

**CONSUMER FINANCIAL PROTECTION BUREAU**

**12 CFR Part 1005**

**[CFPB-2025-0003]**

**Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family,  
or Household Purposes Using Emerging Payment Mechanisms**

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Notice of proposed interpretive rule; request for comment.

**SUMMARY:** In light of interest by electronic fund transfer system market participants to offer new types of products to transfer funds and make purchases through accounts established primarily for personal, family, or household purposes, the Consumer Financial Protection Bureau (CFPB) is proposing this interpretive rule to assist companies, investors, and other market participants evaluating existing statutory and regulatory requirements governing electronic fund transfers (EFTs).

**DATES:** Comments must be received by March 31, 2025.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2025-0003, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2025-0003>.
- *Email:* [2025-Emerging-Payments-Interpretive-Rule@cfpb.gov](mailto:2025-Emerging-Payments-Interpretive-Rule@cfpb.gov). Include Docket No. CFPB-2025-0003 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake—2025 Emerging Payments Interpretive Rule, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

*Instructions:* The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number. Because paper mail is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** George Karithanom, Program Analyst, Office of Regulations at (202) 435-7700 or <https://reginquiries.consumerfinance.gov>. If you require this document in an alternative electronic format, please contact

[CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

## I. Background

### A. The Passage and Evolution of the Electronic Fund Transfer Act

Advances in automation brought about enormous innovation in the middle of the twentieth century with respect to the movement of funds. In 1969, Chemical Bank installed the first automated teller machine in Rockville Center, New York. New payment networks also launched, forming the foundation of mechanisms facilitating EFTs. However, adoption of these new technologies raised questions about the rights and liabilities of consumers who use EFT

services, and the responsibilities of financial institutions that offer them. In particular, while financial firms would reap benefits from automation, consumer adoption might be stymied by concerns about and risks of errors and fraud.

To provide fairness, efficiency, and confidence in burgeoning technologies to make payments outside of paper currency, coins, and paper checks, Congress enacted the Electronic Fund Transfer Act (EFTA) in 1978.<sup>1</sup> To ensure that industry participants in electronic fund transfers (EFTs) had appropriate incentives to guard against errors and fraud, EFTA provides a considerable set of rights to consumers to dispute errors and limit their liability for unauthorized EFTs, among other things. To help vindicate the rights established in EFTA, Congress provided mechanisms for both public and private enforcement.<sup>2</sup> In addition, courts have held that EFTA is a “remedial statute accorded a broad, liberal construction in favor of the consumer.”<sup>3</sup>

The United States was among the first to adopt a framework like EFTA, providing greater certainty and protection for consumers, financial firms, and other participants in electronic fund transfer systems. In enacting that legislation, Congress recognized that electronic fund transfer services would continue to develop in the future. In particular, EFTA’s legislative history demonstrates that Congress drafted the definitions used in the statute in a broad manner to ensure that EFTA was “sufficiently flexible to accommodate the continued evolution of

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<sup>1</sup> See Electronic Fund Transfers, Pub. L. 95-630, tit. XX, section 2001, 92 Stat. 3728 (1978); see also S. Rept. 95-1273 at 10 (1978) (“EFT payment systems, which now involve billions of dollars annually and are growing in size, must have clearly defined rules to operate fairly, efficiently, and with public confidence.”).

<sup>2</sup> See 15 U.S.C. 1693m, 1693o.

<sup>3</sup> *Clemmer v. Key Bank Nat. Ass’n*, 539 F.3d 349, 353 (6th Cir. 2008) (citation omitted); see also *Curtis v. Propel Prop. Tax Funding, LLC*, 915 F.3d 234, 239 (4th Cir. 2019).

electronic fund transfer services.”<sup>4</sup> Congress also granted the Board of Governors of the Federal Reserve System (the Board) and later the CFPB the authority to issue regulations and guidance to implement the broad provisions of EFTA.<sup>5</sup>

The Board implemented EFTA through Regulation E shortly after the statute’s passage in 1978.<sup>6</sup> Over time, the Board and then the CFPB have amended and interpreted Regulation E in response to the emergence of new electronic payment instruments and systems, broader developments in the market, and new congressional legislation.<sup>7</sup> Most recently, in 2016, the CFPB issued a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E.<sup>8</sup> The CFPB noted in the rule that its analysis with respect to virtual currencies and related products and services was ongoing, and that the rule did not resolve issues with respect to the application of existing regulations or the prepaid rule to such products and services.<sup>9</sup> The CFPB therefore treated comments addressing crypto-assets and related products and services as outside the scope of the rulemaking.<sup>10</sup>

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<sup>4</sup> Electronic Fund Transfer Act, H. Rept. 95-1315, at 5 (1978) (discussing definition of “financial institution”); *see also*, e.g., S. Rept. 95-1273 at 25 (1978) (“The definition of ‘electronic fund transfer’ is intended to give the Federal Reserve Board flexibility in determining whether new or developing electronic services should be covered by the act and, if so, to what extent.”); *id.* at 26 (noting that “[t]he definitions of ‘financial institution’ and ‘account’ are deliberately broad so as to assure that all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protection”).

<sup>5</sup> See 15 U.S.C. 1693b, 1693m(d).

<sup>6</sup> See 44 FR 18468 (Mar. 28, 1979); 44 FR 59464 (Oct. 15, 1979).

<sup>7</sup> See, e.g., 61 FR 19662, 19662 (May 2, 1996) (amending Regulation E as part of periodic review to “reflect technological and other developments”); 62 FR 43467 (Aug. 14, 1997) (amending Regulation E with respect to government-administered EBT programs); 71 FR 51437 (Aug. 30, 2006) (amending Regulation E with respect to payroll cards). The CFPB also issued new requirements in subpart B of Regulation E relating to remittance transfers in final rules issued in 2012 and 2013. See 78 FR 30662, 30662 (May 22, 2013) (summarizing 2012 and 2013 rules).

<sup>8</sup> 81 FR 83934 (Nov. 22, 2016). The prepaid rule also amended Regulation Z, which implements the Truth in Lending Act, to create consumer protections for prepaid accounts.

<sup>9</sup> *Id.* at 83978 (discussing “virtual currencies”).

<sup>10</sup> *Id.*

## *B. Facebook's 2019 Libra Proposal*

While most payment networks rely on significant network effects, like those that exist among banks and merchants through card networks, advances in mobile technology spawned new networks for payments. More recently, large technology firms have begun to explore additional ways to leverage their network effects to facilitate payments.

In 2019, the technology firm Facebook announced the creation of a new global currency known as Libra.<sup>11</sup> Libra was a proposed “stablecoin.”<sup>12</sup> Rather than offering Libra to the public for speculative trading, the goal of Libra was to provide a mechanism to make payments throughout the digital world.<sup>13</sup> Users would transmit Libra through a Calibra wallet account, which would also be established by Facebook. A broad range of merchants, including app-based services, indicated that they would participate in the Libra scheme.<sup>14</sup>

Regulators around the world charged with assuring compliance with privacy, consumer protection, and anti-money laundering laws raised concerns about many aspects of the Libra proposal.<sup>15</sup> Central banks and authorities charged with ensuring stability of the financial system also sought clarity on how the Libra stablecoin would fit into existing regulatory frameworks.<sup>16</sup>

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<sup>11</sup> See Mike Isaac & Nathaniel Popper, *Facebook Plans Global Financial System Based on Cryptocurrency*, N.Y. Times (June 18, 2019), <https://www.nytimes.com/2019/06/18/technology/facebook-cryptocurrency-libra.html>.

<sup>12</sup> See Rebecca Nelson & David Perkins, *Libra: A Facebook-led Cryptocurrency Initiative*, Congressional Research Service (Oct. 21, 2019), <https://crsreports.congress.gov/product/pdf/IN/IN11183/2>.

<sup>13</sup> See Libra, *White Paper* (June 18, 2019), <https://web.archive.org/web/20190618085610/https://libra.org/en-US/white-paper/> (“[t]he mission for Libra is a simple global currency and financial infrastructure that empowers billions of people”).

<sup>14</sup> See PYMNTS, *A Brief History of Libra* (July 15, 2019), <https://www.pymnts.com/cryptocurrency/2019/a-brief-history-of-facebook-libra/>.

<sup>15</sup> See Off. of the Priv. Comm'r of Can., *Joint statement on global privacy expectations of the Libra network* (Aug. 5, 2019), [https://www.priv.gc.ca/en/opc-news/speeches-and-statements/2019/s-d\\_190805/](https://www.priv.gc.ca/en/opc-news/speeches-and-statements/2019/s-d_190805/); Foo Yun Chee, *EU antitrust regulators raise concerns about Facebook's Libra currency: sources*, Reuters (Aug. 21, 2019), <https://www.reuters.com/article/technology/eu-antitrust-regulators-raise-concerns-about-facebooks-libra-currency-sources-idUSKCN1VB1C1/>.

<sup>16</sup> See, e.g., Zachary Warmbrodt, *Jerome Powell: Facebook's Libra poses potential risk to financial system*, Politico (July 10, 2019), <https://www.politico.com/story/2019/07/10/jerome-powell-facebook-libra-1578306>.

Ultimately, Libra was abandoned.<sup>17</sup> However, questions surrounding the safety and utility of emerging forms of fund transfers for “personal, family, or household purposes” operating outside of traditional bank and credit union accounts have persisted.<sup>18</sup>

### *C. CFPB Research into Emerging Payments*

While there has been considerable attention paid to cryptocurrencies acquired for speculation and other purposes, the CFPB has conducted research to evaluate emerging forms of payments, fund transfers, and digital technologies for “personal, family, or household purposes.” For example, in 2021, the CFPB launched an inquiry into the payment products and services offered by large technology firms and by widely used digital payment applications.<sup>19</sup> There were many insights from the research, including developments in how firms were offering accounts for storing and transmitting funds. While firms primarily offered the ability to transfer funds by relying on balances in a consumer’s bank or credit union account, many of the firms offered stored balance products, where funds held in an account were not necessarily deposited in a traditional insured account. There were indicia that some of the firms were actively developing proprietary products, including stablecoins similar to Libra.

Because gaming platforms served as early adopters of technologies that inevitably become more broadly adopted, the CFPB also undertook a study of payments in fund transfers

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<sup>17</sup> Katie Paul, *Facebook’s cryptocurrency venture to wind down after asset sale to Silvergate*, Reuters (Jan. 31, 2022), <https://www.reuters.com/technology/facebook-cryptocurrency-venture-wind-down-after-asset-sale-silverage-2022-02-01>.

<sup>18</sup> See CFPB, *Prepared Remarks of CFPB Director Rohit Chopra at the Brookings Institution Event on Payments in a Digital Century* (Oct. 6, 2023), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-brookings-institution-event-on-payments-in-a-digital-century/> (“Libra never became a new global currency. But the questions it provoked in the West for consumer and data protection regulators… live on.”).

<sup>19</sup> Press Release, CFPB, *CFPB Orders Tech Giants to Turn Over Information on their Payment System Plans* (Oct. 21, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/>.

used on such platforms.<sup>20</sup> In a report from April 2024, the CFPB detailed some of the business practices on how game players convert U.S. dollars into virtual currencies. The payment systems on these gaming platforms have rapidly evolved. Rather than relying on a business model in which players make a one-time payment to buy or play the game, some gaming platforms have developed elaborate economies where the platforms accept U.S. dollars in exchange for virtual currency that can be transacted among players and other platform participants, and even exchanged back to U.S. dollars in certain circumstances. The report described how players and other platform participants maintain an account where these virtual currencies are stored, and how some consumers have experienced the loss of assets in these accounts through hacking attempts, account theft, scams, and unauthorized transactions. The developments described in the report raise questions about responsibilities and liabilities when errors or fraud take place.

The CFPB has also conducted research into online services that offer betting on sporting events and casino games.<sup>21</sup> Some of these services allow bettors to maintain accounts that allow individuals to make a range of electronic transfers, including to and from linked accounts. These accounts may be denominated in U.S. dollars, or in proprietary currencies.

Recognizing that many arrangements, such as stablecoins and virtual currencies, constitute alternative electronic fund transfer mechanisms, private sector participants have made certain determinations about how to treat transactions to obtain these currencies. For example,

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<sup>20</sup> See CFPB, *Banking in video games and virtual worlds* (Apr. 4, 2024), <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-video-games/>.

<sup>21</sup> *Id.* (“Third-party websites also facilitate a growing skin gambling industry that supports wagering skins, similar to casino chips, in virtual games such as blackjack, roulette, or craps. . . . competitive gaming contests, also known as esports, and games between professional sports teams. Winnings can be converted to fiat currency or other forms of virtual currency and withdrawn for a fee directly to the player’s digital wallet.”)

many large credit card issuers categorize purchases of virtual currencies as “cash advances,” reflecting the money-like nature of the funds held in these accounts.

#### *D. 2021 Report on Stablecoins*

In November 2021, the President’s Working Group on Financial Markets (consisting of the Secretary of the Treasury, the Chairperson of the Board of Governors of the Federal Reserve System, the Chairperson of the Securities and Exchange Commission, and the Chairperson of the Commodity Futures Trading Commission), in conjunction with the Federal Deposit Insurance Commission and the Office of the Comptroller of the Currency, issued a report on stablecoins.<sup>22</sup> The report described certain financial stability concerns, as well as issues related to the issuance of stablecoins by banks and nonbanks. The report did not include a specific assessment on consumer protection issues, but noted that existing laws (including EFTA) accord certain consumer protections to payments services used by consumers.<sup>23</sup> The report further urged regulators to continue to coordinate on these issues and for Congress to consider legislation on a prudential framework for so-called “payment stablecoins.”<sup>24</sup>

Consistent with the report, the CFPB has coordinated with regulators on issues with respect to stablecoins and emerging payments.<sup>25</sup> There has been considerable legislative discussion on many aspects of stablecoins and digital assets, but these discussions have primarily focused on stablecoins’ status under the securities and commodities trading laws, rather than their potential use as a payment mechanism.

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<sup>22</sup> See President’s Working Grp. on Fin. Mkts., Fed. Deposit Ins. Corp.& Off. of the Comptroller of the Currency, *Report on Stablecoins* (Nov. 2021), [https://home.treasury.gov/system/files/136/StableCoinReport\\_Nov1\\_508.pdf](https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf).

<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.* at 2, 16-18.

<sup>25</sup> See CFPB, *Statement of CFPB Director Chopra on Stablecoin Report* (Nov. 1, 2021), <https://www.consumerfinance.gov/about-us/newsroom/statement-cfpb-director-chopra-stablecoin-report/>.

#### *E. Rationale for Development of Interpretive Rule*

The CFPB is concerned that if market participants do not apply EFTA and Regulation E in a consistent manner, consumers making electronic fund transfers using accounts established primarily for personal, family, or household purposes might face challenges in vindicating their rights in the event of unauthorized transfers and other errors. The CFPB is also concerned that inconsistent application of EFTA and Regulation E might put certain providers at an unfair, competitive disadvantage.

While the application of Federal consumer financial protection laws, such as EFTA, to new methods of payments is often developed through case-by-case adjudications by courts, consumers and market participants may face conflicting guidance from case law. Consistent with the CFPB's mandate to promote fair, transparent, and competitive markets, as well as its mandate to advance the underlying goal of EFTA to create confidence in electronic fund transfer mechanisms by establishing a framework of rights, liabilities, and responsibilities,<sup>26</sup> this proposed interpretive rule, if adopted, would provide a consistent framework for the applicability of EFTA and Regulation E with respect to a range of emerging payment mechanisms. The proposed interpretive rule seeks to synthesize the range of insights developed by the CFPB in recent years derived from research and coordination to outline how market participants can develop beneficial products and services in compliance with EFTA and Regulation E, by ensuring that similar products are treated similarly under the law.

## **II. Proposed Interpretive Rule**

The text of the proposed interpretive rule is as follows.

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<sup>26</sup> See 12 U.S.C. 5511(a); 15 U.S.C. 1693(b).

## *A. Legal Analysis*

EFTA and Regulation E apply to an electronic fund transfer (EFT) that authorizes a “financial institution” to debit or credit a consumer’s account.<sup>27</sup> The term “electronic fund transfer” generally means any transfer of “funds” that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account.<sup>28</sup>

### 1. “*Financial institution*”

The term “financial institution” under EFTA, as implemented in Regulation E, means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide EFT services.<sup>29</sup> It is well-established that financial institutions include nonbank entities that directly or indirectly hold an account belonging to a consumer, or that issue an access device and agree with a consumer to provide EFT services.<sup>30</sup>

### 2. “*Funds*”

The term “funds” is not specifically defined in EFTA or Regulation E, but has been broadly construed to cover a broad array of assets, beyond those held in a traditional bank or

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<sup>27</sup> 12 CFR 1005.3(a).

<sup>28</sup> EFTA section 903(7); 15 U.S.C. 1693a(7).

<sup>29</sup> 12 CFR 1005.2(i). Regulation E defines “access device” as a card, code, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers. 12 CFR 1005.2(a)(1).

<sup>30</sup> See, e.g., S. Rept. 95-1273 at 26 (“The term ‘financial institution’ is defined to mean traditional depository institutions as well as any other person who directly or indirectly holds a consumer’s account.”); Electronic Fund Transfer Act, H. Rept. 95-1315, at 5 (1978) (“Section 903(h) of the bill defines the term ‘financial institution’ to include not only traditional depository institutions that are normally considered to be financial institutions but also ‘... any other person who, ... indirectly, holds a consumer account belonging to an individual; ...’. This language is intended by the Committee to assure that the legislation remains sufficiently flexible to accommodate the continued evolution of electronic fund transfer services.”); see also 81 FR 83934 at 83964 (noting that the prepaid rule’s “requirements apply equally to depositories and non-depositories alike”).

credit union account. Specifically, at the time of EFTA’s enactment in 1978, as well as today, the term was and is broadly understood to cover much more than the U.S. dollar and other fiat currencies.

For example, one leading court decision from before the enactment of EFTA recognized that the dictionary defined “funds” “as ‘available pecuniary resources ordinarily including cash and negotiable paper’” and that “in a legal context the courts have also taken it to include property of value which may be converted into cash.”<sup>31</sup> Another decision from that time stated that the term “[f]unds’ includes moneys, and much more, such as notes, bills, checks, drafts, stocks, and bonds. In other words the general term can and does include not only currency but also other types of pecuniary resources which are readily converted into cash.”<sup>32</sup>

Similarly, Black’s Law Dictionary at that time defined “fund” as “[a] generic term and all-embracing as compared with [the] term ‘money,’ etc., which is specific.”<sup>33</sup> Modern dictionaries (both legal and general-use) similarly define “funds” in reference to pecuniary resources and further define “pecuniary” as “concerning or involving money” or “of or relating

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<sup>31</sup> *Keene v. Keene*, 371 P.2d 329, 332 (Cal. 1962) (quoting definition of “funds” in Webster’s New International Dictionary 921 (3d ed. 1961)); *see also Funds*, Webster’s New International Dictionary 921 (3d ed. 1961) (defining “funds” as “available pecuniary resources ordinarily including cash and negotiable paper that can be converted to cash at any time without loss”).

<sup>32</sup> *In re Plich’s Est.*, 348 P.2d 706, 708-09 (Colo. 1960); *see also, e.g., Zamora v. United States*, 369 F.2d 855, 859 (10th Cir. 1966) (“The word ‘funds’ is broader than but in its usual sense includes ‘moneys.’”).

<sup>33</sup> *Fund*, Black’s Law Dictionary (4th ed. 1957); *see also Funds*, Black’s Law Dictionary (4th ed. 1957) (“Moneys and much more, such as notes, bills, checks, drafts, stocks and bonds, and in broader meaning may include property of every kind.”).

to money.”<sup>34</sup> The term “money” means “something generally accepted as a medium of exchange, a measure of value, or a means of payment.”<sup>35</sup>

Based on the plain language used in EFTA and the reasoning of judicial decisions, as well as the CFPB’s experience in market monitoring, it has long been clear that the term “funds” in EFTA is not limited to fiat currency like U.S. dollars. The CFPB interprets the term “funds” to include assets that act or are used like money, in the sense that they are accepted as a medium of exchange, a measure of value, or a means of payment. Under this interpretation, the term “funds” would include stablecoins, as well as any other similarly-situated fungible assets that either operate as a medium of exchange or as a means of paying for goods or services.<sup>36</sup>

In addition, the fact that the asset may fluctuate in value does not exempt it from this definition. Several courts interpreting “funds” in the context of Federal money transmitter and money laundering statutes have similarly held that the term “funds” is not limited to fiat currency and encompasses other types of assets, including widely held currencies like Bitcoin.<sup>37</sup> A

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<sup>34</sup> *Funds*, Collins English Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/funds> (last visited Dec. 11, 2024); *Pecuniary*, Collins English Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/pecuniary> (last visited Dec. 16, 2024); *Funds*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/money> (last visited Dec. 11, 2024); *Pecuniary*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/pecuniary> (last visited Dec. 16, 2024).

<sup>35</sup> *Money*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/money> (last visited Dec. 11, 2024).

<sup>36</sup> Whether a specific digital asset is included in the term “funds” for purposes of EFTA and Regulation E is fact specific, and there are likely some digital assets that are not “funds” because, for example, they cannot be used to make payments or cannot be readily exchanged for fiat currency. For example, most nonfungible tokens (“NFTs”) are unlikely to be “funds.”

<sup>37</sup> See, e.g., *United States v. Day*, 700 F.3d 713, 726 (4th Cir. 2012) (holding that “gold can constitute ‘funds’ under the . . . statute where it is moved as a liquid, monetary asset”); *United States v. Iossifov*, 45 F.4th 899, 913 (6th Cir. 2022), cert. denied, 143 S. Ct. 812 (2023) (holding that the ordinary meaning of “funds” is “available pecuniary resources,” and noting that courts have “unanimously determined that Bitcoin” is encompassed by the terms “funds” and “monetary instrument”); *United States v. Murgio*, 209 F. Supp. 3d 698, 707 (S.D.N.Y. 2016) (“[t]he ordinary meaning of ‘funds’ . . . is ‘available pecuniary resources’”) (citation omitted); *United States v. Budovsky*, No. 13CR368 DLC, 2015 WL 5602853 (S.D.N.Y. Sept. 23, 2015) (assigning “funds” its ordinary meaning, “assets that ‘can be used to pay for things in the colloquial sense,’” and holding that “funds” encompassed the digital currency at issue); see also *United States v. Harmon*, 474 F. Supp. 3d 76 (D.D.C. 2020).

Federal district court also recently held that cryptocurrency, as a “digital form of liquid, monetary assets,” unambiguously constitutes “funds” under EFTA.<sup>38</sup> These interpretations of “funds” accord with Congress’s intent by ensuring that consumers are adequately protected and have access to the benefits of innovative electronic fund transfer systems and technology.

### 3. “*Account*” and “*Other consumer asset account*”

Given the breadth of the term “funds,” the applicability of EFTA and Regulation E will often turn on the definition of “account” in EFTA and Regulation E.

EFTA section 903(2) defines “account” to mean “a demand deposit, savings deposit, or other asset account . . . as described in regulations of the [CFPB], established primarily for personal, family, or household purposes,” subject to limited exceptions. The legislative history confirms that Congress intended EFTA to cover more than checking or savings accounts, noting that EFTA’s definition of “account” is intended to be broad enough “to assure that all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protections.”<sup>39</sup> The legislative history also explained that the term “account” was intended to go beyond a consumer’s checking or savings account. It provided several examples of nonbank asset accounts that were within EFTA’s coverage because they could potentially be used to make electronic payments from consumer accounts.<sup>40</sup>

Both EFTA and Regulation E generally define “account” to mean:

[A] demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a

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<sup>38</sup> *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498 (S.D.N.Y. 2023).

<sup>39</sup> S. Rept. 95-915 at 9.

<sup>40</sup> *Id.* at 4, 9 (providing as examples mutual fund accounts that provide an EFT card that can be used to make payments, money market mutual fund accounts, and positive balances in margin accounts at a stock brokerage).

financial institution and established primarily for personal, family, or household purposes.<sup>41</sup>

Essentially, “other consumer asset accounts” include prepaid accounts,<sup>42</sup> and other asset accounts established primarily for a consumer’s individual, family, or household use, that are not checking accounts or savings accounts, but into which funds can be deposited by the consumer or on their behalf and which have features of deposit or savings accounts. Such features include, but are not limited to: paying for goods or services from multiple merchants, ability to withdraw funds or obtain cash, or conducting person-to-person transfers.<sup>43</sup> Depending on the facts and circumstances, the following could be considered “accounts” under EFTA: video game accounts used to purchase virtual items from multiple game developers or players; virtual currency wallets that can be used to buy goods and services or make person-to-person transfers; and credit card rewards points accounts that allow consumers to buy points that can be used to purchase goods from multiple merchants.

This interpretation of the term “other consumer asset account” is consistent with the legislative history discussed above, and longstanding provisions in both Regulation E’s regulatory text and the Official Staff Interpretations to Regulation E, where certain types of accounts that are functionally similar to checking and savings accounts are Regulation E “accounts.” Examples include club accounts,<sup>44</sup> retail repurchase agreements,<sup>45</sup> margin

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<sup>41</sup> 12 CFR 1005.2(b)(1); *see also* 15 U.S.C. 1693a(2).

<sup>42</sup> *See* 12 CFR 1005.2(b)(3). Whether a particular product meets the definition of “prepaid account” in Regulation E depends on the features of the product and is outside the scope of this interpretive rule.

<sup>43</sup> *See* 12 CFR 1005.2(b)(1). Whether a particular account sufficiently resembles a checking or savings account, and thus qualifies as an “other consumer asset account” for purposes of Regulation E, will depend on the account’s specific features.

<sup>44</sup> Regulation E comment 2(b)-1.i.

<sup>45</sup> Regulation E comment 2(b)-1.ii.

accounts,<sup>46</sup> as well as any securities and commodities accounts that are functionally similar to checking or savings accounts.<sup>47</sup>

#### 4. *Exceptions for securities and commodities*

EFTA and Regulation E both contain specific securities and commodities exceptions to the definition of EFT.<sup>48</sup> As implemented in Regulation E, these specific exceptions include any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity if, among other things, the security or commodity is regulated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC) or purchased or sold through a broker-dealer regulated by the SEC or through a futures commissions merchant regulated by the CFTC.<sup>49</sup> This exception is limited to EFTs which have as their primary purpose the purchase or sale of commodities or securities, and does not reach instances where securities or commodities are used as “funds” in an “account” to purchase goods or services.<sup>50</sup>

Put another way, EFTA generally does not apply to the purchase or sale of a stock or bond.<sup>51</sup> But it could apply if a stock, bond, or other form of funds in an investment account—including funds and accounts also regulated by the SEC or CFTC—is used to purchase goods or services from a retailer. Indeed, the longstanding Official Commentary to Regulation E makes

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<sup>46</sup> 12 CFR 1005.11(c)(2)(i)(B).

<sup>47</sup> 12 CFR 1005.3(c)(4); Regulation E comment 3(c)(4)-3.i; *see also*, 61 FR 19680 (May 2, 1996).

<sup>48</sup> EFTA section 903(7); 15 U.S.C. 1693a(7); 12 CFR 1005.3(c).

<sup>49</sup> 12 CFR 1005.3(c)(4).

<sup>50</sup> *See* S. Rept. 95-915 at 4 (explaining that EFTA would cover, for example, instances where a mutual fund issues “an EFT card which would draw on the consumer’s fund shares. Each time the card would be used, the fund could instantaneously redeem shares necessary to cover a payment and transfer the funds to the payee”).

<sup>51</sup> *Nero v. Uphold HQ Inc.*, 688 F. Supp. 3d 134, 144 (S.D.N.Y. 2023). (“[P]ersonal asset accounts that are investment accounts like the money market mutual fund accounts identified in the Senate Report or [certain] cryptocurrency accounts . . . , are accounts covered by the EFTA. This is true even though a transaction from those accounts may not be subject to the EFTA in the event it is a transaction for the purchase or sale of a security regulated by the SEC.”)

clear that EFTs from a securities account to purchase goods or services or obtain cash are regulated under EFTA.<sup>52</sup>

### 5. *Consumer protections under EFTA and Regulation E*

Financial institutions have a number of legal obligations under EFTA and Regulation E. Among the most important are error resolution and limits on consumers' liability for unauthorized EFTs, and well as initial and ongoing disclosures. A financial institution has investigation and error resolution obligations under Regulation E when a consumer notifies the financial institution of an error, with limited exceptions.<sup>53</sup> EFTA and Regulation E define the term "error" to include, among other things, "an unauthorized electronic fund transfer."<sup>54</sup> Subject to certain exceptions, Regulation E defines an unauthorized EFT to mean an EFT from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit.<sup>55</sup> Unauthorized EFTs include transfers initiated by a person who obtained a consumer's access device through fraud or robbery and consumer transfers at an ATM that were induced by force. Another example of an unauthorized EFT is when a bad actor obtains a consumer's account credential through computer hacking or other forms of cyber theft and uses that credential to steal funds.<sup>56</sup> EFTA and

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<sup>52</sup> Regulation E comment 3(c)(4)-3.i; *see also*, 61 FR 19680 (May 2, 1996). The SEC has authority to enforce EFTA against broker-dealers that are subject to the Securities Exchange Act. 15 U.S.C. 1693o(a)(4). This interpretive rule is not intended to limit the authority of the SEC under the Securities Exchange Act or the CFTC under the Commodities Exchange Act.

<sup>53</sup> 15 U.S.C. 1693f(a); 12 CFR 1005.11(b). Regulation E also tailored certain error resolution obligations for prepaid accounts. 12 CFR 1005.18(e).

<sup>54</sup> 15 U.S.C. 1693f(f)(1); 12 CFR 1005.11(a)(1)(i).

<sup>55</sup> However, the CFPB reiterates here that nothing in this proposed interpretive rule would change the existing statutory or regulatory exceptions to the definition of EFT.

<sup>56</sup> 12 CFR 1005.2(m); Regulation E comments 2(m)-3 and 4; *see also* CFPB, *Electronic Fund Transfers FAQs*, <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#unauthorized-eft> (last visited Dec. 2, 2024).

Regulation E place limits on a consumer’s liability for unauthorized EFTs, based on a number of factors.

A financial institution must provide initial disclosures of the terms and conditions of EFT services before the first EFT is made or at the time the consumer contracts for an EFT service.<sup>57</sup> The disclosures must include a summary of various consumer rights under Regulation E, including the consumer’s liability for unauthorized EFTs, the types of EFTs the consumer may make, limits on the frequency or dollar amount, fees charged by the financial institution, and the error-resolution procedures. Regulation E also requires a financial institution to provide regular, periodic statements, and change-in-terms notices.<sup>58</sup> Regulation E contains model forms and clauses with respect to the required disclosures.<sup>59</sup> Note that accounts that separately meet the definition of a gift card would have different obligations under the Gift Card Rule and generally would not be subject to the remainder of subpart A of Regulation E.<sup>60</sup>

In sum, market participants offering new types of payment mechanisms to facilitate electronic fund transfers should understand whether their account meets the definition of “other consumer asset account,” including whether it is established for “personal, family, or household purposes.”

### **III. Regulatory Matters**

This is a proposed interpretive rule issued under the CFPB’s authority to interpret EFTA and Regulation E, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance as may be necessary or appropriate to enable the CFPB to

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<sup>57</sup> EFTA section 905; 15 U.S.C. 1693c; *see generally* 12 CFR 1005.7.

<sup>58</sup> 12 CFR 1005.8 and 9(b).

<sup>59</sup> *See generally* 12 CFR part 1005, app. A.

<sup>60</sup> *See* 12 CFR 1005.20; *see also* 81 FR 83934 at 83977 (discussing interaction of the Gift Card Rule and the Prepaid Rule).

administer and carry out the purposes and objectives of Federal consumer financial laws.<sup>61</sup>

While not required under the Administrative Procedure Act (APA), the CFPB is soliciting comments on the proposal and may make revisions when it issues a final interpretive rule as appropriate in light of feedback received.

By operation of EFTA section 916(d), no provision of EFTA sections 916 or 917 imposing liability would apply to any act done or omitted in good faith in conformity with the final interpretive rule, notwithstanding that after such act or omission has occurred, the final interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.<sup>62</sup>

The CFPB has determined that this proposed interpretive rule, if finalized, would not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.<sup>63</sup>

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<sup>61</sup> 12 U.S.C. 5512(b)(1).

<sup>62</sup> 15 U.S.C. 1693m(d).

<sup>63</sup> 44 U.S.C. 3501 through 3521.