

Illinois Requests Feedback on New Virtual Currency Guidance – Deadline Quickly Approaching

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Illinois' Department of Financial and Professional Regulation ("IDFPR") recently published proposed regulatory guidance on the application of Illinois' Transmitters of Money Act ("TOMA") to decentralized digital currencies. The guidance will not carry the force of law. It will instead be the statement of IDFPR's position on how it will interpret and enforce the law. For exchanges, wallets and other virtual currency businesses, this interpretation will be the essential guide to virtual currency regulation in Illinois.

Illinois has requested that the industry submit comments on the proposed guidance, and the deadline is fast approaching.

Currently, TOMA requires businesses which are "money transmitters" to register for a license, and subjects businesses operating as unlicensed money transmitters to heavy fines. The proposed guidance concludes that decentralized virtual currencies do not qualify as "money" under TOMA because they are not affiliated with any government. Therefore, those transacting only in virtual currency are exempt from TOMA's licensing requirements. Whenever government currency is involved, though, the proposed guidance concludes that a license may be required. Where a third party holds a buyer's government currency to facilitate purchase of digital currency from a seller, the third party is acting as an escrow-like intermediary for the government currency and would be engaged in "money transmission". IDFPR's proposed guidance is similar to Texas's regulatory approach, where virtual currency is also not considered "money" for purposes of the state's money transmissions laws. So, who might be required to get a license under the proposed guidance?

Custodial exchanges who custody government currencies would qualify as money transmitters. Those who accept and transmit government currencies while matching a trade or conducting some other business activity both accept and transmit "money" according to the proposed guidance, and would require a license under the proposed guidance.

Most kiosks or "BTMs" accept government currency for an order and then execute a trade on a third party exchange to fill the order. These kiosk machines accept government currency from a prospective buyer of virtual currency and also send government currency to a third party, namely the exchange. As such, the machine's operator holds government currency for transmission, and will require a license under the proposed guidance.

Wallets and peer-to-peer payments providers who also hold government currency will be accepting and transmitting that currency to their customers. This acceptance and transmittal would trigger the TOMA licensing requirements under the proposed guidance.

This comment request represents a rare opportunity to help determine the course of virtual currency policy in Illinois. For those businesses serving users in the state, it will likely be the only chance to influence the regulations that will govern those businesses for years to come. Cooley's fintech and digital currency teams stand ready to assist with comments to the IDFPR.

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