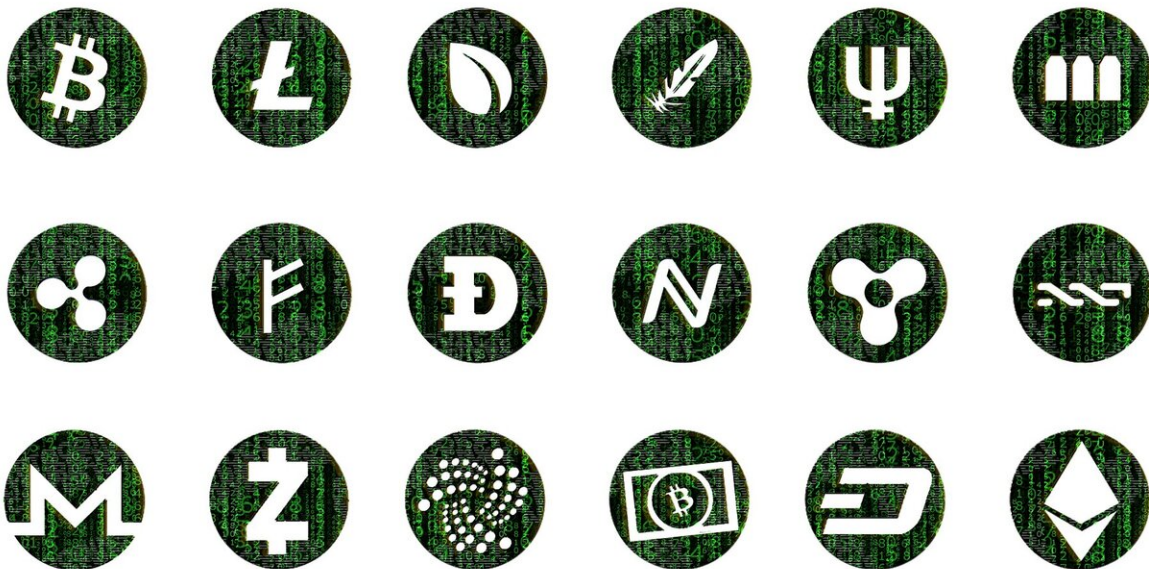


Fintechs use rule-making pause to fight cryptocurrency proposal

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Financial technology firms are fighting a Treasury Department anti-crime proposal that would require them to gather much more information about their customers' use of cryptocurrencies.

Treasury's Financial Crimes Enforcement Network, known as FinCEN, in December proposed that companies conducting cryptocurrency businesses collect [personal information](#) about parties using their services,

including Bitcoin transactions for payments.

Opponents, many of them in the fintech industry, claim the rule would saddle them with onerous requirements to verify the identities of "downstream" parties in crypto transactions with which they have no relationship.

President Joe Biden on Thursday halted federal rule-making for 60 days to give new agency heads time to review pending rule-making. That could give the industry more time to fight the rule.

A bureau of the Treasury Department, FinCEN is responsible for fighting [financial crimes](#) such as money laundering and terrorist financing. The proposal, titled Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets, was issued on Dec. 17 and given a short comment period that ran over the holidays.

It would require financial institutions handling cryptocurrency transactions to provide highly detailed information about the parties making the transactions to counter the use of virtual currencies for drug trafficking and other crimes.

FinCEN described the proposed rule as a "targeted expansion" of the record-keeping obligations of a law known as the Bank Secrecy Act. Cryptocurrency exchanges would have to store name and address information for customers transferring more than \$3,000 in digital assets per day to private "wallets" and file reports for customers transacting more than \$10,000 per day.

Cryptocurrency wallets are software applications that allow users to store and access their digital assets. Private wallets, also known as self-hosted wallets, aren't provided by a financial institution or cryptocurrency service and instead reside on users' computers or offline. Law

enforcement agencies consider such wallets potential conduits for illicit activities like money laundering.

More than 1,000 commenters have weighed in so far, many in opposition, according to CQ Roll Call's review of the comments. Fintech interests are especially critical of the rule.

Jack Dorsey, CEO of payments company Square and social media company Twitter Inc., said tracking of both parties in a cryptocurrency transaction would require Square to keep records "far beyond what is required for cash transactions today." That includes information on a customer's "counterparties," meaning the people opposite of every buyer or seller of cryptocurrency.

The Blockchain Association, whose members include early-stage investors, exchange platforms and virtual currency infrastructure providers, called it an "unprecedented and untested expansion of the Bank Secrecy Act."

"It is one thing to know your customer, and quite another to know your customer's customer or counterparty," it said. "That is not just a difference in degree, but a difference of kind." Demanding this kind of information turns a cryptocurrency business into a regulator of downstream transactions, it said.

Businesses argue that there are no existing systems for obtaining the information required. This would force them to either quickly develop new and untested processes or stop facilitating third-party transactions to avoid triggering the rule.

In the latter case, the rule would "likely operate as a de facto ban on financial institutions transacting with self-hosted cryptocurrency wallets," the Blockchain Association said. It also impinges on consumer

privacy and the Fourth Amendment protections against unreasonable searches because it would allow the government to monitor individuals' financial transactions at "an unprecedented level," it said.

Cryptocurrencies like Bitcoin use blockchain technology to permanently record transactions on public ledgers accessible to anyone with an internet connection, although the individuals conducting those transactions remain anonymous.

Matching blockchain addresses with individuals' identities eliminates the built-in anonymity and potentially allows the government to see every single cryptocurrency transaction an individual makes without a warrant, fintech advocates argue.

"Totally eliminating financial privacy for U.S. citizens just because they choose to use digital currency is not an acceptable or reasonable response to concerns about illicit financial activity. And it is certainly not a mere reporting requirement that should be imposed hastily and without express statutory authorization," the association wrote.

If existing rules haven't prevented criminals from depositing money in regulated [financial institutions](#), the Blockchain Association said, "it is doubtful that a hastily promulgated extension of those rules will fare any better."

Andras Cser, a security and risk analyst at Forrester Research Inc., said a goal of the rule is to make cryptocurrency providers more like traditional banks. "The intent is to corral cryptocurrencies' wallets into the same trackable and regulated process as other types of payments," Cser said in an interview.

Dorsey argued that the rule would create "perverse incentives" for cryptocurrency customers to avoid regulated entities for transactions.

"By adding hurdles that push more transactions away from regulated entities like Square into non-custodial wallets and foreign jurisdictions, FinCEN will actually have less visibility into the universe of [cryptocurrency](#) transactions than it has today," Dorsey wrote.

FinCEN initially had a condensed time schedule for comments: a 12-day period over the holidays with a Jan. 7 deadline for a 72-page document they said was difficult to digest. Faced with criticism of the shortened timetable, FinCEN extended the deadline for public comment by 15 days, to Jan. 22, and an additional 45 days for its record-keeping and counterparty requirements.

"The notion that stakeholders could meaningfully engage with a rule that touches on more than 24 separate subjects in such a highly truncated period would be doubtful even in the ordinary course. But it is wholly untenable in the context of an effort to impose sweeping new rules on a rapidly emerging and complex industry with which the government has very little regulatory experience," the Blockchain Association's counsel, former Solicitor General Paul Clement, wrote to then-Treasury Secretary Steven Mnuchin in a Dec. 30 letter.

Besides pushing back the deadline for submitting comments, FinCEN also split the rule-making into two parts: a focus on a currency [transaction](#) report requirement and a discussion of counterparty information, which the Blockchain Association described as "a step in the right direction."

Treasury Department officials did not respond to requests for comment.

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