



US Conference 2023- New Orleans

Workshop 4: Crypto 202-Federal & State Regulation & Legislation Review

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Federal & State Regulatory Review

FEDERAL

1. Businesses engaged in virtual currencies are subject to a number of laws/regulations/rules by US Federal Authorities, in particular the Financial Crimes Enforcement Network (**FinCEN**), which include registration as a regulated entity, record keeping, reporting & other related anti-money laundering (**AML**) requirements as required by the Bank Secrecy Act (**BSA**).
2. FinCEN defines virtual currency, a medium of exchange, that operates like currency, but doesn't have all attributes of 'real' currency, including legal tender status (US Federal Reserve Currency is legal tender), which includes 'convertible virtual currency (**CVC**) a kind of virtual currency.
3. CVCs include majority of existing Cryptocurrencies, including Ethereum and Bitcoin.
4. BSA states a Money Service Business (**MSB**) is a party functioning in any of the capacities the BSA lists, which includes a '**Money Transmitter**'. A Money Transmitter is a party providing '**Money Transmission Services**'. Users acquiring CVCs for purchasing goods & services are not MSBs. Administrators that accept, transmit CVCs an/or buy/sell are considered MSBs.
5. MSBs in USA must register & renew registrations with FinCEN. MSBs, by way of example, must (i) have an effective AML program in writing, (ii) including training relevant personnel on ALML responsibilities, (ii) have designated AML Compliance Officer, (iv) have an independent audit function in place, (v) be compliant with all record keeping, reporting requirements, (vi) file suspicious activity reports (**SARs**) for suspicious transactions involving or aggregate of assets of \$2K of more, among other requirements.
6. FinCEN Funds Transfer Rule (**Travel Rule**); Financial Action Task Force (**FATF**) Recommendation 16 requiring Virtual Asset Service Providers to share Know-Your-Customer (**KYC**) & PIN data.

Federal & State Regulatory Review

STATE

A. The Fifty States, DC & Puerto Rico for discussion purposes can be divided into Five Classifications:

- Pro-Crypto/Regulation that welcomes Cryptocurrency (like Wyoming)
- No Regulation or Ambiguous enough not to require registration (Montana)
- Regulation that is Ambiguous and/or has exemptions regarding registration... question do you register or do not have to register? (California)
- Regulation that is Ambiguous and may have some questions regarding need to registration... but to minimize risk of non-compliance, probably best to register (Kentucky)
- Regulation(s) that require registration (NY requires BitLicense, as well as a Money Transmitter License).

B. There are several Key Terms & how defined by applicable State laws/regulations that determine which Classification a State, DC and/or Puerto Rico fall into re:

Definition of Money/Value/Cryptocurrency

- **Definition of Money Transmission**
- **Money Services re Money Transmitter**
- **Definition of Money Transmitter re Required Money Transmitter License**

C. This is “rough” Classification, with some States, DC and/or Puerto Rico possibly changing regulatory Classifications due to proposed or pending legislation that might be adopted in 2023.

Prospective Federal & State Legislation Review

FEDERAL

1. NY D House Rep. proposed two bills: Crypto Consumer Investor Protection Act & the Crypto Exchange Disclosure Act.
2. MASS D & KAN R Senators introduced bi-partisan: Digital Asset Anti-Money Laundering Act of 2022.

STATE

- A.** Conference of State Bank Supervisors (**CSBS**) have proposed a regulatory scheme for Money Service Businesses. All states have signed on that regulate Money Transmitters & are participating except Montana, DC & Puerto Rico. Also, there is the National Conference of State Legislatures (**NCSL**) reviewing.
- B.** NY Department of Financial Services (**DFS**) Guidance re of FI's re expand to MSBs, Money Transmitters.
- C.** State legislatures, based on legislative activity proposed, passed & not passed in 2022, will during 2023, continue to propose, adopt or not adopt numerous Cryptocurrency legislation that will vary widely in their respective scope of matter & regulation, which will more than likely try to clarify existing regulations, create new regulatory frameworks, and/or dedicate state resources to support or study the impact and use of digital currency/assets.

SUMMARY

The Federal Government & States, DC, and Puerto Rico have created a significant amount of confusion & substantial risk for industry players to be assessed, fine, suspended and/or sued for non-compliance of Federal & State Cryptocurrency rules, regulations & requirements, when such industry businesses want to, are trying to understand, comply & follow the rules, but are perplexed when Federal Agencies' & States' rules, regulations & registration requirements are in a state of flux, are conflicting, ambiguous & chaotic.