

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

Via Federal E-Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)

March 29, 2021

**Re: FinCEN Docket Number FINCEN-2020-0020; RIN 1506-AB47; Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets**

To Whom It May Concern:

The Stellar Development Foundation (“SDF”) appreciates the opportunity to submit this supplemental comment letter for consideration by the Financial Crimes Enforcement Network (“FinCEN”) with respect to the Notice of Proposed Rulemaking on “Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets” (the “NPRM”).<sup>1</sup> This letter supplements our previous comment letter in response to the NPRM dated and filed January 4, 2021 (our “January 4 Letter”).<sup>2</sup> SDF is grateful that FinCEN heeded the plea of thousands of commenters to reopen and extend the irregularly short initial comment period for this highly consequential proposal. For clarity, we refer throughout this letter to the notice reopening the comment period as the “January 15 Extension”<sup>3</sup> and the notice extending the comment period as the “January 28 Extension.”<sup>4</sup>

SDF is a US-based nonstock, nonprofit organization that supports the development and growth of the Stellar network (“Stellar”) and the “Stellar ecosystem” – the individuals, developers, and businesses who build on or interact with Stellar. Stellar is an open-source network that connects the world’s financial infrastructure. Founded in 2014, SDF helps maintain Stellar’s codebase, supports the technical and business communities building on the network, and serves as a speaking partner with policymakers, regulators, and institutions. Our mission is to create equitable access to the global financial system, using the Stellar network to unlock the world’s economic potential through blockchain technology.

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<sup>1</sup> Financial Crimes Enforcement Network, “Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets,” *Federal Register*, 85 FR 83840 (December 23, 2020).

<sup>2</sup> Tracking number 1k5-9l1d-kf0h. Available at <https://www.regulations.gov/comment/FINCEN-2020-0020-6734>.

<sup>3</sup> Financial Crimes Enforcement Network, “Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets,” *Federal Register*, 86 FR 3897 (January 15, 2021)

<sup>4</sup> Financial Crimes Enforcement Network, “Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets,” *Federal Register*, 86 FR 7352 (January 28, 2021)

Stellar is a decentralized, fast, scalable, and uniquely sustainable network for financial products and services. It is both a cross-currency transaction system and a platform for digital asset issuance. Financial institutions worldwide issue assets and settle payments on the Stellar network, which has grown to over 4.7 million accounts.

SDF stands by and reaffirms our January 4 Letter. This letter should be read in addition to, not in place of, our January 4 Letter. While the Administrative Procedures Act concerns voiced in that letter may have been cured by the reopening and extension of the comment period, other procedural inadequacies of the NPRM remain. For example, neither the January 15 Extension nor the January 28 Extension supplied an adequate cost-benefit analysis of the proposed rule, which we noted in our January 4 Letter was also lacking in the original NPRM. We specifically call attention to the fact that neither the NPRM nor the extension notices address the extent to which the proposed rule will exacerbate “de-risking” by financial institutions and the negative outcomes that will visit upon the global poor and other marginalized communities. Moreover, our concerns around the substance of the NPRM and, in particular, its continued requirement to collect and report counterparty information remain as problematic today as when proposed. As more fully set out in the Chamber of Digital Commerce’s supplemental letter<sup>5</sup> (Section V.f), the counterparty collection and reporting requirements proposed in the NPRM violate the Fourth Amendment and should be explicitly withdrawn from further consideration.

Additionally, SDF is a member of both the Blockchain Association and the Chamber of Digital Commerce. We continue to support both of those organizations’ initial comment letters in response to the NPRM, and also strongly support their supplemental comment letters. SDF also participates in the Compliance and Inclusive Finance Working Group (“CIFWG”) led by FinClusive and the Sovrin Foundation, and we fully support their comment letter in response to the NPRM as well. Rather than repeat the arguments made in those letters, we include below summaries of the most salient points and recommendations for emphasis.

## Recommendations

### **1. FinCEN should suspend further action pursuant to the NPRM until all relevant studies mandated by the Anti-Money Laundering Act of 2020 have been completed.**

On January 1, 2021, after publication of the NPRM, Congress passed the Anti-Money Laundering Act of 2020 (“AMLA”). Section 6204 of the AMLA directs the Treasury Department to undertake a review of existing currency transaction report (“CTR”) and suspicious activity report (“SAR”) requirements and to “propose changes to those reports to reduce any unnecessarily burdensome regulatory requirements and ensure that the information provided fulfills the purposes described in” the Bank Secrecy Act (“BSA”). Among other requirements, the review must consider:

- the categories, types, and characteristics of suspicious activity reports and currency transaction reports that are of the greatest value to, and that best support, investigative priorities of law enforcement and national security agencies; and

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<sup>5</sup> At the time of writing, the supplemental comment letters of the Blockchain Association, Chamber of Digital Commerce, and the Compliance and Inclusive Finance Working Group referenced herein have not yet been filed. We anticipate, however, that these letters will be filed by the comment period deadline of March 29, 2021.

- the increased use or expansion of exemption provisions to reduce currency transaction reports that may be of little or no value to the efforts of law enforcement agencies.

AMLA section 6205 directs the Treasury Department to “review and determine whether the dollar thresholds, including aggregate thresholds [for CTRs and SARs] should be adjusted” and “the costs likely to be incurred or saved by financial institutions from any adjustment to the thresholds.”

Through the analyses mandated by the AMLA (three of which focus on CTR filings), Congress seeks to understand: (i) how reported information is actually used, (ii) whether to modify current dollar thresholds, (iii) whether reporting burdens can be reduced by eliminating reports that yield little or no value, (iv) whether the current system adequately maintains security and confidentiality of personal information, and (v) the costs imposed on the industry by the current reporting regime. Ultimately, the objective of Congress in ordering this review is to “...encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism, [and] to reinforce that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk based.”<sup>6</sup> The requirements proposed in the NPRM are of exactly the type the AMLA directs the Treasury Department to reform.

Congress’ interest in modernizing the nation’s anti-money laundering (“AML”) regime is seemingly shared by FinCEN itself, which published an advanced notice of proposed rulemaking (“ANPRM”) in September 2020 seeking “public comment on potential regulatory amendments to establish that all covered financial institutions subject to an anti-money laundering program requirement must maintain an effective and reasonably designed anti-money laundering program.” FinCEN’s stated objectives for this effort are, in part, to “place a greater emphasis on providing information with a high degree of usefulness to government authorities,” “to maximize efficiency, quality, and speed of providing data to government authorities,” and to provide “due consideration for privacy and data security.”<sup>7</sup>

For FinCEN to proceed with a rulemaking that expands the CTR regime at the same time it studies how to reform (or reduce or replace) the CTR regime makes little sense, wastes government and industry time and resources, and defies the clearly articulated will of Congress. Expanding the CTR regime is neither risk based nor technologically innovative. FinCEN should halt further progress related to the NPRM until it has completed the reviews mandated by the AMLA and ANPRM and published any related reports and recommendations.

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<sup>6</sup> Public Law No: 116-283 <https://www.congress.gov/bill/116th-congress/house-bill/6395/text/>

<sup>7</sup> The Financial Crimes Enforcement Network, “Anti-Money Laundering Program Effectiveness,” Advanced Notice of Proposed Rulemaking (September 17, 2020), 85 Fed. Reg. 58023, 58025, available at: <https://www.federalregister.gov/documents/2020/09/17/2020-20527/anti-money-laundering-program-effectiveness>.

**2. FinCEN should not proceed with rulemaking in this area until it has fully evaluated the impact of de-risking on the global poor and other marginalized communities driven by past AML regulations.**

Treasury Secretary Janet Yellen recently told the Senate Finance Committee, the “issues of diversity, inclusion and racial equity are incredibly important, particularly at this moment in history when the pandemic has taken an unbelievable and disproportionate toll on low-income workers and especially people of color.”<sup>8</sup> The Secretary is “so concerned about the impact on minority communities, the very first meeting that [she] had after [her] nomination was announced was with representatives of racial and economic justice groups to hear directly from them what their needs are.”<sup>9</sup> Further, the AMLA requires the Treasury Department to review “the most appropriate ways to promote financial inclusion and address the adverse consequences of financial institutions de-risking.”<sup>10</sup> Moreover, in February 2021, the Financial Action Task Force (“FATF”) launched a new project to study and mitigate the unintended consequences resulting from the incorrect implementation of the FATF Standards.<sup>11</sup> “The project will focus on four main areas including: (i) De-risking, or the loss or limitation of access to financial services, (ii) Financial exclusion, a phenomenon whereby individuals are excluded from the formal financial system and denied access to basic financial services; (iii) Suppression of [non-profit organizations (‘NPOs’)] or the NPO sector as a whole through non-implementation of the FATF’s risk-based approach; and (iv) Threats to fundamental human rights stemming from the misuse of the FATF Standards or AML/CFT assessment processes to enact, justify, or implement laws, which may violate rights such as due process or the right to a fair trial.”<sup>12</sup>

These examples show a growing recognition at the highest levels of government, both domestically and abroad, that past AML/CFT regulatory efforts have not adequately considered the harmful effects they would impose on the poor, communities of color, and developing economies. AML/CFT enforcement agencies, like FinCEN, should be at the forefront of seeking avenues to mitigate and rectify these harms, but the NPRM does just the opposite. Specifically, the NPRM’s efforts to curb or stigmatize the use of self-hosted wallets will only serve to deny the financially excluded a tool well suited to their needs. Mobile phone based self-hosted wallets provide a low cost access point to financial services for those excluded populations who have been “de-risked” by financial institutions. In a time of heightened emphasis on financial inclusion, FinCEN should not proceed with a new exclusionary rule until the harmful effects of past exclusionary rules and guidance have been studied and remediated.

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<sup>8</sup> U.S. Senate Committee on Finance, Responses of Dr. Yellen to Finance Committee Questions for the Record, January 21, 2021, at 34, available at: <https://www.finance.senate.gov/imo/media/doc/Dr%20Janet%20Yellen%20Senate%20Finance%20Committee%20OFRs%2001%2021%202021.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> AMLA, section 6204.

<sup>11</sup> FATF, *Mitigating the Unintended Consequences of the FATF Standards*, last accessed March 26, 2021 at: <http://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>.

<sup>12</sup> *Id.*

**3. An appropriately calibrated recordkeeping requirement would comport with the intent of the AMLA and more effectively achieve FinCEN’s objectives than would a reporting requirement.**

The NPRM’s proposal to impose value transaction reporting for CVC transactions overlooks one of the inherent benefits of blockchain technology. The reporting requirement seeks to collect information to assist law enforcement with identifying and tracing suspicious transactions. Transparent blockchains eliminate the need for this reporting, because they create a permanent ledger of every transaction ever conducted on the network—including the balances associated with every address on the network—regardless of whether a BSA-regulated entity is a party to the transaction. Indeed, six of the eight pieces of information listed on the proposed “value transaction report” or “VTR” are already publicly available and searchable on transparent blockchains. The only pieces of information not generally available from public sources are the name and physical address of the wallet holder. The need for these two pieces of information is adequately addressed with a recordkeeping requirement for transactions  $\geq$ \$10,000 involving self-hosted wallets. This recordkeeping requirement would ensure financial institutions could produce attribution information once law enforcement identifies a suspicious transaction. In other words, using the searchability of transparent blockchains, FinCEN and law enforcement would be able to identify transactions that warrant additional scrutiny, and with a recordkeeping requirement in place, know that the information required to pursue investigations would be preserved by financial institutions.

Given the public and permanent availability of transparent blockchains’ ledgers, the NPRM’s proposed record-keeping requirement is sufficient to meet law enforcement’s needs. A recordkeeping-only approach would also avoid a number of harmful unintended consequences perpetuated by a reporting regime. First, it would avoid inundating FinCEN with large volumes of “white noise” filings - VTRs of lawful transactions by law abiding citizens that are of no value to law enforcement. As reported by BuzzFeed News, FinCEN received more than 2,000,000 SARs in 2019.<sup>13</sup> According to public testimony, FinCEN reviews about 50 SARs per day, or about 18,250 SARs per year.<sup>14</sup> In other words, FinCEN reviewed less than 1% of the SARs it received in 2019. SARs should be expected to be of greater law enforcement value than CTRs because something causes a SAR transaction to be flagged as suspicious while CTRs are routine and automatic. CTRs are vastly more voluminous than SARs for the same reasons. These statistics highlight the need for the very review that Congress has mandated in the AMLA to review the utility, burden, and impact of the existing CTR and SAR requirements before expanding them.

Second, a recordkeeping-only approach would protect citizens from unnecessary and avoidable risks to privacy and security. While the above statistics indicate that CTRs provide little to no value to law enforcement, the VTR proposed in the January 15 Extension would contain highly sensitive personally identifiable information (“PII”) about their subjects. Combining PII with blockchain data would provide the government a shocking degree of visibility into the private lives of law abiding citizens while also forming a treasure trove for hackers, identity thieves and other cybercriminals. As more fully explained in

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<sup>13</sup> BuzzFeed.News, *The FinCEN Files* (September 20, 2020), last accessed December 29, 2020 at: <https://www.buzzfeednews.com/article/jasonleopold/fincen-files-financial-scandal-criminal-networks>.

<sup>14</sup> K. A. Blanco, Prepared Remarks of FinCEN Director Blanco at the NYU Law Program on Corporate Compliance and Enforcement (June 12, 2019), available at: <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-blanco-nyu-lawprogram-corporate-compliance-and>.

our January 4 Letter, the information contained on a VTR would enable FinCEN to track every transaction a wallet owner has ever made and will ever make, whether below or above the reporting and recordkeeping thresholds, and whether before or after the effective date of the rule. By comparison, a CTR provides information limited to the transaction in question, the account holder and account number at a particular moment in time and no more. A pure recordkeeping requirement would avoid the false equivalency of VTRs for CVC transactions and CTRs for cash transactions and would better protect the legitimate privacy and security interests of citizens.

For these and other reasons more fully set forth in the submissions of the Blockchain Association, Chamber of Digital Commerce, CIFWG and others, FinCEN should abandon any form of reporting requirement for CVC transactions and proceed only with a recordkeeping requirement for CVC transactions above \$10,000 (or such higher amount as may be determined pursuant to the AMLA).

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SDF appreciates the opportunity to supplement our previous comment on the NPRM. We believe that there are better approaches, both substantively and procedurally, to rulemaking in this area and we strongly encourage FinCEN to suspend further action with respect to the NPRM until it has completed the Congressionally-mandated AMLA reviews and evaluated the effects of the NPRM and other AML regulations on financial inclusion.

Sincerely,



Denelle Dixon  
Chief Executive Officer & Executive Director  
Stellar Development Foundation