

FinCEN and the Federal Reserve Board Propose Travel Rule Amendments to Lower the Threshold for Cross-Border Transfers and to Explicitly Cover Convertible Virtual Currencies and Digital Money

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The Financial Crimes Enforcement Network (**FinCEN**) and the Federal Reserve Board (together the **Agencies**) last week **proposed amendments** (the **Proposed Rules**) to the Travel Rule regulations and related Recordkeeping Rules under the Bank Secrecy Act (together the **Rules**).^[1]

Lowering the threshold for cross-border transfers. The Rules currently require banks and nonbank financial institutions to collect, retain, and transmit specified information related to funds transfers and transmittals of funds in amounts of \$3,000 or more, with the goal of helping law enforcement and regulatory authorities detect, investigate, and prosecute money laundering, and other financial crimes by preserving an information trail about persons sending and receiving funds.^[2] In an effort to enhance the information available for law enforcement and national security investigations, the Proposed Rules lower the \$3,000 threshold to \$250 for transactions that begin or end outside the United States, while leaving unchanged the \$3,000 threshold for domestic transactions.^[3]

The Agencies based the new threshold on data showing that malign actors are using smaller-value cross-border wire transfers to facilitate or commit terrorist financing, narcotics trafficking, and other illicit activities, and their understanding that changes in compliance practices and technology since the Rules were originally promulgated in 1996 should minimize the burden on financial institutions of this move to a lower dollar value threshold for cross-border funds transfers. If adopted,

the Proposed Rules would bring the United States in line with Financial Action Task Force (**FATF**) recommendations that provide that countries should adopt a *de minimis* threshold of no higher than USD/EUR 1,000 for recordkeeping requirements applicable to cross-border transactions.

Defining “money” to explicitly cover CVCs and digital money. The Proposed Rules also clarify the definition of “money” to explicitly provide that the Rules apply to domestic and cross-border transactions involving convertible virtual currencies (**CVCs**)^[4] and digital forms of fiat money. The Recordkeeping Rule applies to funds transfers^[5] and transmittals of funds,^[6] which are instructions to pay a fixed or determinable amount of **money**. The Travel Rule applies to **transmittal orders**, which “include a payment order that is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of **money** to a recipient[.]”^[7]

The term “money” is not currently defined in the Rules. However, the Agencies have explained that terms not defined in the Rules, but that are defined in the UCC have the meaning given to them in the UCC.^[8] Article 1 of the UCC defines money as “a medium of exchange *currently authorized or adopted by a domestic or foreign government.*”^[9] This definition would not, by its terms, include most types of CVCs.

FinCEN stated in **2019 guidance** that transfers of CVCs effectuated by a nonbank financial institution may constitute transmittal orders and therefore fall within the scope of the Rules. The Proposed Rule would codify the substance of the FinCEN guidance by defining money in the Rules to include: (1) a medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction, including a monetary unit established by an intragovernmental organization or by agreement between two or more countries; and (2) CVC, which is defined as a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. This definition would thus make explicit that the Rules apply to transfers and transmittal orders of CVCs and digital fiat money.

Next steps. Comments on the Proposed Rules are due November 26, 2020. While the Agencies request comment on all aspects of the Proposed Rule, they in particular request comment from financial institutions, law enforcement and members of the public on eight questions covering the following topics: the extent of the burden the Proposed Rule will have on financial institutions, the benefit the Proposed Rule will have for law enforcement, any additional costs that clarifying the

meaning of “money” will have on complying with the Rules, and what mechanisms have persons that engage in CVC transactions developed to comply with the Rules.

Law Clerk Boaz B. Goldwater contributed to this post.

^[1] The travel rule and related recordkeeping regulations are codified at 31 CFR 1010.410(e) and 1020.410(a), respectively. The Federal Reserve Board separately promulgated subpart B to Regulation S, which cross-references the requirements of 31 CFR 1020.410 (a) and 1010.410(e). Because the Federal Reserve Board’s Regulation S generally cross-references 31 CFR 1020.410 (a) and 1010.410(e), which were jointly promulgated by FinCEN and the Federal Reserve Board, the Agencies think it is unnecessary to propose conforming amendments to Regulation S.

^[2] Under the Recordkeeping Rule, the originator’s bank or transmitter’s financial institution must collect and retain certain information. The complementary Travel Rule requires the originator’s bank or transmitter’s financial institution to include certain information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. Intermediary banks or financial institutions are also required to transmit this information to other banks or nonbank financial institutions in the payment chain, to the extent that the information is received by the intermediary bank or financial institution.

^[3] Transactions would be considered to begin or end outside of the United States if the financial institution “knows or has reason to know that the transmitter, transmitter’s financial institution, recipient, or recipient’s financial institution is located in, is ordinarily a resident in, or is organized under the laws of a jurisdiction other than the United States.” What a financial institution “knows or has reason to know” is based on the information the financial institution receives in the transmittal order, collects from the transmitter to effectuate the transmittal of funds, or otherwise collects from the transmitter or recipient to comply with regulations implementing the Bank Secrecy Act.

^[4] FinCEN guidance defines CVC as convertible virtual currency that is a type of virtual currency that “either has an equivalent value as currency, or acts as a substitute for currency, and is therefore a type of ‘value that substitutes for

currency.” See Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies. FINCEN (May 9, 2019) *available* [here](#).

⁶⁵ In general, terms used in the Rules are intended to parallel the same or similar terms used in Article 4A of the Uniform Commercial Code (**UCC**). Funds transfers is defined in the UCC as “[t]he series of transactions beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order,” with the Recordkeeping Rule defining “payment order” as “[a]n instruction of a sender to a receiving bank . . . to pay, or to cause another bank or foreign bank to pay a fixed or determinable amount of money to a beneficiary.” See 1 CFR 1010.100(II); see *also* UCC 4A-103(a)(1).

⁶⁶ Transmittal of funds is defined in the Recordkeeping Rule as “[a] series of transactions beginning with the transmittor’s transmittal order, made for the purpose of making payment to the recipient” and transmittal order is defined as “[t]he term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution . . . to pay, a fixed or determinable amount of *money* to a recipient” See 31 CFR 1010.100(ddd); see *also* 31 CFR 1010.100(eee).

⁶⁷ 31 CFR 1010.100(eee).

⁶⁸ 60 FR 220, 221—222 (Jan. 3, 1995).

⁶⁹ U.C.C. 1-201(b)(24) (2001); see *also* U.C.C. 4A-105(d) (2012) (stating that Article 1 general definitions are applicable throughout Article 4A).