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**National Association of Federally-Insured Credit Unions**

January 4, 2021

Policy Division  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

**RE: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets (Docket No.: FINCEN-2020-0020; RIN No.: 1506-AB47)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) notice of proposed rulemaking regarding the requirements for certain transactions involving convertible virtual currencies (CVCs) or legal tender digital assets (LTDA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 123 million consumers with personal and small business financial service products. NAFCU appreciates FinCEN's commitment to safeguarding our financial system and efforts in combating illicit activity posed by CVCs, especially anonymous transactions and funds transfers. NAFCU has long advocated for a level playing field between traditional financial institutions and fintech companies, such as cryptocurrency brokers, that do not have to adhere to the same compliance requirements. In general, NAFCU is supportive of efforts to correct gaps in existing *Bank Secrecy Act* (BSA)/anti-money laundering (AML) regulations; however, NAFCU urges FinCEN to allow for additional time for stakeholder comments, or, alternatively to ensure that engagement with financial institutions occurs. In addition, NAFCU implores FinCEN to mitigate compliance burdens by ensuring consistency, as much as possible, with current reporting and recordkeeping requirements and providing a reasonable implementation period given the proposed expansion of BSA/AML compliance requirements.

**General Comments**

The *Annunzio-Wylie Anti-Money Laundering Act* amended the BSA and authorized the U.S. Department of the Treasury (Treasury), to promulgate regulations requiring insured depository institutions to report currency transactions, or transactions involving other monetary instruments as prescribed. As CVC becomes more prevalent in our financial system, it brings BSA/AML concerns to light.

The proposal would create recordkeeping, verification, and reporting requirements for certain deposits, withdrawals, exchanges, or other payments or transfers of CVC/LTDA by, through, or to a financial institution or money service business (MSB) that involves an unhosted, or otherwise covered, wallet. Credit unions that have hosted wallet accounts will be impacted by this proposal. As the proposal indicates, the number of financial institutions impacted by this proposal are small in comparison to the total number of financial institutions. Nevertheless, the proposal could have future implications on a credit union's decision to provide financial services for CVCs/LTDAs as the proposal greatly increases the level of necessary compliance.

Credit unions play an important role in identifying and mitigating risks to our financial system; however, BSA/AML compliance continues to be burdensome. According to NAFCU's 2020 *Federal Reserve Meeting Survey*, over 52 percent of respondents expect to increase the number of full-time equivalent staff members devoted to BSA/AML compliance. This represents a 20 percent increase from last year and will likely continue to grow, as compliance becomes more intricate and complex. The proposal creates recordkeeping requirements that are similar to the current Recordkeeping and Travel Rules pertaining to funds transfers and transmittals of funds and reporting requirements similar to that of the currency transfer reports (CTRs). Credit unions cannot continue to spend massive amounts of money on compliance resources if the requirements are duplicative of other compliance efforts that provide similar information. FinCEN must ensure that the proposal is not duplicative of current reporting and recordkeeping requirements of financial institutions.

### **FinCEN Should Allow for Additional Time for Stakeholder Comments**

NAFCU understands the pressing need to obtain the information that would be provided under the proposed recordkeeping and reporting requirements; however, the expedited 15-day comment period is far too short for public stakeholders to provide substantive comments on potential ramifications. Due to public holidays, the 15-day period includes only 6 business days. The proposal does not afford a "meaningful opportunity" to comment. Further, it is not clear what outreach was conducted to financial institutions impacted by the proposed changes prior to publishing in the *Federal Register*.

This proposal originated from engagement between the FinCEN Exchange and the cryptocurrency industry over a year ago. A rush to finalize at the expense of public comment seems unnecessary given the length of time the issue has been discussed. Although financial institutions may become members of the FinCEN Exchange, the program is currently set up as an invitation-only program. Therefore, representation of financial institutions during prior engagement with the FinCEN Exchange is unknown, while the proposal provides ample evidence of engagement with the cryptocurrency industry. The proposal directly impacts the cryptocurrency industry, who previously did not have to comply with BSA/AML requirements, but the proposal also impacts financial institutions that service hosted wallet accounts. As noted in the proposal, FinCEN states that rapid implementation is necessary to successfully accomplish the objective of curbing illicit finance in CVC/LTDA transactions. FinCEN also states that any delay in the rulemaking process may cause the movement in assets from a hosted wallet to an unhosted wallet in the interim.

NAFCU understand the urgency; however, FinCEN should allow for more time for stakeholder comments, or, alternatively to ensure that engagement with financial institutions occurs.

### **FinCEN Must Allow a Reasonable Implementation Period Given the Proposed Expansion of Requirements Increases Compliance Costs and Burdens**

Although FinCEN is expediting the comment period to ensure that assets do not move from hosted to unhosted wallets, the agency should provide a reasonable implementation period given the proposed expansion of the existing BSA/AML requirements and will increase compliance costs and burdens. Despite the low number of financial institutions that currently have a hosted wallet account, the industry may see more demand for service providers and FinCEN should continue to monitor this trend and the impacts of this proposal, including any associated barriers to providing financial services. Although the proposal limits the scope of expansion to certain transactions, it adds to the existing reporting requirements which increases costs and strain on compliance resources.

Associated costs vary depending on the vendor utilized and some vendors may pass costs down to credit unions. To the extent that these compliance obligations fall upon smaller institutions, the burden may be greater as smaller institutions may have limited staffing resources available to absorb the costs. To mitigate costs, NAFCU urges FinCEN to maintain consistency with the proposed aggregation requirements and procedural requirements, such as the 15-day filing deadline. Consistency between reporting may lessen compliance burdens. In addition, NAFCU is supportive of the proposed exemptions from the required reporting for transactions that are between a hosted wallet account and a counterparty hosted wallet at a financial institution regulated under the BSA, as FinCEN may glean the information from already existing reporting and there is no need for duplication.

In addition to the new reporting requirements, the proposal creates a separate identity verification and recordkeeping requirement, separate and distinct from the reporting requirement. This will apply to financial institutions' hosted wallet accounts and require the collection of the name and physical address of the customer's counterparty when certain transactions occur. Specifically, transactions where a hosted wallet account engages in a transaction with an unhosted wallet with a value of more than \$3,000. Credit unions have operated under the current recordkeeping and verification requirements for some time, but the proposal will require new risk-based policies and procedures and the electronic retention of the recordkeeping information. Again, FinCEN should maintain consistency with current recordkeeping requirements to mitigate compliance burdens and should provide a reasonable implementation period.

### **Conclusion**

NAFCU appreciates the opportunity to share our members' views on this matter. NAFCU urges FinCEN to allow for additional time for stakeholder comments. In addition, NAFCU asks FinCEN to maintain consistency with current reporting and recordkeeping requirements, as much as possible, to lessen compliance burdens. As the CVC/LTDA industry evolves, FinCEN must

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continue to monitor the risks posed and impacts on financial institutions from any proposed changes. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or [kschafer@nafcu.org](mailto:kschafer@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Kaley Schafer", written in a cursive style.

Kaley Schafer

Senior Regulatory Affairs Counsel