ELECTRONIC TRANSACTIONS ASSOCIATION
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August 8, 2022

Via eRulemaking Portal

Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Comments Regarding Ensuring Responsible Development of Digital Assets

On behalf of the Electronic Transactions Association ("ETA"), we appreciate the opportunity to share our thoughts on the U.S. Department of Treasury's ("Treasury") notice and request for comment ("RFC") on establishing a framework for enhancing U.S. economic competitiveness in, and leveraging of, digital asset technologies.

ETA commends President Biden's Executive Order 14067[1] ("Executive Order") and as payments experts, ETA has long advocated for a policy approach to cryptoassets and a U.S. Central Bank Digital Currency that considers both potential benefits and negative consequences and includes an appropriate regulatory framework that is tailored to risk. We believe there is a common set of principles against which any proposed governmental policies should be measured. In this regard, the payments industry has been a leader in developing industry best practices for mitigating risk and protecting the payments ecosystem.

Given that the existing payments system in the U.S. is competitive, safe, effective, dynamic, and efficient, ETA urges policymakers to move thoughtfully and deliberately to ensure that any policy proposal best serves the needs of consumers, furthers financial inclusion, preserves and strengthens the financial system, and ensures that consumers continue to have access to a robust and innovative array of secure financial services and payment options.

Who We Are

ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than $21 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

ETA's Input on Treasury's RFC

As Treasury begins the development of a framework for enhancing U.S. economic competitiveness in, and leveraging of, digital asset technologies including cryptoassets, the agency should carefully consider the following principles and ensure that any proposal best serves the needs of consumers and businesses, furthers financial inclusion, preserves and

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[1] https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets

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strengthens the financial system, minimizes fraud and money laundering, and ensures that consumers and businesses continue to have access to a robust and innovative array of secure banking and payment options.

1. **Properly Defining Cryptoassets:** Developing appropriate and functional definitions of cryptoassets is a critical first step in ensuring clarity about the regulatory requirements that are applicable to the technology. Currently, the business landscape for cryptoasset innovators is characterized by significant regulatory uncertainty and the inconsistent regulatory treatment of cryptoassets across jurisdictions globally. This is creating significant obstacles to the growth and safety of digital asset businesses, both across the globe and in the U.S. Given that new technologies can be deployed in many different ways, and that new use cases are constantly being developed, cryptoassets should be defined and regulated based on the underlying activity or use case and not the specific technology applicable to one type of cryptoasset.

   Adopting tailored definitions for specific activities and use cases will balance the need to appropriately regulate activity against the harms that might arise from sweeping definitions that inadvertently regulate other activities and use cases, while encouraging innovation that benefits consumers, businesses, and the economy.

   Further, drafting a technology-netural definition for cryptoassets will future-proof the definition such that the agency will not be required to consistently update the definition as new, constantly changing technologies give rise to new types of cryptoassets. This will allow not only for less regulatory burden but will also give rise to additional clarity to the industry on what types of new technology would fall within the existing definitions developed through this RFC.

2. **Tailoring Regulations to the Risk Profile of the Participant/Activity:** As the U.S. government considers its approach to this sector, appropriate regulatory frameworks for cryptoassets are key to unlocking their potential while ensuring the safety and soundness of the payments ecosystem. Entities engaging with cryptoassets should be subject to regulation that is tailored to the risks that they or the activity in which they are engaged poses to the payments ecosystem. The U.S. administration should consider global leadership in developing regulatory frameworks for cryptoassets as a key enabler of the overall competitiveness of American firms in this sector. Potential regulation of cryptoassets should consider harm to consumers as well as safety, soundness, financial crime considerations, and financial stability risks, but the U.S. also needs to conduct efforts to ensure internationally consistent enforcement of such regulations. These efforts must be balanced by the benefits the technology brings and the need to enable responsible growth in the sector.

3. **Ensuring Consumer Protection:** Public policy governing cryptoassets should include a framework of standards and rules that appropriately safeguard the privacy and security of transactions, protect consumers' interests, and give consumers confidence to use the technology for in-person and online transactions. Further, the U.S. government should collaborate closely with cryptoasset stakeholders that specialize in anti-money

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laundering, sanctions, fraud detection, and blockchain analytics to support the overall security and compliance of this emerging industry. Policymakers should also ensure that consumer protection in payments should not be confused with retail investor protection. Payments are more critical services than retail investments as it impacts everyone, including the most vulnerable consumers, and consumers should understand those protections and how they may differ from those offered by other payment methods. ETA cautions that Commerce should not enact a one-size fits all consumer protection regime or be overly restrictive in such a way that negatively impacts the continuous innovation in cryptoassets. The ability to identify and reduce fraud is critical and should be part of the regulatory considerations.

4. **Harmonizing With Existing Regulatory Frameworks and Across Regulators:** The payments industry is heavily regulated, and the adoption of any new laws or regulations governing cryptoassets should be designed to fit within this established, robust, regulatory framework. This framework includes federal and state laws relevant to anti-money laundering, economic sanctions, and other anti-fraud and consumer protection requirements. New public policies for cryptoassets should complement, and not conflict with, existing laws and regulations as well as private sector rules and practices. Existing guidance, regulations, and statutes should be reviewed to identify areas where definitions require revision to remain technology neutral. This will allow for a more seamless integration of any new laws and regulations related to cryptoassets into the existing regulatory frameworks in the payments industry.

   ETA also supports a clear regulatory cross-agency collaboration to harmonize any framework for cryptoassets. Ensuring consistency across the agencies would reduce any costs associated with the compliance and enforcement issues resulting from a patchwork of regulations, which may allow ETA members to explore and develop additional use cases to address consumers' needs.

   Further, this will reduce the risk of industry confusion if each agency adopts different definitions or frameworks related to cryptoassets. As multiple federal agencies regulate the payments industry, consistent regulation resulting from cross-agency collaboration will allow for a cohesive cyrptoasset regulatory structure.

5. **Encouraging Responsible Innovation:** Continual investment in innovation is at the heart of past, present, and future improvements to the financial ecosystem. Our financial system, and its consumers, has benefited greatly from the development of new technologies and capabilities, which serve to strengthen cybersecurity and consumer protection, increase efficiencies, and expand access to financial services. As a technology, cryptoassets have the potential to further many of these developments and promote new innovation and developments. Accordingly, holistic government consideration of cryptoasset policies should consider the technology's promise to improve existing capabilities while serving as a catalyst and platform for continued innovation.

6. **Develop Digital Trade Approach:** Many countries are resorting to measures such as data localization requirements or burdensome technical standards that create barriers and an unlevel playing field for U.S. businesses, especially fintechs and small businesses. This severely diminishes competition and innovation, and most importantly, consumer choice. Therefore, the U.S. should develop an approach to the treatment of digital trade, including trade in cryptoassets, in the negotiation of U.S. trade agreements. Such an approach should, for instance, include strong non-discrimination principles.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,

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