



## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Parts 1010, 1020, and 1022

RIN 1506-AB47

### Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** On December 23, 2020, FinCEN published a notice of proposed rulemaking proposing requirements for banks and money services businesses (“MSBs”) related to certain transactions involving convertible virtual currency (“CVC”) or digital assets with legal tender status (“legal tender digital assets” or “LTDA”). As set forth below, FinCEN is identifying additional statutory authority for the proposed rule under the Anti-Money Laundering Act of 2020, providing additional information regarding the reporting form, and reopening the comment period for the proposal. Specifically, FinCEN is providing an additional 15 days for comments on the proposed reporting requirements regarding information on CVC or LTDA transactions greater than \$10,000, or aggregating to greater than \$10,000, that involve unhosted wallets or wallets hosted in a jurisdiction identified by FinCEN. FinCEN is providing an additional 45 days for comments on the proposed requirements that banks and MSBs report certain information regarding counterparties to transactions by their hosted wallet customers, and on the proposed recordkeeping requirements.

**DATES:** The comment period for the proposed rule published on December 23, 2020 (85 FR 83840) is reopened for 15 days for comments on the proposed reporting requirements and for 45 days for comments on the proposed requirement to report counterparty information and the proposed recordkeeping requirements. Written comments are now therefore due with respect to the proposed reporting requirements (except with respect to

reporting of counterparty information) on **[INSERT DATE 15 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, and with respect to all other aspects of the proposed rule on **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2020-0020 and the specific RIN number 1506-AB47 to which the comment applies.
- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0020 and the specific RIN number.

**FOR FURTHER INFORMATION CONTACT:**

The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

**SUPPLEMENTARY INFORMATION:**

On December 18, 2020, FinCEN filed with the *Federal Register* a notice of proposed rulemaking (the “December Notice”). The December Notice was published in the *Federal Register* on December 23, 2020.<sup>1</sup> In the December Notice, FinCEN proposed to address the threat of illicit finance with respect to certain transactions involving CVC or LTDA by (i) establishing new reporting requirements for certain CVC or LTDA transactions analogous to existing currency transaction reports, and (ii) establishing new recordkeeping requirements for certain CVC or LTDA transactions that is similar to the recordkeeping and travel rule regulations pertaining to funds transfers and transmittals of funds. The original comment period formally closed on January 7, 2021, although FinCEN took steps to ensure comments could still be received after that date.<sup>2</sup>

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<sup>1</sup> Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets, 85 FR 83840 (Dec. 23, 2020).

<sup>2</sup> Members of the public have continued to be able to, and have in fact continued to, submit comments since January 7, 2021. FinCEN will continue to review comments submitted after the filing of the original notice of proposed rulemaking, including comments received between January 7, 2021 and **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

On January 1, 2021, the Anti-Money Laundering Act of 2020 (Division F of Public Law 116-283) (“AML Act of 2020”) became law. The AML Act of 2020 amended 31 U.S.C. 5312(a)(3), the definition of “monetary instruments” in the Bank Secrecy Act (“BSA”), on which Treasury proposed to rely to determine that CVC and LTDA are monetary instruments. As amended by the AML Act of 2020, the BSA now defines the term monetary instruments as United States coins and currency; as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers’ checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form; and, as the Secretary shall provide by regulation, value that substitutes for any monetary instrument described in the other categories.<sup>3</sup>

In the December Notice, FinCEN proposed prescribing by regulation that CVC and LTDA are monetary instruments because they constitute “similar material” to instruments described in 31 U.S.C. 5312(a)(3)(B) (“coins and currency of a foreign country, travelers’ checks, bearer negotiable instruments, bearer investment securities, bearer securities, [and] stock on which title is passed on delivery . . . .”). As the December Notice explained, CVC and LTDA are “similar material” to “coins and currency of a foreign country, travelers’ checks, bearer negotiable instruments, bearer investment securities, bearer securities, [and] stock on which title is passed on delivery . . . .” FinCEN now intends to prescribe by regulation that CVC and LTDA are “monetary instruments” pursuant to paragraph (D) of 31 U.S.C. 5312(a)(3), as amended. Specifically, pursuant to 31 U.S.C. 5312(a)(3)(D), CVC and LTDA are both value that substitute for currency and are therefore “monetary instruments” under the BSA.

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<sup>3</sup> 31 U.S.C. 5312(a)(3), as amended by section 6102(d) of the AML Act of 2020, which added paragraph (D).

As FinCEN specified in the December Notice, the determination at 31 CFR 1010.316(a) is *not* intended to affect the regulatory definition of “monetary instruments” at 31 CFR 1010.100(dd), or the use of that regulatory definition elsewhere in FinCEN’s regulations, including in relation to the currency transaction reporting requirements at 31 CFR 1010.311 and the transportation of currency or monetary instruments reporting requirements at 31 CFR 1010.340.<sup>4</sup>

The AML Act of 2020 also amended 31 U.S.C. 5318(a)(2), granting the Secretary additional authority to implement reporting requirements. Specifically, the Secretary may require a class of domestic financial institutions to “maintain appropriate procedures, including the collection and reporting of certain information as the Secretary of the Treasury may prescribe by regulation, to ensure compliance with [subchapter 53 of title 31 of the U.S. Code] and regulations prescribed under [such] subchapter or to guard against money laundering, the financing of terrorism, or other forms of illicit finance.” Thus, in addition to the authority cited in the December Notice, the proposed rule relies on authority under 31 U.S.C. 5318(a)(2) to extend transaction reporting requirements to CVC/LTDA transactions.<sup>5</sup>

Reports required by the proposed rule would be submitted on a Value Transaction Report form similar to the existing FinCEN Currency Transaction Report (“CTR”) Form 112. The form would be submitted through the existing BSA E-filing system and would be able to be batch reported.<sup>6</sup> Filers would be able submit information commonly associated with CVC and LTDA transactions, such as:

- a) The CVC or LTDA type used in the transaction;

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<sup>4</sup> Nor is this regulatory determination intended to have any impact on the definition of “currency” in 31 CFR 1010.100(m). Furthermore, nothing in the proposal is intended to constitute a determination that any CVC or LTDA that is within the regulatory definition of “monetary instruments” prescribed pursuant to 31 U.S.C. 5312(a)(3) is currency for the purposes of the federal securities laws, 15 U.S.C. 78c(47), or the federal derivatives laws, 7 U.S.C. 1-26, and the regulations promulgated thereunder. Finally, this determination is intended to have no impact on the taxability of CVC or LTDA.

<sup>5</sup> 31 U.S.C. 5318(a)(2), as amended by section 6101(b) of the AML Act of 2020.

<sup>6</sup> The user guide for the existing CTR form is available at: [https://bsae filing.fincen.treas.gov/docs/XMLUserGuide\\_FinCENCTR.pdf](https://bsae filing.fincen.treas.gov/docs/XMLUserGuide_FinCENCTR.pdf).

- b) The transaction amount;
- c) The assessed transaction value (in U.S. dollars);
- d) The date and time of the transaction;
- e) The transaction hash;
- f) CVC or LTDA addresses involved in the transaction, and if they are hosted or unhosted;
- g) The name and physical address of each counterparty to the transaction of the financial institution's customer; and
- h) Other information readily available to the bank or MSB, which aids in identifying the specific reported transaction(s), the means by which it was conducted, and the parties involved.

A final rule implementing these proposed reporting requirements would be effective 30 days after its publication, except that the requirement to report counterparty information (if adopted) would not take effect for 60 days given the additional complexity it may present.

FinCEN also continues to invite comment on the portion of the December Notice related to proposed independent recordkeeping obligations for transactions greater than \$3,000. Any final rule implementing the recordkeeping requirements would be effective 60 days after its publication.

#### **COMMENTS ON THE DECEMBER NOTICE:**

FinCEN reviewed and considered 7,506 comments submitted in response to the December Notice prior to January 8, 2021. Commenters included financial institutions and companies that provide services related to CVC or LTDA, academics, trade organizations, cryptocurrency development groups, non-profit organizations, customers and employees of companies that provide services related to CVC or LTDA, and cryptocurrency owners and other individuals (both domestic and foreign), as well as anonymous sources. Commenters addressed a range of considerations, including implications for technological development and other forms

of innovation, the economics of the digital asset industry, U.S. economic competitiveness, compliance matters, data security and privacy, utility to law enforcement, and procedural aspects of the December Notice (including the length of the comment period).

**DETERMINATION TO REOPEN THE PUBLIC COMMENT PERIOD:**

FinCEN appreciates the substantial response from commenters during the original comment period, and FinCEN welcomes further comment in the reopened comment periods. With respect to the additional 15 days for comments on the proposed reporting requirements, FinCEN notes that these proposed requirements are essentially equivalent to the existing CTR reporting requirements that apply to transactions in currency. The proposed rule is a vital loophole-closing measure to prevent illicit transactions using CVC and LTDA, including the financing of terrorism, in light of the fact that such transactions would otherwise be subject to familiar and long-established reporting requirements if they were in cash. The proposal is also consistent with Congress's recent expansion of the definition of "monetary instrument" in the BSA, which reflects the expectation that FinCEN would bring CVC and LTDA within monetary instrument reporting requirements. FinCEN notes that a large number of commenters agreed it is fully appropriate for FinCEN to finalize a rule providing similar regulatory treatment to similar activity. FinCEN welcomes comments during this reopened comment period on FinCEN's application of new statutory authority pursuant to the BSA amendments made by the AML Act of 2020. In addition, several commenters noted the need for additional information on the nature of the reports required by the proposal in order to provide an assessment of potential costs and benefits of the proposed rule. As indicated in the supplementary information, FinCEN intends to use a form similar to the existing CTR form and requests further comment in light of this additional information.

With respect to the additional 45 days for comments on the proposed recordkeeping requirements and the proposed requirement to report counterparty information, FinCEN is providing a longer period in light of the somewhat greater complexity of those aspects of the

proposed rule and various issues identified in comments received during the original comment period.

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