



The National Association of State Credit Union Supervisors

January 22, 2024

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

Re: FinCEN – Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern: Docket No. FINCEN-2023-0016

Dear Sir or Madam:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the Financial Crimes Enforcement Network’s (FinCEN) Proposal of Special Measure Regarding Convertible Virtual Currency (CVC) Mixing, and request for comment. This proposal is the first action under Section 311 of the Patriot Act² in which FinCEN uses its authority to target a class of transactions of primary money laundering concern. As noted in the proposed rule; “Because CVC mixing is intended to make CVC transactions untraceable and anonymous, CVC mixing is ripe for abuse by, and frequently used by, illicit foreign actors that threaten the national security of the United States and the U.S. financial system.”

NASCUS fully appreciates FinCEN’s commitment to protecting the U.S. financial system and associated rulemaking to combat illicit activities such as those potentially posed by CVCs. However, we encourage FinCEN to mitigate the potential compliance burdens imposed by the proposed rule and present the following comments for consideration in future rulemaking.

Additional Clarification is Needed

The number of credit unions participating in the CVC space is estimated to be relatively low, and those involved in foreign transactions even less. However, given that a credit union would have to amend its policies and procedures to account for these transactions should they arise, the proposal, if finalized, would have an impact on all covered institutions. We encourage FinCEN to consider whether the proposal might be further calibrated to mitigate the burden on modestly sized institutions.

Credit unions are already subject to extensive recordkeeping and reporting requirements under the current Bank Secrecy Act (BSA) framework.³ The proposed rule would require new, and separate reporting requirements from those of the existing BSA obligations. The new reporting requirements would require a financial institution to identify, record, and report the following information regarding covered transactions within 30 days of the initial detection of a covered transaction:

- The amount of any CVC transferred, in both CVC and its U.S. dollar equivalent when the transaction was initiated;
- CVC type;
- CVC mixer used (if known);

¹ NASCUS is the professional association of the nation’s 46 state credit union regulatory agencies that charter and supervise over 1,900 state credit unions. NASCUS membership includes state regulatory agencies, credit unions, and credit union system stakeholders. State-chartered credit unions hold over half the \$2.2 trillion assets in the credit union system and are proud to represent nearly half of the 136.5 million credit union members.

² 31 U.S.C §5318A (“Section 311”)

³ 31 CFR Chapter X



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- CVC wallet address associated with the mixer;
- CVC wallet address associated with the customer;
- Transaction hash;
- Date of transaction;
- IP addresses and time stamps associated with the covered transaction; and
- Narrative

These requirements, including the narrative, do not replace the obligation to file a Suspicious Activity Report (SAR) and, according to the proposed rule, financial institutions would “continue to have an obligation to file a SAR when warranted, regardless of whether the covered financial institution also filed a report required under the proposed rule.”

In addition to the reporting requirement under the proposed rule and the continued SAR filing requirement, the proposal would require a financial institution to report the following identifying information, within 30 days, regarding a customer associated with a covered transaction.

- Customer’s full name;
- Customer’s date of birth;
- Customer’s address;
- Any email address associated with any and all accounts from which or to which the CVC was transferred;
- A phone number associated with any and all accounts from which or to which the CVC was transferred;
- Internal Revenue Service or foreign tax identification number, or if none are available, a non-expired United States or foreign passport number or other government-issued photo identification number, such as a driver’s license.

Credit unions already collect much of this information as part of their existing BSA reporting obligations, the requirement to retain and provide separate reporting from what is already existing is not only duplicative but also quite burdensome. Credit unions have operated under the current recordkeeping and reporting requirements as required under existing regulations. FinCEN should maintain consistency with the current regulatory framework to mitigate compliance burdens.

Not only would such reporting be burdensome and duplicative, but it would also be quite costly. Credit unions already spend a significant amount of money on BSA monitoring and reporting software and additional compliance resources to assist them in identifying transactions. To identify the specific reporting information outlined in the proposal, credit unions would have to deploy more advanced monitoring and data collection programs that are not currently under the scope of review resulting in further costs.

Conclusion

Credit unions and their supervisory authorities will also need to monitor state laws and regulations as states implement their laws as well as regulations and supervisory expectations that relate to virtual currencies, adding another wrinkle to an already complex environment and the proposed rule. NASCUS encourages FinCEN to consider the existing regulatory framework for recordkeeping and reporting, as much as possible, to reduce compliance burdens. We also urge FinCEN to work with other regulatory agencies, including the state agencies. Given FinCEN’s reliance on state regulator supervision of credit union compliance to the BSA/AML implementation of additional rulemaking, such as this proposed rule surrounding CVCs, cannot be successful without full integration of the state regulators into every aspect of the process.



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We thank FinCEN for the opportunity to provide comments and would be happy to answer any questions.

Sincerely,

-signature redacted for electronic submission –

Sarah Stevenson
Vice President, Regulatory Affairs
NASCUS