



# Financial Services Management

## Digital Asset AML/CFT Compliance

### Cite

Treasury, Ensuring Responsible Development of Digital Assets; Request for Comment

### Recommended Distribution:

Digital Finance, Compliance, Risk Management, Audit/Examination, Security, Legal, Government Relations

### Website:

<https://public-inspection.federalregister.gov/2022-20279.pdf>

## Impact Assessment

- Despite concluding that digital assets post significant AML/CFT risk, the USG appears open to a wide range of solutions.
- The extent to which these satisfy U.S. concerns will determine the extent to which U.S.-domiciled companies, especially nonbanks, can expand their digital footprint in the U.S. and/or in any digital obligations with dollar-denominated features.
- The scope of the question suggests Treasury is more open than bank regulators to algorithmic or similar AML/CFT controls.

## Overview

Treasury is seeking comments on issues raised by the President's executive order (EO) on digital assets to guide further work curbing illicit-finance and national-security risks in this sector.<sup>1</sup> The request includes no policy discussion beyond introductory comments about the risks identified in Treasury's reports, but the range of questions suggests openness to at least some industry-supported compliance and reporting systems that might facilitate adoption of at least some digital and virtual products.

## Impact

This request follows several reports Treasury released in response to many directives in the EO including those addressing central bank digital currency and the payment system<sup>2</sup> and the overall framework for cryptoasset regulation, including an

<sup>1</sup> See *Client Report CRYPTO26*, March 9, 2022.

<sup>2</sup> See *Client Report CBDC14*, September 19, 2022.

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action plan addressing illicit finance and national security.<sup>3</sup> In addition, Treasury was directed by the President to work with the State Department, Attorney General, and other government agencies to develop a coordinated action plan to address these risks and identify additional avenues for public-private partnership. This request for comment (RFC) is designed to inform a final action plan, which will surely build on the extensive discussion of AML, sanction, and national-security risks.

Findings in these reports make it clear that, absent extensive new controls, disclosures, and express compliance obligations, the U.S. will block widespread adoption of digital and virtual products outside the regulated financial-industry sectors where AML and sanctions obligations are express and compliance infrastructure already exists.

## What's Next

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This request for comment was released on September 19; comments are due November 3.

## Analysis

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In addition to any comments on how to accomplish the Administration's goals, views are expressly sought on:

- the proper definition of illicit-finance risk;
- the extent to which digital-finance technological development increases or reduces illicit-finance risk;
- NFT, mixer, and DeFi illicit-finance risk;
- additional steps to deter and disrupt criminal digital-asset use;
- areas in AML/CFT requiring clarification or modernization related to digital finance;
- how best to work with states and global authorities to deter digital-finance illicit activities. Treasury also wants views on countries requiring extra attention;
- strategies to combat ransomware;
- maximizing public-private information and resource-sharing along with collaborative analytics without undermining due process;
- using emerging technologies (e.g., blockchain); and
- how financial institutions offering or providing safekeeping digital or virtual assets could improve internal controls.

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<sup>3</sup> See *Client Report CRYPTO32*, September 21, 2022.