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Via Electronic Submission

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RE: Request for Public Comment on Proposed Rule Regarding Financial Data Transparency Act Joint Data Standards

To whom it may concern:

Blockchain Association (“BA”)¹ and DeFi Education Fund (“DEF”)² welcome the opportunity to provide feedback on the nine federal agencies’ (“Agencies”) proposed rule to establish data standards for collections of information reported to the Agencies (the “Proposal”) under Section 124 of the Financial Stability Act of 2010 (the “FSA”), which has been added pursuant to Section 5811 of the Financial Data Transparency Act of 2022 (the “FDTA”).³

While the Proposal addresses a wide variety of data standards for certain collections of information, BA and DEF have focused the comments in this letter specifically on Section 124(c)(1)(A) of the FSA, which requires the joint standards to include “a common nonproprietary legal entity identifier that is available under an open license for all entities required to report to” the Agencies.

Legal Entity Identifier

The Proposal would establish International Organization for Standardization (“ISO”) 17442 – Financial Services – the Legal Entity Identifier (“LEI”) as the legal entity identifier joint standard. The LEI is a global, 20-character, alphanumeric identifier standard that uniquely identifies a legal entity. The LEI is managed by the Global Legal Entity Identifier Foundation (“GLEIF”) and issued through “local operating units” (“LOUs”).

We respectfully request that the Agencies reconsider using LEI as the joint standard for the following reasons:

1. *Costs Imposed.* We agree with Securities and Exchange Commission Commissioner Mark T. Uyeda’s statements regarding the Proposal and reiterate some of Commissioner Uyeda’s concerns regarding the use of LEI.⁴ The FDTA amends section 124(c)(1)(A) of the

¹ BA is a leading nonprofit organization dedicated to promoting a pro-innovation policy environment for the digital asset economy. BA works with its members to educate policymakers about blockchain technology and its ability to pave the way for a more secure, competitive, and consumer-friendly digital marketplace. BA’s mission is to advance the future of crypto in the United States, promoting the potential of blockchain technology and shaping policy that ensures its success.

² DEF is a nonpartisan research and advocacy group working to explain the benefits of decentralized finance (“DeFi”), achieve regulatory clarity for the future of the global digital economy, and help realize the potential of DeFi. DEF works to educate regulators and policymakers and advocate for smart approaches.

³ *Financial Data Transparency Act Joint Data Standards*, S7-2024-05 (Aug. 22, 2024), <https://www.federalregister.gov/d/2024-18415>.

⁴ Commissioner Mark T. Uyeda, *Statement on Financial Data Transparency Act Proposed Joint Data Standards*, (Aug. 2, 2024),

Financial Stability Act to require the joint standards to include “a common nonproprietary legal entity identifier that is available under an open license.” The LEI system is based on a cost-recovery model, and the costs associated with obtaining and renewing an LEI covers the administrative expenses associated with the LEI system. Since LEI is managed by GLEIF and issued through LOUs, entities must pay a fee to an LOU both to initially obtain an LEI and to renew the LEI annually. Because of this, we do not believe that the LEI satisfies both the “nonproprietary” and “open license” requirements of the FSA. First, we argue that the LEI is proprietary to GLEIF and the LOUs. Furthermore, we believe that the term “open license” under the FDTA means that a data asset should be made available at no cost to the public and with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset. The Agencies should consider alternatives that do not impose additional costs to entities who need to obtain a legal entity identifier.

2. *Proprietary Standards.* We note that ISO charges a fee to view the LEI standard, as well as additional fees to view related standards. To the best of our knowledge, none of the Agencies have provided free, public access to ISO’s LEI standard during this rulemaking, nor do any Agencies intend to provide free, public access if it is adopted as a standard under the FDTA.

The Administrative Conference of the United States (“ACUS”) has highlighted that failure to make free electronic access to material available during the rulemaking process may impede the public’s ability to provide meaningful comments on a proposal.⁵ Putting aside the potential administrative law and fair notice issues with such impediment, ACUS has recommended that federal agencies “work with the copyright owner to ensure the material will be reasonably available to regulated and other interested parties both during rulemaking and following promulgation.”⁶ Additionally, ACUS has stated that federal agencies should consider the free accessibility of a standard as a factor when selecting among options. Given the involvement of the US government in the Financial Stability Board and the dominance of US markets in the global financial system, we request that the Agencies prioritize making the LEI standard publicly available, or as discussed below, provide a free option.

3. *Updating.* Federal agencies are prohibited from dynamically incorporating updates to a standard that is incorporated into a regulation by reference.⁷ While the preamble to the Proposal implies that the Agencies intend to adopt only the first edition of the 2020

<https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-financial-data-transparency-act-080224>.

⁵ Emily Bremer, *Collaboration is the Key to Making the Law Free* (July 2, 2023), <https://www.acus.gov/article/regulating-reference>.

⁶ ACUS, *Incorporation by Reference*, Rec. 2011-5 (Dec. 8, 2011).

⁷ 1 C.F.R. § 51.1(f).

version of the LEI standard, the rule-text does not specify the version that is being adopted. At a minimum, the Agencies will need to revise the rule-text to specify the version of the LEI standard that is being adopted.

4. *Limited Eligibility Criteria.* LEIs are available to “legal entities,” which include unique parties that are legally or financially responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way (e.g. trusts, partnerships). It includes governmental organizations, supranationals, and individuals when acting in a business capacity but excludes natural persons. GLEIF publishes the Entity Legal Forms (“ELF”) Code List, which lists more than 3,400 entity legal forms across various jurisdictions that are eligible for LEI. However, the ELF Code List, which is relied on by LOUs, does not include all legal entity forms available in the United States. For example, common forms of structures, such as sole proprietorships and general partnerships, are listed as being available only if a member is based in a specific state (e.g., only 9 states appear to be listed in the ELF Code List as having sole proprietorship as a form of business). Thus, it is unduly burdensome to require all legal entities to obtain LEIs to report relevant information to the Agencies.

Given the concerns referenced above, we request that the Agencies consider alternatives to requiring regulated entities to obtain an LEI.

One option would be to allow each Agency to simply rely on the legal entity identifiers that it already obtains from the entities it regulates, which would impose no new obligations on such entities. For example, the Securities and Exchange Commission (on its own or with the other Agencies) could rely on use of the Central Index Key (CIK), which is already required to be used to make EDGAR filings with the Securities and Exchange Commission. Another option could be the file number issued by the Delaware Department of State’s Division of Corporations, which is already obtained by many regulated entities. Both options are free of charge and may also satisfy the FDTA’s data standard requirements. These alternatives could be used on a “fallback” (e.g., filer does not have an LEI or cannot obtain an LEI) or “filer’s choice” basis.

Another approach would be for the Agencies to require an entity to use and disclose its LEI only if that entity has already obtained one for other purposes. For example, in Call Reports, banks are only required to provide their LEI on the cover page of the Call Report if they already have an LEI. A bank that does not have an LEI is not required to obtain one for purposes of reporting it on the Call Report.⁸ While that alternative option may not alleviate all “nonproprietary” and “open license” concerns with the LEI, it would, at least, not impose additional costs and would not create a regulatory barrier for entities who are unable to obtain an LEI based on the ELF Code List.

⁸ Instructions for Preparation of Consolidated Reports of Condition and Income: FFIEC 031 and 041, at 28 (June 2024), https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202406_i.pdf.

Conclusion

BA and DEF appreciate the opportunity to comment on the Agencies' proposed rule to establish data standards for collections of information reported to the Agencies. If you have questions or require additional information about BA and DEF's comments, please contact us at laura@theblockchainassociation.org or tuminelli@defieducationfund.org.

Sincerely,

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