

## Currency Exchange – Definition

### **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

FIAP - definitions of currency exchange activities are inconsistent.

### **AVAILABLE OPTIONS**

Uniform Money Service Act

31 CFR Chapter X

### **POLICY CONSIDERATIONS (including risks)**

The definitions among the states and the UMSA do not differ substantially. The differences center around including or excluding instruments other than money and whether charging a fee triggers licensing. For those states that will add on the currency exchange module, we should use Texas' definition of currency as it follows FinCEN's definition but is less confusing.

Thirteen state statutes regulate currency exchange. Five states closely follow the UMSA in their definition. A few states also have a list of activities that are exempt from currency exchange activities. Currency exchange can also be performed under a money transmitter license.

### **RECOMMENDATION (model statutory language)**

"Currency Exchange or Foreign Currency Exchange" – means advertising, soliciting, or accepting for a fee the currency or other negotiable instrument denominated in the currency of one government in exchange for the currency or other negotiable instrument denominated in the currency of another government.

"Currency" means the coin and paper money of the United States or another country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance.

"Negotiable instrument" has the meaning assigned by Section 3-104, Uniform Commercial Code.

# Money Transmission – Definition

## **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

According to the FIAP white paper, the scope of regulated money transmission activities was an area in need of reconciliation and uniformity. The white paper focused on establishing various exemptions.

## **AVAILABLE OPTIONS**

UMSA

State laws based on the UMSA

## **POLICY CONSIDERATIONS (including risks)**

The challenge is to draft language that broadly encompasses the activities the states want to regulate while clearly defining exempt activities in a consistent way.

## **RECOMMENDATION (model statutory language)**

“Money transmission” means any of the following:

- (1) Selling or issuing payment instruments.
- (2) Selling or issuing [prepaid access or stored value] (use the term your state uses).
- (3) Receiving money for transmission.

The term does not include the provision solely of online or telecommunications services or network access.

“Receiving money for transmission” or “money received for transmission” means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

## Sale of Payment Instruments – Definition

### **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

The FIAP white paper focused on establishing various exemptions to the definitions.

### **AVAILABLE OPTIONS**

UMSA

State laws based on the UMSA.

### **POLICY CONSIDERATIONS (including risks)**

Draft language that broadly encompasses the activities the states want to regulate while clearly and consistently defining those activities exempt from regulation.

### **RECOMMENDATION (model statutory language)**

“Payment instrument” means a written or electronic check, draft, money order, traveler’s check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.

# Virtual Currency – Definition

## **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

FIAP: not addressed

## **AVAILABLE OPTIONS**

1. Uniform Laws Commission definition in the Virtual Currency Businesses model law
2. Adopt CSBS's definition of virtual currency from the model framework
3. Create a new definition

## **POLICY CONSIDERATIONS (including risks)**

Several portions of ULC's definition of virtual currency is identical to the CSBS model definition. Using similar or identical language is the goal of the new definition.

## **RECOMMENDATION (model statutory language)**

Virtual currency means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. Virtual currency does not include the software or protocols governing the transfer of the digital representation of value.

# Agent of Payee/Payment Processors

## **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

**FIAP:** The treatment of agent of the payee and/or payment processors varies among the states; some expressly exempt one or both via statute, some exempt one or both via guidance, and some consider the activities money transmission. Official comments to UMSA point out that “clearing agents should clearly fall outside the scope of a safety and soundness statute.”

## **AVAILABLE OPTIONS**

1. Create two separate exemptions, one for uniform agent of payee and one for payment processor.
2. Create uniform exemption that would incorporate both agent of payee and payment processors.

## **POLICY CONSIDERATIONS (including risks)**

FinCEN determined that payment processors meeting the requirements above are not money transmitters subject to Bank Secrecy Act (BSA) regulations. Therefore, the suggested language below utilizes a combination of FinCEN and several states’ exemptions for payment processors.

## **RECOMMENDATION (model statutory language)**

This chapter does not apply to:

- (1) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers;
- (2) an agent appointed by a payee to collect and process payment as the agent of the payee, provided the agent can demonstrate that: a) there exists a written agreement between the payee and the agent directing the agent to collect and process payments on the payee’s behalf; b) the payee holds the agent out to the public as accepting payments on the payee’s behalf; and c) payment is treated as received by the payee upon receipt by the agent so that there is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the payee. [This exemption would not apply to virtual currency and/or marijuana industry processing activities. (This sentence could be added for those states that do not wish to exempt marijuana industry and/or virtual currency processing activities.)]

## Money/Monetary Value – Definition

### **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

Not addressed

### **AVAILABLE OPTIONS**

1. ULC: “Monetary value” means a medium of exchange, whether or not redeemable in money. “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.
2. FinCEN: “Money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency...

### **POLICY CONSIDERATIONS (including risks)**

For those states using the virtual currency module, they will add another section to the definition of money transmitter to include virtual currency.

### **RECOMMENDATION (model statutory language)**

“Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

“Monetary value” means a medium of exchange, whether or not redeemable in money.

#### **Model statutory language for virtual currency module:**

Add to definition of money transmission:

(4) Conducting virtual currency activity.

Create definition of “conducting virtual currency activity.” (see Template 17).

## Closed Loop Prepaid Access

### **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

The FIAP requested harmonization of the closed loop stored value/prepaid access exemption.

### **AVAILABLE OPTIONS**

1. ULC UMSA
2. Other state's laws

### **POLICY CONSIDERATIONS (including risks)**

UMSA articulates the view that closed loop systems would not be subject to regulation because there are only two parties involved. UMSA excludes “closed loop” payment instruments from the definition of money transmission.

### **RECOMMENDATION (model statutory language)**

[This sentence follows the definition of “prepaid access [or stored value]”.] The term “prepaid access [or stored value]” does not include any prepaid access [or stored value] that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

# Virtual Currency Transmission

## **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

**FIAP:** The treatment of virtual currency varies among the states; some expressly regulate virtual currency transmission via statute or other guidance, while some do not consider virtual currency activity to be regulated under their money transmission laws.

## **AVAILABLE OPTIONS**

1. Adopt ULC's Uniform Regulation of Virtual-Currency Businesses Act
2. Create a new standard

## **POLICY CONSIDERATIONS (including risks)**

The ULC regulates the exchanging, transferring, or storing of virtual currency directly or through an agreement with a virtual currency control-services vendor. It does not regulate relationships in which the provider cannot transact or prevent transactions unilaterally (i.e. excludes multi-sig services). In addition, it excludes businesses that are under an annual transaction volume threshold of \$5K. It also offers a limited registration regime for annual activity over \$5K, but under \$35K.

CSBS and FinCEN would also regulate exchanging, transferring, or storing VC. All three regulatory regimes would not require fiat to be involved in exchange or transmission in order for the activity to be covered.

## **RECOMMENDATION (model statutory language)**

"Conducting virtual currency activity" means any of the following:

- (1) Exchanging virtual currency.
- (2) Transferring virtual currency.
- (3) Storing virtual currency.

"Exchanging virtual currency" means assuming control of virtual currency from or on behalf of a person to sell, trade, or convert virtual currency for cash, bank deposits, or other virtual currency or assuming control of legal tender or bank credit to sell, trade, or convert it for one or more forms of virtual currency.

"Transferring virtual currency" means assuming control of virtual currency from or on behalf of a person and to credit the virtual currency to the account of another person, move the virtual currency from one account of the person to another account of the same person, or relinquish control of virtual currency to another person.

"Storing virtual currency" means maintaining control of virtual currency on behalf of a consumer with the power to execute unilaterally or prevent indefinitely a virtual currency transaction.



# Agent of Bank/Service Provider of Bank

## **CONCERNS (include source of concern – ex. FIAP, RFI, etc.)**

Responses to the RFI requested we harmonize the definitions and exemptions for all states. Industry requests consistent boundaries between licensed activities involving banks and exemptions based on a bank's status as a regulated institution.

## **AVAILABLE OPTIONS**

Adopt UMSA

Draft new language

Combine parts of the UMSA with new language

## **POLICY CONSIDERATIONS (including risks)**

Institutions that are otherwise subject to safety and soundness, consumer protection, and BSA/AML requirements may qualify for an exemption. Uniform exemptions for otherwise regulated entities would be helpful.

## **RECOMMENDATION (model statutory language)**

This act does not apply to:

- (1) An Insured Depository Financial Institution or agent of a Depository Financial Institution.

“Insured Depository Financial Institution” means a bank, credit union, savings and loan association, savings association, or savings bank with insured deposits organized under the laws of the United States or any state of the United States.