

No. 22-1954

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Yagoub M. Mohamed et al.,
individually, and on behalf of
all others similarly situated,

Plaintiff-Appellant,

v.

Bank of America, N.A.,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Maryland
Hon. Catherine C. Blake
Case No. 21-cv-01283-CCB

BRIEF OF AMICUS CURIAE
CONSUMER FINANCIAL PROTECTION BUREAU
IN SUPPORT OF PLAINTIFF-APPELLANT

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INTEREST OF AMICUS

The Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693 *et seq.*, provides a framework of rights and responsibilities for financial institutions, consumers, and intermediaries who transfer funds electronically. The Consumer Financial Protection Bureau (“Bureau” or “CFPB”) is charged with promulgating rules under EFTA, *id.* § 1693b, as well as enforcing the statute’s requirements, *id.* § 1693o; *see also* 12 U.S.C. § 5481(12), (14) (including EFTA in the list of “Federal consumer financial laws” that the Bureau administers). The rules implementing EFTA are known as Regulation E. *See* 12 C.F.R. pt. 1005.

This case concerns the scope of accounts covered under EFTA and Regulation E. The district court erred when it applied a regulatory exclusion to hold that prepaid accounts loaded with pandemic unemployment benefits were excluded from coverage. This holding is unsupported by the statutory and regulatory text and, in addition, undermines the primary purpose of EFTA to provide individual rights to consumers.

As the agency primarily responsible for interpreting, implementing, and enforcing the protections under EFTA, the Bureau has a substantial interest in this Court’s resolution of the question presented in this appeal. The Bureau regularly receives complaints from consumers about prepaid cards, and the number of those complaints rose sharply with the onset of the Covid-19 pandemic. Indeed, the

Bureau received an increased number of complaints about government benefit prepaid cards, especially cards loaded with unemployment benefits. Given the importance of these benefits to consumers, especially at the height of the pandemic when unemployment rates surged, it is imperative that consumers receive the protections to which they are legally entitled. For all these reasons, the Bureau has a substantial interest in this Court’s resolution of the question presented in this appeal.

STATEMENT

A. Prepaid Cards

Prepaid cards play an important role in the lives of consumers. A study by the Federal Deposit Insurance Corporation (“FDIC”) found that about 6.9 percent of U.S. households were using prepaid cards as of June 2021. *See FDIC, 2021 FDIC National Survey of Unbanked and Underbanked Households 31 (Oct. 2022),* <https://bit.ly/3F7GwmG>.

Economically vulnerable households often use prepaid cards at higher rates. According to the FDIC study, among households in which no one had a bank account (*i.e.*, unbanked households), 32.8 percent used prepaid cards, compared to only 5.7 percent of banked households. *Id.* at 31. Prepaid card use was also higher among lower-income households (13.4 percent of households earning under \$15,000), households with no high school diploma (11.8 percent), working-age

households with a disability (13.6 percent), and households where the householder identifies as Black (12.6 percent), American Indian or Alaskan Native (11 percent), Hispanic (7.3 percent), or two or more races (9.5 percent). *Id.*

Federal and state government offices often use prepaid cards to distribute government benefits, such as unemployment insurance benefits, child support, Social Security, and other benefits. *See What Is a Government Benefit Card?*, CFPB (Sept. 4, 2020), <https://bit.ly/3UVFeS0>. In 2020, at the onset of the Covid-19 pandemic, disbursements to these prepaid cards skyrocketed. Across reported programs, government offices disbursed \$408.9 billion on prepaid cards in 2020, a roughly 200 percent increase from 2019. This increase was driven largely by increased unemployment benefits, which, due to pandemic-related programs, jumped up to \$232 billion and represented the greatest share of government funds disbursed on prepaid cards in 2020. *See Bd. of Governors of Fed. Reserve Sys., Report to Congress on Government-Administered, General-Use Prepaid Cards 2-3* (Oct. 2021), <https://bit.ly/3O6aXxK>.

At the same time, consumer complaints about prepaid cards rose as well. In 2020, the Bureau received about 8,500 consumer complaints about prepaid cards, which was significantly more than in previous years. *See CFPB, Consumer Response Annual Report, January 1 – December 31, 2020, at 69–72* (March 2021), <https://bit.ly/3g4LEQb>. This included complaints about government benefit

prepaid cards, which saw a 673 percent increase in the number of complaints from the average for the prior two years—in large part due to government programs that distributed funds to consumers through prepaid debit cards in response to Covid-19. *Id.* at 70–71. Indeed, government benefit prepaid cards were the most complained about type of prepaid card in 2020 and 2021. *Id.*; *see also* CFPB, Consumer Response Annual Report, January 1 – December 31, 2021, at 53 (March 2022), <https://bit.ly/3G7Ikhi>. Some of the most common complaints from consumers who received prepaid cards loaded with unemployment benefits included not receiving cards, card activation problems, loss of account access, and difficulty getting replacement cards. *See* CFPB, Consumer Response Annual Report, 2020, at 72.

In addition to receiving consumer complaints, the Bureau has also taken enforcement actions against financial institutions regarding prepaid cards, and specifically government benefit prepaid cards. *See, e.g.*, Consent Order, *In Re Bank of America, N.A.*, No. 2022-CFPB-0004, 2022 WL 2974670 (July 14, 2022), <https://bit.ly/3uBkDaI>; Consent Order, *In Re JPay, LLC*, No. 2021-CFPB-0006, 2021 WL 5828200 (Oct. 19, 2021), <https://bit.ly/3Y8W425>. For instance, in 2022, the Bureau issued a \$100 million fine against Bank of America for mishandling the disbursement of state unemployment benefits on prepaid cards at the height of the pandemic. *See* *Bank of America*, No. 2022-CFPB-0004 at 34.

B. EFTA and Regulation E

Congress enacted EFTA in 1978 to “provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.” Pub. L. 95–630, 92 Stat. 3641, 3728 (1978) (codified at 15 U.S.C. § 1693). EFTA’s primary objective is “the provision of individual consumer rights.” *Id.* Congress also empowered the Federal Reserve Board to promulgate regulations implementing EFTA. *Id.* at 3645. With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, authority to implement most of EFTA transferred to the Bureau. *See* Pub. L. 111–203, 124 Stat. 1376, 2081 (2010). The regulations implementing EFTA are known as Regulation E. *See* 12 C.F.R. pt. 1005.

Together, EFTA and Regulation E impose requirements that financial institutions must follow with regard to electronic fund transfers. As relevant here, EFTA and Regulation E establish a framework for financial institutions to investigate and timely resolve errors in consumers’ accounts. *See* 15 U.S.C. § 1693f; 12 C.F.R. § 1005.11; *see also* 12 C.F.R. § 1005.15(e)(4) (establishing modified error resolution requirements for government benefit accounts). Under this framework, if a consumer notifies a financial institution of an error in their account—such as an unauthorized electronic fund transfer—then the institution must investigate the alleged error and share the results with the consumer within 10

business days; if an error has occurred, the institution must correct it within 1 business day of determining that an error occurred, including by crediting the consumer with interest. 15 U.S.C. § 1693f(a)–(b), (f); 12 C.F.R. § 1005.11(a)(1)(i), (c)(1). As an alternative approach, the institution may take 45 days to investigate the error, but it must provisionally credit the consumer’s account within 10 business days of receiving notice of the alleged error, and the consumer must have full use of the provisional funds during the pendency of the investigation. 15 U.S.C. § 1693f(c); 12 C.F.R. § 1005.11(c)(2). Finally, if the institution determines that no error occurred, then it must provide a written explanation of its findings within 3 business days after the conclusion of its investigation. 15 U.S.C. § 1693f(d); 12 C.F.R. § 1005.11(d).

Financial institutions must comply with these requirements with respect to an account as defined in EFTA and Regulation E. Under EFTA, a consumer “account” means, in pertinent part, a “demand deposit, savings deposit, or other asset account . . . , as described in regulations of the Bureau, established primarily for personal, family, or household purposes.” 15 U.S.C. § 1693a(2).

Since shortly after EFTA’s passage, the responsible agencies (first the Federal Reserve Board, then the Bureau) have promulgated regulations (known as Regulation E) to further define the scope of covered accounts. The Board first adopted rules implementing Regulation E in 1979. *See Authority, Purpose and*

Scope, Definitions, Exemptions, Issuance of Access Devices, Liability of Consumer for Unauthorized Transfers, and Model Disclosure Clauses, 44 Fed. Reg. 18468 (1979) (“1979 EFT Rule”). That original regulation simply echoed the statute’s definition of “account.” *Id.* at 18480. The Board later stated in official staff commentary that this definition did not cover government benefit accounts. *See* Electronic Fund Transfers; Official Staff Commentary Update, 52 Fed. Reg. 10734, 10734 (1987).

In 1994, the Board changed course and amended Regulation E to bring government benefit accounts within the scope of the rule. *See* Electronic Fund Transfers, 59 Fed. Reg. 10678, 10678–80 (1994) (“1994 Government Benefit Rule”). The Board explained that, in general, “all consumers using [electronic fund transfer] services should receive substantially the same protection under the EFTA and Regulation E,” and that there was no showing that the costs of applying Regulation E to government benefit accounts outweighed “the need for consumer protections.” *Id.* at 10680. The Board therefore added a new section that extended Regulation E’s protections, with certain limited adjustments, to government benefit accounts—that is, any “account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.” *Id.* at 10683.

Shortly thereafter, Congress amended EFTA to exempt state and local “needs-tested” electronic benefit transfer programs from coverage. *See Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. 104–193, 110 Stat. 2105 (1996). In response, the Board adopted a rule implementing these changes and exempting from Regulation E “needs-tested [electronic benefit transfer] programs that are established or administered by state or local government agencies.” *See Electronic Fund Transfers*, 62 Fed. Reg. 43467, 43467 (1997) (“1997 Government Benefit Rule”). Needs-tested programs “generally take a recipient’s income or other resources into account to determine the appropriate level of benefits,” *id.* at 43467, and thus unemployment benefits (which do not depend on income) are not needs-tested, *see id.* (clarifying unemployment benefits “remain covered” by Regulation E); *see also* 15 U.S.C. § 1693b(d)(2)(A)(ii) (providing that system for distributing “needs-tested” benefits does not include “unemployment benefits”).

The 1997 Government Benefit Rule established the definition of a “government benefit account” that remains in effect today. And after primary authority to implement EFTA had transferred to the Bureau, the Bureau replicated the Board’s definition in the Bureau’s Regulation E. *See Electronic Fund Transfers*

(Regulation E), 76 Fed. Reg. 81020 (2011). Under that definition, a government benefit account is:

[A]n account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

12 C.F.R. § 1005.15(a)(2).

Most recently, in 2016, the Bureau promulgated a rule to expressly cover prepaid accounts and to create new and modified provisions specific to those accounts. *See Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)*, 81 Fed. Reg. 83934, 83934 (2016) (“Prepaid Rule”). The Prepaid Rule established the definition of a consumer “account” that remains in effect today.

That definition specifies that an “account” under Regulation E “includes a prepaid account.” 12 C.F.R. § 1005.2(b)(3)(i). The rule then provides a definition of “prepaid account” that contains four paragraphs (A) through (D) identifying four categories of accounts that each qualify as a “prepaid account.”

The first two paragraphs list specific categories of accounts that were, at the time of the Prepaid Rule’s promulgation, “currently covered under Regulation E.” Prepaid Rule, 81 Fed. Reg. at 83934. First, paragraph (A) covers a “payroll card account,” 12 C.F.R. § 1005.2(b)(3)(i)(A), which Regulation E has covered since

2006, *see* Electronic Fund Transfers, 71 Fed. Reg. 51437 (2006). Second, paragraph (B) covers a “government benefit account,” as defined in § 1005.15(a)(2),” *id.* § 1005.2(b)(3)(i)(B), which Regulation E has covered since the mid-1990s, *see supra* pp. 7–9. The Bureau explained that while government benefit accounts were already defined in § 1005.15(a)(2), “it was appropriate to explicitly add such accounts used for the distribution of government benefits as a stand-alone sub-definition of prepaid account as well.” Prepaid Rule, 81 Fed. Reg. at 83969.

The third and fourth paragraphs extend coverage to general categories of prepaid accounts that Regulation E had not clearly covered before. The third category is Paragraph (C): an “account that is marketed or labeled as ‘prepaid’ and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines.” 12 C.F.R. § 1005.2(b)(3)(i)(C). And the fourth category is Paragraph (D): an account that “is issued on a prepaid basis in a specified amount” or “capable of being loaded with funds” after issuance, whose “primary function” is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct person-to-person transfers, and “is not a checking account, share draft account, or negotiable order of withdrawal account.” *Id.* § 1005.2(b)(3)(i)(D).

Finally, the Prepaid Rule adopted a number of exclusions from the definition of prepaid accounts “[f]or purposes of paragraphs (C) and (D)”—*i.e.*, the new

categories added to Regulation E’s coverage—and not for purposes of paragraphs (A) or (B) covering payroll card accounts and government benefit accounts—*i.e.*, the categories already covered under Regulation E. As relevant here, one such exclusion “[f]or purposes of paragraphs (C) and (D)” only is “[a]n account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments.” *Id.* § 1005.2(b)(3)(ii)(B); *see also id.* pt. 1005, Supp. I ¶ 2(b)(3)(ii)-2 (explaining that those excluded “qualified disaster relief payments” are “funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b)”). The Bureau added this specific exclusion because it concluded that the burden of requiring those accounts to comply with the new rule “outweighs the potential utility of those requirements to consumers who have had the misfortune of experiencing a disastrous event.” Prepaid Rule, 81 Fed. Reg. at 83976.

C. Factual and Procedural Background

In 2020, Plaintiff-Appellant Yagoub Mohamed was working as a mechanic at a small business that he owned in Baltimore. JA 24.¹ When the Covid-19 pandemic hit, Mr. Mohamed faced a sudden loss of revenue and, in July 2020,

¹ The description of facts provided is based on the district court’s order, JA 213-224, and the facts pled in the complaint, JA 7-50, which are assumed to be true based on the procedural posture of the case, *see Lucero v. Early*, 873 F.3d 466, 469 (4th Cir. 2017).

closed his business. JA 25. That same month, he applied for unemployment insurance benefits from the Maryland Department of Labor’s Division of Unemployment Insurance, which determined that he was entitled to receive \$14,644 in unemployment benefits. JA 25.

Mr. Mohamed was eligible for unemployment benefits under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which established Pandemic Unemployment Assistance (“PUA”) for individuals who were not eligible for unemployment benefits under state or federal law—such as self-employed workers. Pub. L. 116–136, § 2102, 134 Stat. 281, 313–17 (2020) (codified at 15 U.S.C. § 9021); *see also* JA 214. In Maryland, unemployment benefits, including PUA, were administered by the Department of Labor’s Division of Unemployment Insurance, which contracted with Bank of America (the “Bank”) to issue the unemployment benefits on prepaid debit cards. JA 11–13.

Mr. Mohamed opted to receive his benefits via a prepaid debit card (as opposed to paper check). JA 25, 214. From the start, however, Mr. Mohamed faced a series of obstacles in trying to access his benefits. First, it took several months for the card to arrive from the Bank. JA 25. And when the card finally arrived on December 5, 2020, Mr. Mohamed learned that the card had an account balance of \$0. JA 26. The next day, Mr. Mohamed called the Bank, and a representative informed him that the account had been depleted with numerous charges, none of

which Mr. Mohamed authorized. JA 26. So, Mr. Mohamed submitted a claim to notify the Bank of the error in his account. JA 27–28. The Bank then froze Mr. Mohamed’s account due to “irregular, unauthorized, or unlawful activities,” and would not allow him to use or access his account. JA 29. Over the next few months, Mr. Mohamed persisted in trying to access his stolen funds, repeatedly calling the Bank for help, but the Bank failed to resolve his claim. JA 31–32. According to one representative, the Bank stopped processing his claim, and according to another, the Bank twice denied his claim. JA 30–32. At no point did the Bank explain to Mr. Mohamed why his claim was denied. JA 32.

On May 24, 2021, Mr. Mohamed filed a class-action lawsuit against the Bank on behalf of himself and all other similarly situated persons. JA 7–50. Among other things, Mr. Mohamed asserted that the Bank had violated the error resolution requirements of EFTA, 15 U.S.C. § 1693f, and Regulation E, 12 C.F.R. § 1005.11. JA 37–41. Specifically, Mr. Mohamed alleged that the Bank had failed to complete good-faith investigations of consumer claims within 10 business days, failed to provide provisional credit to consumers for claims that could not be resolved within 10 business days, failed to credit consumers with interest, and froze consumers’ accounts to delay investigations and prevent consumers from accessing their funds. JA 38–39.

It was only after Mr. Mohamed filed suit that the Bank finally credited his account for his lost unemployment benefits, on June 25, 2021, eleven months after he initially applied for unemployment to the Maryland Division of Unemployment Insurance. JA 216.

Before the district court, the Bank conceded that if Regulation E applied to Mr. Mohamed’s account, then Mr. Mohamed had pled a claim at least for statutory damages. JA 220, 242–43. Nonetheless, the Bank moved to dismiss, arguing that Mr. Mohamed failed to “plausibly establish that his prepaid debit card account is covered by EFTA and Reg E.” JA 80. The Bank relied on the provision of Regulation E that excludes from part of the definition of a covered “prepaid account” any account that is “directly or indirectly established through a third party and loaded only with qualified disaster relief payments.” JA 80. According to the Bank, Mr. Mohamed’s account was “established by” the Bank, and the PUA benefits were “qualified disaster relief payments,” and therefore Mr. Mohamed’s account was excluded from coverage. JA 80.

The district court granted the motion and dismissed the case. Without first analyzing whether and how Mr. Mohamed’s account met the definition of a covered “account,” the court applied Regulation E’s exclusion of prepaid accounts established through a third party and loaded with qualified disaster relief payments. JA 222. The court reasoned that the case hinges on this exclusion—“If the PUA

payments are qualified disaster relief payments, then Mr. Mohamed’s account is carved out of the definition of ‘prepaid accounts’ under EFTA, and he cannot bring his federal EFTA claim.” JA 222. Against this backdrop, the court found that the CARES Act “referred to the pandemic itself, which was subsequently declared a disaster” by the President. JA 223. Thus, the court held that the “PUA payments were ‘qualified disaster relief payments’” and “excluded from the definition of ‘prepaid account,’ therefore falling outside of EFTA’s definition of covered ‘accounts.’” JA 223–24.

Mohamed filed this appeal on September 6, 2022. JA 226–27.

SUMMARY OF ARGUMENT

Congress enacted EFTA to provide individual rights to consumers who participate in electronic fund transfer systems. Under EFTA, if a consumer notifies a financial institution about an error—such as an unauthorized transfer from their account, as Mr. Mohamed alleged—then the institution must investigate and resolve the error. The Bank does not dispute its obligations under EFTA to investigate and timely resolve errors such as the one alleged by Mr. Mohamed; it disputes only whether EFTA applies to his account at all. The pertinent question in this appeal, then, is whether Mr. Mohamed’s account meets the definition of “account” such that the Bank is liable for its failure to abide by EFTA’s error resolution requirements. The answer to that question is yes.

The term “account” is defined in Regulation E to include a prepaid account, and one type of prepaid account is a “government benefit account.” 12 C.F.R. § 1005.2(b)(3)(i)(B). Here, Mr. Mohamed’s account is a “government benefit account” because it was established by a government agency to distribute government benefits to him electronically. While Regulation E contains certain exclusions from the definition of prepaid accounts, those exclusions do not apply to a prepaid account that is a government benefit account. *See id.* at § 1005.2(b)(3)(ii).

Since Mr. Mohamed’s account meets the definition of a government benefit account, no exclusions apply, and no further analysis is necessary. The district court’s entire discussion of whether PUA benefits could be considered “qualified disaster relief payments” is thus irrelevant, since the exclusion for qualified disaster relief payments does not apply to a government benefit account. Accordingly, Mr. Mohamed’s account is a covered account under EFTA and Regulation E, and the district court erred in dismissing the case.

ARGUMENT

The Plaintiff’s Account Is Covered Under EFTA and Regulation E

When interpreting a regulation, this Court “us[es] the same rules applicable to statutory construction.” *United States v. Moriello*, 980 F.3d 924, 934 (4th Cir.

2020). Thus, if the regulatory text “has a plain and ordinary meaning,” this Court “need look no further and should apply the regulation as it is written.” *Id.*

Here, under the plain text of Regulation E, Mr. Mohamed’s account is a covered account, and Mr. Mohamed has adequately pled a claim for the Bank’s failure to comply with the error resolution obligations under EFTA and Regulation E. First, Mr. Mohamed’s account meets the definition of an account because it is a prepaid account—specifically, a government benefit account. Second, since Mr. Mohamed’s account satisfies the definition of a government benefit account, the district court erred in applying the exclusion for qualified disaster relief payments, since this exclusion does not apply to government benefit accounts. Therefore, Mr. Mohamed’s account is a covered account under EFTA and entitled to its statutory and regulatory protections.

A. The Plaintiff’s Account Is a Government Benefit Account

First, Mr. Mohamed’s account is a covered account because it is a “government benefit account.” *See* 12 C.F.R. § 1005.2(b)(3)(i)(B).

EFTA imposes obligations on financial institutions to investigate and timely resolve errors in a consumer’s account. *See* 15 U.S.C. § 1693f. These obligations apply to an “account,” which is defined in the statute to mean “a demand deposit, savings deposit, or other asset account … as described in regulations of the Bureau, established primarily for personal, family, or household purposes.” *Id.* § 1693a(2).

The scope of covered accounts is further detailed in Regulation E. Under Regulation E, the term “account” includes a “prepaid account,” 12 C.F.R. § 1005.2(b)(3), which is then broken down into four categories of prepaid accounts, *id.* § 1005.2(b)(3)(i)(A)–(D). These categories of prepaid accounts are separated by the word “or,” which is “almost always disjunctive,” *see Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1141 (2018), meaning an account qualifies as a “prepaid account” if it falls within any one of the four categories.

One of the listed prepaid accounts is a “government benefit account,” 12 C.F.R. § 1005.2(b)(3)(i)(B), which is defined by reference to 12 C.F.R. § 1005.15(a)(2). This provision in turn defines a “government benefit account” as “an account established by a government agency for distributing government benefits to a consumer electronically … but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.” *Id.* Mr. Mohamed’s account meets this definition because it was established by a government agency (Maryland Division of Unemployment Insurance) to distribute government benefits (PUA) to the consumer electronically (through a prepaid debit card), and it is not loaded with

needs-tested benefits.² Thus, Mr. Mohamed’s account is a government benefit account.³

Indeed, Mr. Mohamed’s account operates like an account that holds traditional unemployment benefits, which are administered in Maryland by the same state agency and distributed through the same electronic methods. JA 11.⁴ And traditional unemployment benefit accounts have long been deemed government benefit accounts covered under Regulation E. *See Prepaid Rule*, 81 Fed. Reg. at 84320 n.956 (“All prepaid cards used to distribute … State and local non-needs tested benefits (such as unemployment, child support, and pension

² As discussed above, *supra* p. 8, needs-tested benefits are those that take a recipient’s income or other resources into account to determine the appropriate level of benefits, such as benefits under Temporary Assistance for Needy Families, Special Supplemental Nutrition Program for Women, Infants, and Children, and the Supplemental Nutrition Assistance Program. *See 1997 Government Benefit Rule*, 62 Fed. Reg. at 43467; *Prepaid Rule*, 81 Fed. Reg. at 83942. Unemployment insurance payments are not needs-tested benefits. *See Prepaid Rule*, 81 Fed. Reg. at 83995 (listing “unemployment insurance” as example of a “non-needs tested” program).

³ Because Mr. Mohamed’s account is a government benefit account as defined in subparagraph (B), it is unnecessary to consider whether Mohamed’s account is one of the other types of prepaid accounts set forth in subparagraphs (C) or (D), since satisfying any one type of account is sufficient to qualify as a covered account.

⁴ The Maryland Division of Unemployment Insurance has since ended its contract with the Bank to issue prepaid debit cards and now relies on a system of direct deposit through a contract with another bank. JA 15. Prior to this change, however, the Division relied on the Bank to issue prepaid debit cards for distributing unemployment benefits—including both regular unemployment and extended unemployment such as PUA. JA 11-15.

payments) are currently covered by Regulation E.”); 1997 Government Benefit Rule, 62 Fed. Reg. at 43468 (“Government benefits that remain covered include ... state and local benefits that are employment-related such as ... unemployment benefits.”).

The district court never addressed whether the account was a “government benefit account.” The Bank argued, however, that Mr. Mohamed’s account was not a government benefit account because it was “established” by the Bank, rather than the state agency. *See JA 80, 244–45.* This position is incorrect. First, contrary to the Bank’s assertion, Mr. Mohamed’s complaint does not allege that the Bank established the account, but rather that the Bank issued and administered the account. *See JA 15.* And this is precisely how government benefits such as unemployment payments operate: a state agency establishes the benefit account and then contracts with a bank to issue a prepaid card, manage and distribute the benefits, and fully comply with the requirements of Regulation E, including its error resolution requirements.⁵ Indeed, Regulation E has long made clear that a government benefit account is established by a government agency, “whether or

⁵ See Prepaid Product Agreements Database, CFPB, <https://bit.ly/3ePNfZg> (select “Narrow results by” the prepaid product type “Government benefits” to see list of prepaid product agreements between government agencies and financial institutions (listed as “Issuer”)) (last visited January 10, 2023); *see also* JA 64 (defining “Card” in account agreement to mean “Government Prepaid Debit Card issued by us on behalf of Maryland Department of Labor” (emphasis added)).

not the account is directly held by the agency or a bank or other depository institution.” 1997 Government Benefit Rule, 62 Fed. Reg. at 43468. Thus, Mr. Mohamed’s account was established by the Maryland Department of Labor’s Division of Unemployment Insurance notwithstanding the agency’s contract with the Bank to distribute the benefits.

Accordingly, Mr. Mohamed’s account is a government benefit account under Regulation E and a covered account under EFTA.

B. Government Benefit Accounts Are Not Subject to the Prepaid Account Exclusions

Because Mr. Mohamed’s account is a government benefit account, it is not subject to the prepaid account exclusions listed in 12 C.F.R. § 1005.2(b)(3)(ii).

Under Regulation E, certain types of accounts are excluded from part of the definition of a prepaid account. As relevant here, Regulation E provides that, “[f]or purposes of paragraphs (b)(3)(i)(C) and (D) of this section, the term ‘prepaid account’ does not include … [a]n account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments.” 12 C.F.R. § 1005.2(b)(3)(ii)(B).

The district court relied on this exclusion to find that Mr. Mohamed’s account was not covered by EFTA. But the text of Regulation E makes clear that the exclusions in § 1005.2(b)(3)(ii) (including the exclusion relating to disaster relief payments) apply “[f]or purposes of paragraphs (b)(3)(i)(C) and (D),” the two

new categories of account that the Bureau added when it adopted the Prepaid Rule in 2016. *See id.* (emphasis added); *see also supra* pp. 9–10. In other words, only those two subparagraphs are subject to the § 1005.2(b)(3)(ii) exclusions. Here, because Mr. Mohamed’s account is a government benefit account—listed in paragraph (B)—it is not subject to the exclusion for accounts loaded with qualified disaster relief payments, nor any of the other exclusions listed in § 1005.2(b)(3)(ii). Thus, it is unnecessary to consider the ancillary question of whether Mr. Mohamed’s account was loaded with qualified disaster relief payments. Upon satisfying the definition for a government benefit account, Mr. Mohamed’s account meets the definition of a prepaid account, and no further analysis is needed—Mr. Mohamed’s account is a covered account under Regulation E and EFTA.

Additionally, even though the regulatory language unambiguously limits Regulation E’s exclusions to subparagraphs (C) and (D), other rules of construction confirm this reading. *See Moriello*, 980 F.3d at 934. To start, an expanded application of the exclusions in Regulation E would render superfluous the limitation in the regulatory text that these exclusions are “[f]or purposes of paragraphs (b)(3)(i)(C) and (D) of this section,” 12 C.F.R. § 1005.2(b)(3)(ii)(B). And because this Court favors interpretations “that give effect to every clause and word” of a provision, *United States v. Young*, 989 F.3d 253, 259 (4th Cir. 2021)

(construing a statute), the canon against surplusage favors a reading that limits Regulation E’s exclusions to subparagraphs (C) and (D) only.

Moreover, looking at the text as a whole reinforces this reading. *See Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748 (2019) (“The text must be construed as a whole.” (*quoting* A. Scalia & B. Garner, *Reading Law* 167 (2012))). In particular, Regulation E also provides that, “[f]or purposes of paragraphs (C) and (D),” the term “prepaid account” does not include “[a]n account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency, as set forth in § 1005.15(a)(2).” 12 C.F.R. § 1005.2(b)(3)(ii)(E). It would be superfluous to apply that exclusion for purposes of paragraph (B) as well because paragraph (B) already excludes such needs-tested benefit accounts. Specifically, paragraph (B) covers a “government benefit account,” as defined by § 1005.15(a)(2)—and that provision, as discussed above, *supra* pp. 8–9, excludes from the definition of a “government benefit account” those accounts for distributing state and local needs-tested benefits. By adopting the same exclusion for purposes of paragraphs (C) and (D) of the definition of “prepaid account” as well, the Bureau intended to “make clear that accounts excluded from the definition of government benefit account in § 1005.15(a)(2) are also excluded from the general definition of prepaid account in

§ 1005.2(b)(3).” Prepaid Rule, 81 Fed. Reg. at 83978. Applying this exclusion for purposes of paragraphs (C) and (D) only reflects this intent.

Finally, the preamble to the Prepaid Rule confirms that the Bureau did not intend to narrow or in any way change what government benefit accounts would be covered when it adopted the exclusion for qualified disaster relief payments. *See E. Associated Coal Corp. v. Dir., Off. of Workers’ Comp. Programs*, 805 F.3d 502, 512 (4th Cir. 2015) (relying on “the text of the statute and regulations, as well as the preamble”). As the preamble explains, Regulation E has long covered government benefit accounts. Prepaid Rule, 81 Fed. Reg. at 83946, 83995 (detailing regulatory history). The Bureau understood “that the existing scope of the definition, which has been in place since 1997, is well-established and forms the basis of current industry, government, and consumer practices,” and the Bureau did not intend to “unsettle[] the status quo with respect to the scope of coverage for government benefit accounts.” *Id.* at 83995–96. The Bureau recognized the current definition of covered government benefit accounts and made clear that the Prepaid Rule “does not change this.” *Id.* at 84320 n.956; *see also* CFPB, Prepaid Rule’s Key Changes for Government Benefit Accounts 1 (Jan. 25, 2018), <https://bit.ly/3iwvfVD> (“The Prepaid Rule does not change which prepaid accounts that distribute government benefits are or are not subject to Regulation E.”). Thus, the preamble evinces the Bureau’s intent to maintain the long-standing definition

of government benefit accounts, and it would be contrary to that intent to read the exclusion for accounts loaded with qualified disaster relief payments to limit the scope of what government benefit accounts are covered by Regulation E.

In short, the text and history of Regulation E and EFTA confirm that the exclusion for qualified disaster relief payments does not apply to a government benefit account, and therefore Mr. Mohamed's account is not excluded from coverage under Regulation E or EFTA.

CONCLUSION

For the reasons set forth above, Mr. Mohamed's account is a government benefit account, and the exclusion for qualified disaster relief payments does not apply. The district court's order should be reversed.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 5,572 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

I further certify that this document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

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