



Comments of the Regulatory Action Center

Re: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets

Docket ID: FINCEN-2020-0020-7420

February 10, 2021

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

On behalf of FreedomWorks' activist community, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding the notice of proposed rulemaking on *Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets* (FINCEN-2020-0020-7420). This notice seeks comment on the proposal to require banks and other money service businesses (MSBs) to keep records of, and report the identity of, individuals involved in cryptocurrency transactions.

In late December 2020, the Financial Crimes Enforcement Network (FinCEN) hastily issued a Notice of Proposed Rulemaking (NPRM), attempting to sneak this action through at the midnight hour of the Trump Administration. FreedomWorks Foundation opposed that initial rulemaking partially on the grounds that the expedited procedure under which it was promulgated was an abuse of emergency powers under the Bank Secrecy Act (BSA). While FinCEN has addressed the procedural issues of this NPRM by reopening the public comment period, we remain in firm opposition to this rule for two very important reasons.

First of all, requiring disclosure of identifying information for all cryptocurrency transactions over \$10,000 would effectively be centralizing digital currencies that are, by their very nature decentralized. Second, implementing disclosure requirements for convertible virtual currencies (CVCs) would create serious security risks and surveillance concerns. Financial regulators should maintain the light-touch approach to regulating CVCs that has allowed the industry to blossom. Instead, this NPRM would saddle cryptocurrencies with burdensome, new regulatory requirements for amorphous benefits.



It is important to note that while the benefits of this rule are vaguely defined, FinCEN's reasoning behind promulgating this NPRM is not entirely unfounded. As we outlined in our comment on the original docket for this action, the nature of CVCs as a theoretically untraceable and decentralized means of transaction have always meant that cryptocurrencies are regularly used for illicit purposes. In their notice, FinCEN justifiably refers to several examples of cryptocurrency use by malign actors, as was the case in the WannaCry ransomware attack.¹ Examples such as this present very real concerns for our security as a nation.

However, FinCEN greatly exaggerates the magnitude of the threat posed by illicit CVC transactions, especially when considering the broader market of illicit financing. A report from Chainalysis examining found that only 1.1 percent of cryptocurrency transactions are associated with criminal activity.² To put it another way, cryptocurrency transactions only make up a small proportion of total illicit financial activity. As Jennifer Fowler, the Deputy Assistant Secretary of Office of Terrorist Financing and Financial Crimes, told the Senate Judiciary Committee; "Although virtual currencies are used for illicit transactions, the volume is small compared to the volume of illicit activity through traditional financial services."³

Furthermore, as is too often the case, FinCEN's proposed remedy to these issues is a gross overreaction that could present an existential threat to cryptocurrencies as we now know them. While the BSA grants financial regulators broad power to combat financial crimes and illegal transactions in a myriad of ways, this NPRM is a massive expansion of federal regulatory power beyond the spirit of the BSA. Absent direct congressional authorization, such a power grab by FinCEN is merely the latest example of federal agencies using the guise of national security as a means to further expand their authority.

The second issue with this proposal is just as important. In requiring disclosure of identifying information for both hosted and unhosted wallets, FinCEN is inadvertently creating new security and surveillance issues for cryptocurrencies. As we noted in our original comment on this docket, a significant portion of the security of CVCs is due to the anonymity provided by encrypted wallets. In order to implement this proposed rule, CVCs would be required to maintain identifying information for individual wallets, removing all anonymity from the process. In

¹ Geralis, Alexander. "WannaCry Hackers Move \$140,000 From Bitcoin Wallets, Marcus Hutchins Arrested." *Cointelegraph*. August 4, 2017. <https://cointelegraph.com/news/wannacry-hackers-move-140000-from-bitcoin-wallets-marcus-hutchins-arrested>

² "The Chainalysis 2020 Crypto Crime Report." *Chainalysis*. January 29, 2020. <https://blog.chainalysis.com/reports/cryptocurrency-crime-2020-report>

³ S.1241: *Modernizing AML Laws to Combat Money Laundering and Terrorist Financing*. 116th Congress. November 28, 2017. Testimony of Jennifer Fowler, Deputy Assistant Secretary of the Office of Terrorist Financing and Financial Crimes. <https://www.judiciary.senate.gov/imo/media/doc/Fowler%20Testimony.pdf>



doing so, financial regulators are creating the possibility of bulk financial data collection where it would otherwise be inconceivable.

Armed with both the identifying data and transaction information from the public ledger, both federal regulators and sufficiently savvy hackers would have unparalleled access to American's financial information. Because many cryptocurrencies were designed specifically to thwart this type of surveillance, collecting this type of financial information would be practically impossible absent the proposed rule. Given the federal government's track record with bulk data collection and other dragnet surveillance techniques, it is worrisome that financial regulators are seeking to create new ways to track American's financial data.⁴

While FinCEN's decision to reopen this docket for public comments is a positive course correction for the procedural issues with their original proposal, the contents of this NPRM could have a disastrous impact on cryptocurrencies. Not only does centralizing CVCs run entirely counter to the nature of these financial instruments, but requiring disclosure of identifying information presents serious new security issues. For all these reasons, we strongly urge FinCEN to reconsider this action and retract this proposed rule in its entirety.

Respectfully submitted,

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⁴ Neidig, Harper. "Appeals court rules NSA's bulk phone data collection illegal." The Hill. September 2, 2020.
<https://thehill.com/policy/national-security/514854-court-rules-nsas-bulk-phone-data-collection-illegal>