had declined to roughly $1.24 billion by month-end. The five funds together account for approximately $10.92 billion of the category. See RWA.xyz; GN Crypto, "Circle, BlackRock Lead $15.2B Tokenized Treasuries Market" (May 2026); Cryptotimes, "Circle vs BlackRock: $15B Tokenized Treasury Market Enters New Phase" (May 2, 2026); BIS, "Tokenisation of finance" note (Nov. 26, 2025). FOBXX and WTGXX are accessible to U.S. retail investors without an accredited-investor threshold; BUIDL is restricted to qualified institutional buyers with a $5 million minimum.

within the digital-asset perimeter, between two registered instruments: the payment stablecoin and the MMF share. §404 directly addresses only the second conversion; the first is governed by the GENIUS Act framework, which the senators chose to leave intact. As a deposit-flight measure, prohibiting MMF routing is therefore both over- and under-inclusive: it captures a conversion that does not affect deposits, while leaving untouched the conversion that does.

The assets backing FOBXX, WTGXX, and comparable government MMFs are short-term U.S. Treasury obligations. To the extent routed balances flow to these funds, they finance the U.S. Treasury directly, with the proceeds returning to the economy through federal expenditure. The banking-industry deposit-flight argument depends on a lending-channel mechanism: deposits, then bank loans, then economic activity. A direct Treasury-channel analog operates here: MMF balances finance Treasury issuance, which then funds federal expenditure. The two channels differ in distributional incidence and in intermediation risk, but not in the underlying claim on real economic resources.

C. The Prohibition Reaches Less Than It Claims

§404 implicitly assumes USD denomination. For U.S. retail users holding payment stablecoins as a dollar substitute, the premise is coherent: it prevents functionally equivalent deposits from migrating outside the regulated banking perimeter. But that premise maps onto only a narrow slice of global stablecoin holding. Approximately 80 percent of USDC and USDT holders are located outside the United States and obtain substantial yield from the act of holding alone, measured in their domestic currency.[10] No U.S. statute can prohibit that yield, because no U.S. statute can compel non-U.S. users to denominate their wealth in their domestic currency.

The U.S. domestic effects are also smaller than the banking-industry framing suggests. A Council of Economic Advisers analysis released in April 2026 estimated that prohibiting stablecoin yield would increase U.S. bank lending by approximately $2.1 billion, a marginal increase of about 0.02 percent.[11] The banking industry's own

[10] Estimates of the geographic distribution of stablecoin holdings vary by methodology. See BIS, Stablecoin Growth—Policy Challenges and Approaches, Bulletin No. 108 (2025); IMF, Understanding Stablecoins, IMF Departmental Paper (2025). Separately, Visa stablecoin volume data (June 2025) estimates approximately $7.3 trillion in adjusted annual stablecoin transaction volume, of which approximately 99 percent represents holdings rather than payments-related transfers. The BIS/IMF and Visa figures measure different things (geographic distribution of holdings versus the holdings-to-transactions ratio of total volume) and should not be conflated.

[11] White House Council of Economic Advisers, "Effects of Stablecoin Yield Prohibition on Bank Lending" (Apr. 8, 2026), released through whitehouse.gov, estimating an aggregate increase of approximately $2.1 billion in U.S. bank lending and a net consumer cost of approximately $800 million from prohibition. The CEA estimate measures aggregate U.S. bank lending; the banking-industry estimate (one-fifth or greater reduction in consumer, small-business, and farm loans, commissioned by the Consumer Bankers Association from economist Andrew Nigrinis) measures sectoral impact on a narrower base. The two estimates are not directly comparable on units, but the order-of-magnitude divergence is informative as to the contested empirical premise of §404's breadth.

cited research, by economist Andrew Nigrinis, estimates a one-fifth or greater reduction in consumer, small-business, and farm loans. The two estimates measure different things (aggregate U.S. lending versus sectoral lending on a narrower base), but the order-of-magnitude divergence is informative as to the contested empirical premise of §404's breadth. The senators' choice to draft a compromise rather than a comprehensive prohibition is consistent with the lower estimate. The May 5 affirmation of that compromise as final is consistent with a Senate-side judgment that the marginal economic case for further restriction has not been made.

Within those bounds — globally bounded by jurisdictional reach, domestically bounded by marginal effect — the case for narrowly tailoring §404 to genuinely deposit-equivalent arrangements becomes stronger, not weaker.

III. Routing Already Operates Under Existing Law

The most important practical observation about the §404 compromise is that it does not require new legislation to permit user-initiated routing into registered tokenized MMFs. The compromise prohibits arrangements economically or functionally equivalent to bank deposits. A registered MMF share is, by statutory definition, neither.[12] The 1940 Act framework that governs MMFs is precisely the framework that distinguishes investment products from deposits.

The Committee's task is therefore narrowly defined. Routing architectures built on existing registered products already operate under existing law: they require no statutory exemption, no safe harbor, and no rulemaking, only that the routing layer respect the legal character of the underlying instrument. What the Committee should do is clarify, in the Committee Report accompanying markup, that §404 does not displace the 1940 Act framework already governing the products at issue. Without legislative-history guidance now, the joint SEC/CFTC/Treasury rulemaking will resolve the question in the absence of any congressional signal, exposing it to the broadest enforcement reading the agencies are willing to defend. Modification of the negotiated statutory text is not on the table after the May 5 statement; the Committee Report is the only available channel.

The observation that registered tokenized MMFs operate under existing securities law has been characterized as identifying a "loophole," typically by parties opposed to the underlying compromise. That reading misreads the negotiating record. The 1940 Act framework that governs FOBXX, WTGXX, and BUIDL pre-dates the §404 negotiations by 86 years. The senators were aware of that framework, and they expressly declined to extend §404 to displace it. The recommendation here is not the

[12] Investment Company Act of 1940 § 3(a)(1)(A), 15 U.S.C. § 80a-3(a)(1)(A); Rule 2a-7 of the Investment Company Act, 17 C.F.R. § 270.2a-7. Money market fund shares are unambiguously securities, not deposits. The GENIUS Act of 2025 likewise distinguishes "payment stablecoins" from registered investment-company shares.

discovery of a loophole; it is the recognition of a securities-law boundary that §404 was negotiated against the backdrop of, and that the senators chose not to disturb.

IV. Who Bears the Loss: A Threshold Test

The most natural objection to any routing framework is that it functions as a wrapper. On this view, the underlying economic reality is interest-paying stablecoin behavior dressed in successive layers of legal abstraction. The objection deserves direct response, because if it succeeds, no further analysis matters.

The objection fails on the basis of a foundational distinction in U.S. financial regulation. The legal definition of a deposit, derived from the Bank Holding Company Act and reinforced by *Reves*, depends on how the obligation to return principal at par has been allocated. An instrument is **deposit-equivalent** when the issuer assumes that obligation regardless of the performance of underlying assets. An instrument is **investment-equivalent** when the user retains exposure to variation in underlying-asset value.

This distinction does not turn on the magnitude of expected return variation. A government MMF may exhibit NAV variation of less than ten basis points in normal conditions. The legally relevant question is what occurs in adverse conditions: who bears loss when NAV falls below par. *Reves* holds, and the regulatory tradition built upon it confirms, that legal characterization follows the allocation of downside risk, not the appearance of upside return.

Applied to routing architectures, this produces a threshold test that any compliant design must satisfy.

Factor 0: NAV Pass-Through Integrity (Threshold)

A routing architecture qualifies for activity-based treatment under §404 only if all of the following hold:

- **(a)** The wrapper token's on-chain price tracks the NAV of the underlying registered product, and adjusts in both directions as NAV changes.
- **(b)** Redemption rates reflect current NAV at the time of redemption, or are mediated through a structurally equivalent dealer-principal arrangement (such as that approved for WTGXX) in which the user retains exposure to fund-level NAV risk while the dealer absorbs intraday price-fixing risk.
- **(c)** The user bears actual economic loss in the event of NAV decline below par, including in scenarios such as money-market-fund liquidity gating or a "break the buck" event of the kind that affected the Reserve Primary Fund in September 2008.[13]

[13] See generally Reserve Primary Fund events (September 2008); 17 C.F.R. § 270.2a-7 (governing redemption gates and fees in money market funds).

- **(d)** Risk disclosure to the user (including current NAV variation, interest-rate risk, and gating risk) is presented at each routing event, not solely at initial onboarding.
- **(e)** Tax reporting treats user distributions as ordinary or interest dividends on Form 1099-DIV (the form prescribed for distributions from regulated investment companies, including money market funds), not as bank-paid interest income on Form 1099-INT.[14]

Failure of any condition under Factor 0 creates an irrebuttable presumption that the arrangement is passive yield, regardless of how its other features are characterized. Subsequent factors are not reached.

Condition (e) operates differently from (a) through (d), and the difference is worth making explicit. Conditions (a) through (d) are structural: they describe how the routing architecture allocates risk and authorization. Condition (e) is a federal characterization. It functions both as an independent prong (a 1099-INT election is itself a federal recognition that contradicts the structural premises of (a)–(d)) and as an evidentiary marker (IRS acceptance of 1099-DIV reporting confirms that the structure operates as a regulated investment company under Subchapter M of the Internal Revenue Code rather than as a deposit-taking arrangement). The relevant federal recognition for the framework is not the issuer's election standing alone, but the IRS's acceptance of that election in the form of a 1099-DIV filing accepted by the Service. Where that acceptance has been obtained, federal tax characterization aligns with the structural premises of (a)–(d), and the framework as a whole holds together. Where it has not, the framework does not apply.

The substance of the test is straightforward. An arrangement with 1:1 locked redemption and concealed accrued yield is deposit-equivalent and subject to §404, regardless of its smart-contract architecture. An arrangement with NAV-based redemption (or its dealer-principal equivalent) and explicit user-borne risk is securities-equivalent and outside the prohibition's intended scope, regardless of its user-facing convenience.

One structural variant deserves direct treatment. The WTGXX structure approved by the SEC in February 2026 fixes intraday trading at $1 per share, with the broker-dealer absorbing intraday NAV variation. This does not violate Factor 0(b). The

[14] Internal Revenue Service, Form 1099-DIV (Dividends and Distributions), instructions: dividends from money market funds are reported on Form 1099-DIV, not Form 1099-INT, which is reserved for interest paid by deposit-taking institutions. Form 1099-DIV is the prescribed reporting form for distributions from a regulated investment company within the meaning of Subchapter M (IRC §§ 851–855). The IRS Form 1099-B instructions exclude "sales of shares in a regulated investment company that is a money market fund." The 1099-DIV / 1099-INT distinction is the operative federal tax-characterization line between investment-fund treatment and deposit treatment. The relevant federal recognition is not the issuer's election alone but the IRS's acceptance of that election in the form of an actual 1099-DIV filing accepted by the Service: it is the post-acceptance status, not the pre-filing election, that operates as federal characterization for the purposes of Factor 0(e).

underlying fund continues to operate under floating-NAV mechanics subject to Rule 2a-7. The user retains downside exposure to fund-level events including gating, suspension, and end-of-day NAV decline. The broker-dealer is regulated as a principal trader by FINRA. The dealer-principal structure is a regulated allocation of intraday price risk, not a removal of fund-level risk from the user. Factor 0(b) is therefore framed in the disjunctive: NAV-based redemption or its dealer-principal equivalent.

WTGXX, like all registered MMFs, credits dividends to shareholders pro rata based on the period of record. That feature does not trigger the May 4 banking concern about "duration, balance, and tenure." It is the structural arrangement that §22(c) of the Investment Company Act and IRS Subchapter M prescribe for regulated investment companies. The "duration" the banking trades object to (rewards calibrated to encourage idle stablecoin holding) and the "duration" 1940 Act dividend accrual contemplates (period of record for share ownership) describe different things. Treating them as equivalent is the interpretive error this brief is meant to correct.

V. Four Metrics for Distinguishing Active From Passive

Once Factor 0 is satisfied, the remaining inquiry is whether the user's role is genuinely active or merely nominal. §404's "bona fide activities" language depends on this distinction but does not define it. The four metrics below replace the qualitative inquiry with ex ante, programmatically verifiable thresholds. Each is calculable from public chain data.

The metrics are presented in the order an engineer would actually check them: timing first (when does the user act), then content (does the user know what they are signing), then control (can the user reverse course), then coupling (is the claimed activity real).

A. Authorization Density Index (ADI)

ADI measures how often the user actually shows up.

```
ADI = (number of discrete user signatures within a rolling 30-day
window) ÷ (number of fund state changes within the same window)
```

≥ 0.95: active. Each fund movement traces to a contemporaneous user signature.

0.50–0.95: boundary. Periodic re-authorization or threshold-triggered movements.

< 0.50: passive. Funds move autonomously after initial authorization.

A user who signs once and authorizes daily algorithmic rebalancing for a year produces an ADI of approximately 0.003. That is passive by definition, regardless of how the initial authorization is documented. A user who signs for each individual routing event produces an ADI approaching 1.0.

B. Disclosure Granularity Score (DGS)

DGS measures whether the user, at each authorization event, has the specific information needed to make an informed decision. Four required disclosure elements are scored at each signature event, twenty-five points each: (a) the specific routing amount, denominated to the cent; (b) the specific target product identifier; (c) the specific term or redemption trigger; and (d) the current NAV of the target product at the moment of signature.

100 at every event: active. **75–99:** boundary (partial disclosure with periodic reminders). **< 75:** passive (onboarding-only or generalized disclosure).

A useful concrete example. Imagine a wallet UI showing: “Route $500.00 of USDC into FOBXX. Current NAV: $1.0001. Term: open-ended. Redemption available at NAV, T+1.” That screen, presented at every routing event with a fresh NAV reading, scores 100. A screen showing “Route to your savings program” and nothing else scores zero — even if the user originally consented to extensive terms at onboarding.

A critical design principle: prior consent obtained at onboarding does not satisfy DGS at later events. Each routing event requires fresh disclosure. This forecloses the recurring legal fiction by which previously agreed terms are invoked to justify subsequent automated activity.

C. User Control Coefficient (UCC)

UCC measures whether the user retains effective control over the disposition of routed funds after authorization.

```
UCC = (number of state changes the user may unilaterally initiate) ÷
(total possible state changes in the system)
```

Threshold for active classification: ≥ 0.80. Boundary range: 0.50–0.80. Below 0.50: passive: provider effectively determines fund disposition.

UCC is the most direct response to the *Reves* “reasonable expectations of the investing public” inquiry as applied to allocation of decisional authority. Where UCC is high, economic outcomes are determined by user decisions, not by the provider’s effort. Where UCC is low, the structure resembles managed-account services, which have always been treated as investment-advisory or investment-company arrangements regardless of their technological wrapper.[15]

D. Activity Coupling Ratio (ACR)

ACR is the metric most directly responsive to the May 4 banking-industry concern about constructed activity. It measures, across the routing facility as a whole, the share of redemption value that is mechanically bound to a specific payment or transfer instruction at the moment of redemption.

---

[15]Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 et seq.; Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq.

```
ACR = (redemption value mechanically bound to a payment or transfer
instruction encoded in the redemption call) ÷ (total redemption value
across the routing facility)
```

Threshold: ≥ 0.95. Below 0.95 creates a presumption of disguised withdrawal: most redemption value across the facility is decoupled from any specific deployment, suggesting the routing arrangement is being used for yield extraction rather than for activity-based purposes. The threshold operates at the facility level, not the individual user level, so a small fraction of off-platform withdrawals does not by itself fail the test.

ACR addresses the most common evasion scenario: a user redeems a balance "in anticipation of payment," then pays from the redeemed stablecoin balance. Without mechanical coupling (redemption amount equal to payment amount, executed as a single atomic transaction with the payment destination encoded in the redemption call), the "payment activity" is narrative association rather than mechanical reality. Under *Reves* substance-over-form analysis, such arrangements are properly treated as ordinary withdrawals.

VI. The Six-Factor Test, Consolidated

Combining the Factor 0 threshold with the four agency metrics and two structural conditions on the underlying product and operator compensation produces a consolidated test.

Factor	Test	Threshold
0	NAV Pass-Through Integrity	All five conditions of §IV satisfied (threshold; failure dispositive)
1	Underlying Product Registration	Routing target is a 1940 Act registered product
2	Authorization Density (ADI)	≥ 0.95 over rolling 30-day window
3	Disclosure Granularity (DGS)	= 100 at each signature event
4	User Control (UCC)	≥ 0.80
5	Activity-Payment Coupling (ACR)	≥ 0.95 across the facility; below threshold creates disguised-withdrawal presumption
6	Provider Compensation Structure	Routing fee only; no NIM; no spread on underlying yield

Factor 0 is dispositive: failure produces an irrebuttable presumption of passive yield. Factors 1 through 6 produce a rebuttable presumption: failure of any single factor

places the burden on the operator to demonstrate that the arrangement nonetheless satisfies the substance of the activity-based requirement.

The framework is designed to operate ex ante and to be on-chain auditable. Every metric can be calculated by any party with access to public chain data, including the SEC, the OCC, monitoring service providers, or the operators themselves for purposes of compliance attestation.

With civil penalties of up to $5 million per violation under §404, agencies will be litigated against on every borderline call. They will not have the examination capacity to investigate each one in detail. Compliance can be self-evidenced through standardized on-chain reporting, with the agencies retaining authority to challenge specific attestations on the merits. This is the form of regulatory architecture the OCC has used effectively in trust-bank examination, and it is the form most likely to produce consistent enforcement at acceptable cost.

A note on what the framework does not and cannot do. The metrics establish ex ante structural conditions; they do not substitute for case-by-case enforcement judgment. Coordinating attestation between SEC examination staff, OCC bank examiners, and Treasury sanctions personnel will require new interagency protocols this brief does not propose. That is a real cost, and it falls on the agencies. It is the right cost to bear, but it should not be elided.

VII. Answering the Banking Industry

The May 4 joint statement of the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Financial Services Forum, and Independent Community Bankers of America made two specific criticisms of the §404 compromise text.[16] Both deserve direct response.

The first is that the text permits exchanges to offer yield through “membership programs,” provided payments are not structured like bank interest. The trade groups characterized this as a “significant loophole.”

The second is that the text permits rewards calculated by reference to “duration, balance, and tenure” (features the trade groups argued would “directly reward idle stablecoin holdings”) and recreate deposit-equivalent behavior under another label.

The framework proposed in this brief addresses both, but on different grounds.

[16]Joint statement of the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Financial Services Forum, and Independent Community Bankers of America (May 4, 2026). The statement raised two specific objections: (i) the text permits exchanges and intermediaries to pay rewards through membership programs, provided the structure is not calculated like bank interest, which the trades characterized as a “significant loophole”; and (ii) the text permits rewards calculated by reference to “duration, balance, and tenure,” which the trades argued would “directly reward idle stablecoin holdings.” The statement cites research by economist Andrew Nigrinis estimating that yield-earning stablecoins could reduce consumer, small-business, and farm loans “by one-fifth or more.” See ABA Banking Journal, “Report: Senators reach deal on stablecoin yield” (May 5, 2026).

On membership programs

The membership-program concern is about reward structures inside a payment-stablecoin holding: a Coinbase customer who holds USDC in a Coinbase wallet and receives a "membership reward" from Coinbase. Whatever the structure of that reward, it does not change the legal character of the asset the customer holds. The asset remains a payment stablecoin, subject to §404. If the reward is calibrated to function like deposit interest (graduated by balance or tenure, accruing without user action), the reward is properly within §404's scope, regardless of the membership-program label.

The framework here does not protect such structures. They fail Factor 0(c): the user bears no fund-level NAV risk, because there is no fund. They fail Factor 0(a): the wrapper price (which is the stablecoin's own peg) does not track an underlying NAV. They fail Factor 0(e) on tax characterization. The framework proposed here is therefore fully consistent with the banking-industry concern about membership-program loopholes. It rejects them.

The framework protects something different: routing transactions in which the user's holding changes legal character: from a payment stablecoin to a 1940 Act registered investment-company share. After that change, the user is no longer holding a payment stablecoin. The membership-program concern, which is about rewards on continuing payment-stablecoin holdings, does not reach this case.

On duration, balance, and tenure

When a user routes a payment-stablecoin balance into a registered MMF, three things change. The user's holding is no longer a payment stablecoin; it is a share of a 1940 Act registered investment company (FOBXX, WTGXX, or comparable). The user's legal-risk position changes from a 1:1 par claim against issuer reserves to NAV-based exposure with full downside risk. And the federal tax form changes from 1099-INT (the form for deposit-taking institutions) to 1099-DIV (the form for regulated investment companies under Subchapter M).

Dimension	Pure Stablecoin Holding (§404 prohibited)	After Routing into Registered MMF (§404 not reached)
Asset character	Payment stablecoin (subject to GENIUS Act and §404)	Share of a 1940 Act registered investment company (FOBXX, WTGXX, BUIDL)
Legal-risk structure	1:1 par claim against issuer reserves; principal-protective by design	User bears NAV variation, gating risk, and "break the buck" possibility (Reserve Primary Fund 2008)
Federal tax form	§404–prohibited reward; structurally equivalent to bank	Form 1099-DIV (regulated investment company

Dimension	Pure Stablecoin Holding (§404 prohibited)	After Routing into Registered MMF (§404 not reached)
	deposit interest (Form 1099-INT category)	distribution under Subchapter M)
Banking-industry concern	“Duration, balance, tenure” rewards on idle holdings; concern correctly applies	“Duration” is the holding period of a registered MMF share; concern does not reach

Each of these is independently dispositive. §404 prohibits yield on payment stablecoins.[17] After routing, the user does not hold a payment stablecoin. The duration-balance-tenure attack assumes the user continues to hold a payment stablecoin while receiving graduated rewards. In the framework proposed here, that assumption fails at the first transformation.

What the framework does not permit

The framework forecloses the structures the banking trades have correctly identified as problematic:

- Reward programs that pay graduated rewards (calculated on duration, balance, or tenure) on a continuing payment-stablecoin holding, with no asset-character transformation. These fail Factor 0(a): the user’s holding remains a payment stablecoin and the reward formula is functionally indistinguishable from deposit interest.
- Loyalty or membership programs that apply yield rates differentiated by balance tier without redirecting balances into a registered investment product. These fail Factor 0(c): the user bears no fund-level NAV risk because there is no fund.
- Architectures that nominally route balances into a fund but use 1:1 fixed redemption with no NAV pass-through and no user-borne loss in adverse conditions. These fail Factor 0(c): the user is held harmless against fund-level risk, which means the operator (or some other intermediary) is bearing that risk in a way that recreates a deposit-equivalent claim.
- Architectures that elect interest-income tax treatment (1099-INT) rather than dividend treatment (1099-DIV). These fail Factor 0(e): federal tax characterization is itself a federal determination of legal nature, and an interest-income election is dispositive of deposit-equivalence.

The line drawn here is the line the banking-industry statement and the Tillis–Alsobrooks compromise are both trying to draw. The structural transformations that take a routing architecture out of §404 are the same transformations that take it out

[17] GENIUS Act of 2025, Pub. L. No. 119-XX (signed July 18, 2025), § 4 (defining “payment stablecoin” and prohibiting issuer-paid yield).

of the deposit-flight concern. Where they are absent, §404 applies. Where they are present, no deposit-equivalent claim is being created.

On rapid round-trip patterns

A predictable evasion pattern deserves direct treatment. Imagine a user who routes a stablecoin balance into an MMF, holds the share briefly, redeems back to stablecoin, and repeats the cycle on a regular cadence. The intent is to capture fund yield while preserving the stablecoin's usability. Without a discipline on this pattern, the framework would permit a category of structured evasion that the May 4 banking statement is right to worry about.

ACR ≥ 0.95 catches this. Because ACR is computed across all redemptions at the facility level, redemptions that return value to the user's own stablecoin balance with no payment or transfer instruction encoded count toward the denominator but not the numerator. A round-trip pattern, executed at scale or by a meaningful share of users, drives the facility's ACR toward zero. The arrangement fails Factor 5 of the consolidated test in §VI and falls outside the framework, regardless of whether each individual routing event satisfies Factor 0. The discipline on round-trip patterns is structural, not discretionary.

VIII. Draft Language for the Committee Report

Rather than proposing additions to the negotiated statutory text, this brief recommends that the Committee Report accompanying markup include interpretive language affirmatively characterizing user-initiated routing as a recognized form of "bona fide activities" within the meaning of §404. Suggested language follows.

> **Section X.X: Activity-Based Rewards and Routing into Registered Investment Products**
>
> The Committee clarifies that user-initiated routing of payment-stablecoin balances into investment products registered under the Investment Company Act of 1940 falls within the activity-based reward framework that §404 of the CLARITY Act establishes. The Committee identifies two activity categories within which user-initiated routing falls — both expected to be encompassed by the joint Securities and Exchange Commission, Commodity Futures Trading Commission, and Treasury Secretary rulemaking required by §404: "transfers" (the movement of value from a payment stablecoin to a registered investment-company share) and "market-making" (in arrangements involving a regulated dealer-principal liquidity model, including the structure approved for WTGXX in February 2026). The resulting returns to the user constitute permitted activity-based rewards rather than prohibited yield, where the following conditions are satisfied:

> (1) The underlying investment product retains its statutory character throughout the routing transaction, including its NAV-based pricing or structurally equivalent dealer-principal arrangement, redemption mechanics, and disclosure obligations under the Investment Company Act of 1940;
>
> (2) Each routing transaction is initiated by an affirmative user signature reflecting the specific routing amount, target product identifier, term, and current NAV of the target product at the time of signature;
>
> (3) The user bears the market and liquidity risk of the underlying investment product, including in adverse conditions such as NAV decline below par, liquidity gating, or fund-level redemption suspension;
>
> (4) The routing-facility operator's compensation consists of a routing fee disclosed to the user and does not include any portion of the yield generated by the underlying investment product; and
>
> (5) Where the user claims activity-based treatment for a redemption transaction, the redemption is mechanically bound to a specific payment instruction such that the redemption amount equals the payment amount and the redemption proceeds are transferred directly to the payment destination.
>
> The Committee further clarifies that arrangements satisfying these conditions are, as a matter of structure, neither "economically equivalent" nor "functionally equivalent" to bank deposits within the meaning of §404, because (i) the user, not the operator, bears principal risk; (ii) the operator earns no net interest margin; and (iii) the underlying instrument is a registered investment product whose statutory character is incompatible with deposit characterization, as confirmed by federal tax reporting on Form 1099-DIV rather than Form 1099-INT.
>
> The Committee further notes that compliance with these conditions is verifiable through public blockchain data, and recommends that the joint rulemaking required by §404 develop standardized reporting formats permitting ex ante demonstration of compliance, in coordination with the Office of the Comptroller of the Currency where bank-affiliated routing facilities are involved.

The proposed language anchors interpretation in activity categories the agencies are already expected to define, addresses the CCI scope concern without modifying statutory text, and defines the boundary by structural conditions rather than enumerated exclusions. Positive definitions hold up better under interpretive pressure than negative ones, because they give regulated parties and enforcement agencies a clear standard to apply rather than requiring litigants to argue about the absence of prohibited features.

IX. Considerations for Markup

There is a narrow window in which Committee Reports actually shape rulemaking. It opens when the underlying statute is finalized and closes when agencies file their first proposed rule. The §404 window opened on May 5. It will close some time in late 2026 or early 2027, when the SEC, CFTC, and Treasury circulate their joint draft.

The proposal here is unusual in three respects, and each cuts down the political resistance it would otherwise face.

It asks for no new exemption. Requesting a new safe harbor invites comprehensive scrutiny of every word added to the statute. This proposal asks for none. It asserts that the 1940 Act framework already governs the products at issue, and asks the Committee to confirm that interpretation in legislative history. After the senators' May 5 commitment to the negotiated text as final, this is no longer a strategic preference. Any proposal requiring statutory modification has been foreclosed.

It substitutes calculation for political judgment. The term "bona fide activities" is politically defined but technically ambiguous. Whichever industry coalition files the most extensive comment record in the joint rulemaking will substantially shape the resolution. The four metrics in §V replace political judgment with calculation any party can perform, audit, and contest. This is the form of regulatory clarity drafters tend to prefer, because it shifts subsequent disputes from rulemaking proceedings to discrete factual determinations.

The third feature does double duty: it forecloses what the banking industry is right to worry about while preserving what the SEC has already approved. The framework prohibits graduated rewards on continuing stablecoin holdings, the precise structure the May 4 statement targets. It also preserves user-initiated access to FOBXX and WTGXX, products that have been available to U.S. retail investors for over a year. A Committee Report incorporating this framework is therefore not a balanced concession to two industry coalitions; it is a reading of where §404's text actually applies.

The bipartisan structure of the underlying compromise gives the framework a real opening. Quantifiable user protection, NAV transparency, and explicit risk disclosure address the consumer-protection concerns Senate Democrats have raised. Ex ante rules and on-chain verifiability address the regulatory-predictability concerns Senate Republicans have raised. The same provisions advance both interests rather than balancing them against each other. The senators who negotiated the underlying text have already demonstrated this kind of bipartisan ground exists. The framework here builds on it.

Three caveats are worth naming directly.

The metrics are auditable in principle, but interagency attestation infrastructure does not currently exist. Coordinating SEC, OCC, and Treasury examination work

around shared on-chain data will require new protocols this brief does not propose. That cost falls on the agencies rather than on regulated parties, but it is real.

The 0.95 ADI threshold and 0.80 UCC threshold are defensible but not derived from first principles. They reflect plausible operational tolerances for distinguishing active from passive arrangements; they are not the only defensible thresholds. The agencies should retain authority to recalibrate them through rulemaking.

The framework does not address the broader scope concern raised by the Crypto Council for Innovation about §404’s reach beyond issuers. That concern is real and deserves separate treatment. This brief addresses the routing question because it is the most acute interpretive ambiguity and the one most likely to produce immediate enforcement disputes. The scope question requires a different kind of analysis.

These caveats are not defects. A framework satisfying the criteria above is the form of policy contribution most likely to influence Committee deliberation in the compressed window before markup.

X. Conclusion

The CLARITY Act compromise resolved the largest political dispute over stablecoin yield by drawing a binary line. It deferred the technical question of where that line falls in marginal cases involving registered investment products. The May 4 banking-industry joint statement and the May 5 Senate-side affirmation of the text as final have together transformed that deferred question from a future regulatory matter into an immediate Committee Report drafting question.

This brief proposes that the question be answered by reference to the existing 1940 Act framework rather than by new exemption. User-initiated routing into registered tokenized money market funds operates under existing securities law and does not require statutory accommodation. The Committee’s role is interpretive: to confirm that the new prohibition does not displace the existing framework that already governs the products at issue.

The six-factor test, anchored by the NAV pass-through threshold and the four user-agency metrics, gives a defensible, technically grounded standard for distinguishing compliant routing from disguised yield. The standard is on-chain auditable, ex ante verifiable, and bipartisan in its appeal. It can be incorporated into the Committee Report accompanying markup without modification to the negotiated statutory text, the only path now available.

The cost of inaction falls on retail users seeking access to SEC-approved tokenized money market funds. If the Committee proceeds to markup without addressing the interpretive question, courts and agencies will resolve it through enforcement, almost certainly inconsistently, and almost certainly with substantial collateral effects on legitimate retail access to registered products that the SEC has already

approved. Civil penalties of up to $5 million per violation make this not a hypothetical concern. Every borderline arrangement will be litigated against the May 4 framing (duration, balance, tenure as a loophole that "must be addressed"), with no clear standard for resolution.

The Committee can provide that standard now, at minimal political cost, and in language that closes the loophole the banking industry has identified while preserving the access the SEC, the 1940 Act, and the senators' own compromise text already permit.

Appendix A: Glossary of Proposed Metrics

Authorization Density Index (ADI). Ratio of discrete user signatures to fund state changes within a rolling 30-day window. Measures temporal discreteness of user authorization. Threshold for active classification: ≥ 0.95.

Disclosure Granularity Score (DGS). Composite score (0–100) of four required disclosure elements at each signature event: specific routing amount, specific target product identifier, specific term or redemption trigger, and current NAV of target product. Twenty-five points per element. Threshold for active classification: 100.

User Control Coefficient (UCC). Ratio of state changes the user may unilaterally initiate to total possible state changes in the system. Measures structural reversibility of user authorization. Threshold for active classification: ≥ 0.80.

Activity Coupling Ratio (ACR). Computed across the routing facility as a whole. Ratio of redemption value mechanically bound to a payment or transfer instruction (encoded in the redemption call) to total redemption value. Threshold: ≥ 0.95. Below the threshold creates a presumption of disguised withdrawal.

Factor 0 (NAV Pass-Through Integrity). Threshold structural test combining (a) bidirectional NAV tracking; (b) NAV-based redemption or structurally equivalent dealer-principal arrangement; (c) user-borne downside risk; (d) per-event risk disclosure; (e) Form 1099-DIV tax characterization. Failure of any condition is dispositive.

Appendix B: Authorities Cited

Supreme Court Decisions

- *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).
- *Reves v. Ernst & Young*, 494 U.S. 56 (1990).
- *United Hous. Found., Inc. v. Forman*, 421 U.S. 837 (1975).

Federal Statutes

- Securities Act of 1933, 15 U.S.C. §§ 77a et seq.
- Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq. (esp. §§ 3(a)(1)(A), 17(a), 22(c)).
- Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 et seq.
- Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq.
- Internal Revenue Code, Subchapter M (regulated investment companies), 26 U.S.C. §§ 851–855.
- Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (“GENIUS Act”), Pub. L. No. 119-XX (2025).

- Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (passed House July 17, 2025, 294–134; §404 Tillis–Alsobrooks Compromise Text, May 1, 2026; affirmed final May 5, 2026).

Federal Rules and Guidance

- 17 C.F.R. § 270.2a-7 (Money Market Fund Rule).
- SEC Division of Corporation Finance, Statement on Stablecoins (Apr. 4, 2025).
- SEC, Order Granting §6(c) Exemptive Relief to WisdomTree Trust (Feb. 24, 2026); FINRA approval of WisdomTree Securities to engage in principal trading of WTGXX shares.

Tax Authorities

- Internal Revenue Code §§ 851–855 (regulated investment companies).
- IRS Form 1099-DIV (Dividends and Distributions) and instructions.
- IRS Form 1099-INT (Interest Income) and instructions.
- IRS Form 1099-B (Proceeds from Broker and Barter Exchange Transactions) and instructions (excluding sales of money market fund shares).
- IRC § 988 (Treatment of Foreign Currency Transactions).

Government and International Reports

- White House Council of Economic Advisers, Analysis of Marginal Effect of Prohibiting Stablecoin Yield on Bank Lending (Apr. 2026).
- U.S. Department of the Treasury, Report on Stablecoins (Nov. 2021).
- President's Working Group on Financial Markets, Report on Stablecoins (Nov. 2021).
- Financial Stability Board, High-Level Recommendations for the Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements (Final Report, July 2023).
- Bank for International Settlements, Stablecoin Growth—Policy Challenges and Approaches, BIS Bulletin No. 108 (2025).
- International Monetary Fund, Understanding Stablecoins, IMF Departmental Paper (2025).

References

Primary Statements (May 2026)

- Joint Statement of Senators Thom Tillis and Angela Alsobrooks on Section 404 Compromise (May 1, 2026).

- Joint Statement of Senators Thom Tillis and Angela Alsobrooks Affirming Compromise Text as Final (May 5, 2026).
- Statement of Senator Cynthia Lummis Affirming Compromise Text as "Finalized" (May 4, 2026).
- Joint Statement of the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Financial Services Forum, and Independent Community Bankers of America on §404 Compromise Text (May 4, 2026).
- Crypto Council for Innovation, Public Statement by CEO Ji Hun Kim (May 2, 2026).
- Coinbase, Statements by CEO Brian Armstrong, Chief Legal Officer Paul Grewal, and Chief Policy Officer Faryar Shirzad (May 1–2, 2026).
- White House Crypto Council, Statement by Executive Director Patrick Witt (Apr. 2026).
- Senate Banking Committee Chairman Tim Scott, Statement on Republican Committee Vote Count (Apr. 30, 2026).

Secondary Sources

- Galaxy Digital, Market Commentary by Alex Thorn (May 2026).
- Polymarket, Contract on "Clarity Act signed into law in 2026" (probability ~70% as of May 5, 2026).
- Wharton Blockchain and Digital Asset Project, The Stablecoin Toolkit, Part I: Financial and Market Dimensions (Jan. 2026).
- Coin Center, Framework for Securities Regulation of Cryptocurrencies (rev. 2018).
- BCG, Stablecoins: Five Killer Tests to Gauge Their Potential (May 2025).
- BIS Working Paper No. 1270, Stablecoins and Safe Asset Prices (2025).
- Speech of Federal Reserve Governor Stephen Miran, "A Global Stablecoin Glut" (2025).
- Punchbowl News, original reporting on §404 compromise text (May 1–5, 2026).
- FinanceFeeds, "CLARITY Act's Stablecoin Yield Deal: Section 404 Explained" (May 3, 2026).
- ABA Banking Journal, "Report: Senators reach deal on stablecoin yield" (May 5, 2026).

Tokenized Money Market Fund Documentation

- Franklin Templeton, OnChain U.S. Government Money Fund (FOBXX), prospectus and SEC filings; Benji platform documentation.

- WisdomTree Treasury Money Market Digital Fund (WTGXX), prospectus and SEC filings; SEC §6(c) exemptive relief order (Feb. 24, 2026).
- RWA.xyz, Tokenized Treasury Funds Dashboard (May 2026).

About the Author

Yunjie Fan writes about stablecoin regulation and the boundaries between digital-asset products and existing securities-law frameworks. From 2025 to 2026 she served as Project Officer at the Office of the Vice President (Research), Nanyang Technological University (Singapore), supporting senior leadership at the NTU Centre in Computational Technologies for Finance on policy synthesis at the intersection of AI, blockchain, and sustainable finance.

Her policy work spans U.S. and APAC digital-asset regulation. She holds a Master of International Management from Audencia Business School (France), with additional certifications from the United Nations International Training Centre of the ILO (Master's Certificate in AI applications in governance and ethics) and the World Bank Group's Sustainability Training Program.

She wrote this brief because the joint SEC/CFTC/Treasury rulemaking on §404 will draw substantially from legislative history, and because the compressed window before markup is the moment when that legislative history is actually written.

Contact: yunjiefan.research@gmail.com | LinkedIn: linkedin.com/in/yunjiefan

About This Brief

This is an independent policy brief prepared for distribution to Senate Banking Committee staff and the broader stablecoin policy community ahead of the anticipated markup of the Digital Asset Market Clarity Act in the week of May 11, 2026.

The brief reflects the author's independent analysis. It does not represent the views of any current or former employer, including Nanyang Technological University, the NTU Centre in Computational Technologies for Finance, or any organization with which the author has been affiliated. The author has no commercial relationship with any stablecoin issuer, money-market-fund operator, or routing-facility provider, and receives no compensation, direct, contingent, or otherwise, from any party with a financial interest in the policy outcome discussed.

A note on substantive alignment. The framework's conclusions align with positions held by parties with commercial interests in the policy outcome, including registered investment advisers and tokenized fund operators. Readers should evaluate the substantive analysis on its own terms; the conclusions' alignment with industry

positions is a function of the underlying legal architecture, not of any consulting, advisory, or compensatory relationship.

The author welcomes critique and is available to discuss the framework with policymakers, regulators, academic researchers, and industry participants prior to and during the Senate Banking Committee markup process. Comments and corrections are particularly welcomed.

Suggested citation: Yunjie Fan, *Narrowing the Section 404 Prohibition: A Quantitative Framework for Distinguishing User-Initiated Routing from Disguised Yield Under the Tillis–Alsobrooks Compromise to the Digital Asset Market Clarity Act* (Independent Policy Brief, May 6, 2026).