



STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA



Regulation of Virtual Currency Business Activity Office of Financial Institutions December 31, 2021

Virtual currency, also known as digital currency, crypto-currency or Bitcoin, is a medium of exchange not authorized or adopted by government. In Louisiana, virtual or digital currency is defined in Section 1382 of the “Virtual Currency Businesses Act” (VCBA) as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature. In addition, Section 1382 of the VCBA defines what **is not included** as “Virtual currency” and what constitutes “Virtual currency business activity.”

Any persons engaging, or wishing to engage, in virtual currency business activity in the State of Louisiana must file a VCBA application through the Nationwide Multistate Licensing System and Registry (NMLS) and satisfy all of the filing requirements contained therein. Supervision and regulation of such persons comes under the jurisdiction of the Louisiana Office of Financial Institutions (OFI).

The following definitions are contained in the VCBA:

“Virtual currency” means a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not legal tender, whether or not denominated in legal tender.

“Virtual currency” **shall not include** either of the following:

(i) A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank credit, or virtual currency.

(ii) A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

“Virtual currency business activity” means any of the following:

(a) Exchanging, transferring, or storing virtual currency or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control services vendor.

(b) Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals.

(c) Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for either of the following:

(i) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received.

(ii) Legal tender or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

Persons that deal in virtual currencies, cryptocurrencies, or digital assets need to be aware of the licensure requirements that might be applicable if you wish to engage, or already engage, in the following activities in the State of Louisiana:

- Persons operating kiosks or virtual currency “ATM”s may need to obtain a license
- Persons operating a virtual currency exchange platform may need to obtain a license
- Persons providing virtual currency storage may need to obtain a license
- Persons providing payment processing services for merchants may need to obtain a license if they are processing virtual currency

Persons wishing to transmit money for Louisiana residents in a virtual or digital form can contact OFI for a determination of whether licensure under the VCBA is required. Persons wishing, or already engaging, in virtual currency business activity in the State of Louisiana must apply for a license in accordance with Section 1385 of the VCBA within 90 days of the adoption of a proposed rule that will provide for implementation and enforcement of the provisions of the VCBA pursuant to Section 1394 regarding licensure, registration, and regulation of those persons engaging in virtual currency business activity.

Please note that the provisions of the VCBA will not become effective until the rule is finalized. Once the rule is finalized, applications must be filed through the Nationwide Multistate Licensing System and Registry (NMLS&R) and applicants must satisfy all of the filing requirements contained therein.

The following is a link to Act 341 of the 2020 Regular Session of the Louisiana Legislature: (<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1182592>)

The following is a link to the VCBA as it appears on the Louisiana Legislative website: (<http://www.legis.la.gov/legis/Law.aspx?d=1187462>)

OFI intends to participate in a “networked supervision” system that will allow it to efficiently utilize its resources to examine multi-state licensees that are included within the scope of the VCBA. The “networked supervision” approach will allow OFI to coordinate the examination of multi-state licensees with other state regulators in order to reduce redundancies and the regulatory burden on licensed persons.

We are hopeful that the proposed rule will be published in the Louisiana Register in the very near future. In the meantime, you may wish to monitor the rule making process in the Louisiana Register through the following website: (<https://www.doa.la.gov/doa/osr/louisiana-register/>)

Pursuant to Sections 1389 of the VCBA, a person whose volume of virtual currency business activity in United States dollar equivalent of virtual currency will not exceed \$35,000 thirty-five thousand dollars annually may engage in virtual currency business activity with, or on behalf of, a resident under a registration without first obtaining a license pursuant to the provisions of this Chapter, subject to certain conditions. Any person seeking to register must file a VCBA Limited Activity Registration Application through the NMLS.

At the federal level, digital currency is regulated by the Financial Crimes Enforcement Network (FinCEN). In its first guidance on virtual currency, FinCEN defined the parties in virtual currency transactions and identified those considered money services businesses (MSB).

A money service business must register with FinCEN and is subject to reporting and recordkeeping requirements. Parties defined as administrators and exchangers are MSBs under the guidance while users are not. The first guidance document is here:

Guidance on the Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (Mar. 18, 2013) (<https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>)

More recently, FinCEN issued two more guidance documents, further clarifying the applicability of the MSB designation to the parties in virtual currency transactions.

With regard to miners of virtual currency, more detailed guidance provides that for certain mining and conversion activities, the party is deemed a user of the virtual currency and is not therefore subject to the registration, reporting and recordkeeping requirements. The guidance on miners is here: Application of FinCEN's Regulations to Virtual Currency Mining Operations (Jan. 30, 2014) (<https://www.fincen.gov/sites/default/files/shared/FIN-2014-R001.pdf>)

Entities that develop software to facilitate the purchase of virtual currency for sale to and from other parties, all exclusively as investments for its own account that company is a user of virtual currency and is not therefore subject to the registration, reporting and recordkeeping requirements. The guidance on the purchase and sale of virtual currency as a user is here: January 30, 2014: (http://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2014-R002.pdf)

The FinCEN website on money services businesses is here: Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity (January 30, 2014) (<https://www.fincen.gov/sites/default/files/shared/FIN2014-R002.pdf>)

Additionally, on March 25, 2014, the IRS published its guidance document, IR-2014-36. The IRS said:

The notice provides that virtual currency is treated as property for U.S. federal tax purposes. General tax principles that apply to property transactions apply to transactions using virtual currency. Among other things, this means that:

Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to federal income tax withholding and payroll taxes.

Payments using virtual currency made to independent contractors and other service providers are taxable and self-employment tax rules generally apply. Normally, payers must issue Form 1099.

The character of gain or loss from the sale or exchange of virtual currency depends on whether the virtual currency is a capital asset in the hands of the taxpayer.

A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property.

You can view the guidance document and link to an FAQ here:

(<http://www.irs.gov/uac/Newsroom/IRS-Virtual-Currency-Guidance>)

Frequently Asked Questions on Virtual Currency Transactions

(<https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>)

Internal Revenue Bulletin: 2014-16

(https://www.irs.gov/irb/2014-16_IRB#NOT-2014-21)

If you have any questions regarding the contents of this guidance, please contact Chief Examiner Michelle Jeansonne at (225) 922-2596 or via email at mjeansonne@ofi.la.gov or Chief Examiner Sid Seymour at (225) 925-4675 or via email at sseymour@ofi.la.gov.

OTHER HELPFUL VIRTUAL CURRENCY INFORMATION

Application of Money Services Business regulations to the rental of Computer Systems for Mining Virtual Currency (Apr. 29, 2014) https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R007.pdf

Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform (October 27, 2014) https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R011.pdf

Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Payment System (October 27, 2014) https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R012.pdf

Application of FinCEN's Regulations to Persons Issuing Physical or Digital Negotiable Certificates of Ownership of Precious Metals (Aug. 14, 2015) https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2015-R001.pdf

Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies (May 9, 2019) <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>

Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets (Extension Notice) January 26, 2021 Requirements for Certain Transactions Involving Convertible Virtual Currency Notice of Proposed Rulemaking (NPRM) <https://www.federalregister.gov/documents/2021/01/28/2021-01918/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets>

Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets, [86 FR 3897](https://www.federalregister.gov/documents/2021/01/15/2021-01016/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets) (Jan. 15, 2021). <https://www.federalregister.gov/documents/2021/01/15/2021-01016/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets>

Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets, [85 FR 83840](https://www.federalregister.gov/documents/2020/12/23/2020-28437/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets) (Dec. 23, 2020). <https://www.federalregister.gov/documents/2020/12/23/2020-28437/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets>