ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

July 15, 2021

Via Electronic Submission

James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN 3064–ZA25
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

RE: Request for Information and Comment on Digital Assets (RIN 3064-ZA25)

Dear Mr. Sheesley:

The Independent Community Bankers of America® ("ICBA")[1] welcomes the opportunity to provide feedback on the Federal Deposit Insurance Corporation ("FDIC") Request for Information and Comment on Digital Assets. Innovation in financial services is critical for banks to find solutions to meet new and existing customer needs. Digital assets, ranging from cryptocurrencies like bitcoin to various tokenized financial or non-financial assets, represent new efforts to advance the digital economy and deliver new ways to increase speed, efficiency, and transparency in financial services for consumers and businesses. The promises of these technologies, however, are counter-balanced by serious concerns about the potential for disintermediation of traditional financial services by decentralized finance ("DeFi") and the use of cryptocurrencies to facilitate ransomware, money laundering, and other criminal activity.

ICBA and its members look forward to continued engagement to ensure that all community banks continue to play a leading role in developing the products and services that enable their customers and communities to benefit from advances in financial technology.

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[1] *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5 trillion in assets, over $4.4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation, and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.*

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Background

The world of digital assets has its roots in the birth of bitcoin, the original cryptocurrency, in 2008. Since then, the global market has rapidly expanded with the development of thousands of other cryptocurrencies and related products, such as non-fungible tokens ("NFTs"). Although the anonymity of many cryptocurrencies makes it challenging to determine how many people invest in or utilize digital assets, a survey conducted by Cambridge University estimates a "total of up to 101 million users across 191 million accounts opened at service providers as of Q3 2020."[2] As of June 2021, the global cryptocurrency market capitalization stands at nearly $1.5 trillion.[3]

As the digital asset market continues to expand, some banks are starting to consider offering crypto-related products and services, such as custodial services or holding stablecoin issuers' reserve accounts, to meet new and existing customer demands. Early adopters among community banks have created cryptocurrency rewards programs for debit card purchases, enabled bitcoin purchases at ATMs, and some also provide banking services for cryptocurrency companies.
Most community banks, however, are still in the early stages of learning about the underlying technologies, potential use cases and assessing the associated risks.

In the wake of this growing interest, policymakers and regulators are intensifying their scrutiny of digital assets to understand how these technologies may benefit the financial system or how they may introduce or amplify risks to banks and consumers. Several recent congressional hearings have called attention to the risks that consumers face when they engage in various crypto-related activities. For example, legislators recently held a hearing on the complex and opaque nature of DeFi, which uses smart contracts and digital currencies to provide a variety of financial services without intermediaries and clear oversight from regulators.[4] The path forward, however, remains uncertain as policymakers continue to consider potential legislative actions that could impact banks and other digital asset service providers.

Community banks face challenges to develop and implement digital asset products and services, such as constrained resources. Bankers had to prioritize the most urgent needs last year as the pandemic impacted their communities, and they rushed to assist with the implementation of multiple government stimulus programs. Researchers with the Federal Reserve Bank of Kansas City highlighted these efforts in a recent publication finding that "community banks…accounted for a disproportionately large share of the $525 billion in total PPP funds approved."[5] This achievement

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[2] Apolline Blandin, Dr. Gina Pieters, Yue Wu, Thomas Eisermann, Anton Dek, Sean Taylor, Damaris Njoki, *3rd Global Cryptoasset Benchmarking Study*, September 2020, https://www.jbs.cam.ac.uk/wp-content/uploads/2021/01/2021-ccaf-3rd-global-cryptoasset-benchmarking-study.pdf, pg. 44.
[3] See Coinmarketcap.com.
[4] See Hybrid Hearing – America on "FIRE": Will the Crypto Frenzy Lead to Financial Independence and Early Retirement or Financial Ruin?
[5] Matt Hanauer, Brent Lytle, Chris Summers, and Stephanie Ziadeh, "Community Banks' Ongoing Role in the U.S. Economy," *Federal Reserve Bank of Kansas City Economic Review*, Vol. 106, no. 2 (2021): pg. 29, https://www.kansascityfed.org/documents/8159/erv106n2hanauerlytlesummersziadeh.pdf.

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resulted from community banks quickly scaling up their lending programs and devoting considerable resources to help customers during one of the nation's most difficult periods. In speaking for his member banks, one state banking association executive noted that while these efforts were successful, many community banks were challenged to prioritize resources to explore digital asset services. The FDIC should be mindful that community banks' responses to the pandemic have deflected attention and diverted resources away from educating staff about digital assets or implementing new programs to facilitate the adoption of digital asset services.

The Financial Crimes Enforcement Network ("FinCEN") also recently issued the first national anti-money laundering and counter terrorist financing priorities which identified cybercrime and virtual currencies as primary concerns for the agency to address.[6] This policy document underscores the need for bank regulators to work together with law enforcement and community banks to combat the use of cryptocurrency for illegal activities. As one of the primary regulators for community banks, the FDIC can play an important role in efforts to help the industry learn more about the opportunities and risks of cryptocurrencies.

ICBA Comments

ICBA conducted multiple interviews with members to assess how community banks are exploring digital assets to address customer needs and learn more about how they think digital assets may impact the future of financial services. Bankers support the FDIC's efforts to seek industry feedback on this critical topic, and they recognize the Request for Information is the first step of a longer journey to address regulatory considerations and gaps in education and awareness among bankers and consumers alike. ICBA members said that there is "a role for the FDIC to serve as a catalyst for new ideas" as the pace of innovation in digital assets quickens and more banks seek to evaluate the potential risks and benefits associated with the technologies.

Regulatory Harmonization and Clarity

ICBA and its members support cross-agency collaboration to harmonize the definitions and provide more clarity on how existing regulatory frameworks will apply to digital assets. ICBA and its members are encouraged by recent remarks from Federal Reserve Board ("FRB") Vice Chairman Quarles and the Office of Comptroller of the Currency ("OCC") Acting Comptroller Hsu that the FRB, OCC, and FDIC are working together to prevent a fragmented regulatory approach with respect to cryptocurrencies and digital assets.

Bankers also observed that there remains an opportunity for strengthened cooperation and collaboration between the FDIC and other regulatory agencies to develop a more comprehensive approach to digital assets. Currently, the lack of harmonization among all the banking regulators leaves community banks that are not regulated by the OCC at a competitive disadvantage relative to their OCC-regulated peers and non-bank cryptocurrency companies. Several bankers noted that the

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[6] Financial Crimes Enforcement Network, U.S. Department of the Treasury, "Anti-Money Laundering and Countering the Financing of Terrorism National Priorities," June 30, 2021, https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf.

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OCC is the only banking regulator that has produced detailed guidance to provide crypto-related services. Regulators should apply a consistent approach to all entities engaged in similar digital asset products and services to support a level field for competition and ensure appropriate protections for consumers. A more comprehensive and coordinated approach from all prudential regulators can help to dispel confusion in the marketplace and may prompt more community banks to explore digital asset products and services to address customer needs.

ICBA members also signaled a need for additional clarity about how existing regulations may apply to digital assets. Bankers requested guidance from the FDIC to assess the full impact of digital assets and address regulatory concerns and requirements. In particular, bankers indicated a need for more information on possible changes to capitalization requirements if they engage in digital assets as well as more guidance on the on-boarding of customers involved in digital asset or cryptocurrency businesses.

Moreover, the lack of information from the FDIC, and other prudential regulators, may have a chilling effect on innovation, leading to inaction or speculation among banks about prudent courses of action. Responsible innovation in financial services requires clear guard rails so that banks know which activities are permissible and how products and systems should operate. Without such information, many banks may choose not to engage in cryptocurrency or other digital asset activities.

Additional Clarity in Terminology

The term “digital assets” is not defined in the FDIC’s Request for Information. Although the term is commonly used to label cryptocurrencies such as bitcoin, other agencies, notably Commodity Futures Trading Commission (“CFTC”) and FinCEN, described digital assets in a 2019 statement as encompassing “instruments that may qualify under applicable U.S. laws as securities, commodities, and security- or commodity-based instruments such as futures or swaps.”[7] The lack of clear guidance from the FDIC leaves room for uncertainty about which products or systems may qualify as “digital assets” and how current regulatory structures may apply to any particular asset(s). Without additional guidance, many community banks may hesitate to pursue digital asset products and services.

Industry Education to Bridge the Digital Asset Divide

While digital assets may offer the capability to deliver enhanced experiences for banks and customers, the FDIC should be mindful of a growing digital asset divide in the banking industry. One state banking association executive voiced alarm that the rapid growth of digital assets has the “potential to widen the chasm between the haves and have-nots.” Knowledge of cryptocurrency technology remains a niche area of study and only a handful of schools specialize in programs dedicated to these emerging technologies. There is now intense competition for workers with cryptocurrency expertise and programming skills. Smaller banks, particularly those located in rural areas, already face challenges in finding and retaining knowledgeable staff, and the growth of digital

[7] Commodity Futures Trading Commission, Financial Crimes Enforcement Network, Securities and Exchange Commission, “Leaders of CFTC, FinCEN, and SEC Issue Joint Statement on Activities Involving Digital Assets,” Public statement issued on October 11, 2019, https://www.sec.gov/news/public-statement/cftc-fincen-secjointstatementdigitalassets.

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assets may intensify these challenges if banks cannot access adequate training or find the right employees.

To that end, ICBA and its members support cross-industry engagement to consider all the possible uses, benefits, and risks of digital assets in banking. The Faster Payments Task Force convened by the Federal Reserve in 2015 stands out as prime example for what can be accomplished when industry stakeholders cooperate to analyze issues and create practical recommendations and timelines. Collaboration can help to identify gaps in regulations and opportunities for digital assets to address existing and future customer needs. Collaboration can also help to ensure that the development of digital assets will not harm the integrity of the U.S. financial system by disintermediating the community banks.

The FDIC can help to bridge the divide by hosting forums for dialogue and creating accessible materials that explain digital asset regulations and risks. Several bankers specifically called for an expansion of the FDiTech Innovation Hours to include sessions dedicated to digital assets. These forums could allow bankers and FDIC staff to collaborate on solutions before problems arise.

Educate FDIC Staff and Examiners

Bankers also encourage the FDIC to develop its internal expertise on digital assets. A well-trained and experienced staff is essential to help bankers maintain compliance with regulations and produce fair and accurate assessments of digital asset activities.

ICBA and its members appreciate the opportunity to comment on the Request for Information and Comment on Digital Assets and look forward to continued dialogue to ensure that all community banks continue to play a leading role in developing the products and services that enable their customers and communities to benefit from advances in financial technology. If you have questions or require additional information about ICBA's statements, please contact me at (202) 821-4427 or by email at Brian.Laverdure@icba.org.

Sincerely,

/s/

Brian Laverdure, AAP
Vice President, Payments and Technology Policy

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