

Practice Update

CFPB Proposes Extending Consumer Protections to Accounts Holding Stablecoins, Video Game Currency, and Rewards Points

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After years of speculation, the Consumer Financial Protection Bureau (“CFPB”) finally took a concrete step towards regulating cryptocurrencies. The Bureau is seeking comment on a [proposed interpretative rule](#) that would apply the Electronic Fund Transfer Act (“EFTA”) and its implementing regulation, Regulation E, to digital payment mechanisms, including some cryptocurrencies, stablecoins, video game currencies, and rewards points. Its proposal would, for the first time, acknowledge that providers of certain non-fiat means of exchange are subject to the rules that already exist to protect consumers’ bank accounts,^[1] such as, initial disclosure,^[2] error resolution,^[3] and unauthorized transfer requirements.^[4] In other words, in what is likely the final two weeks in office for its current director, the CFPB issued potentially controlling guidance on crypto.

Like its other recent interpretative rules, the CFPB does not provide details on how to comply with the rule and does not address the costs of doing so. For example, the CFPB neither explains whether accounts holding these types of funds would be “mobile wallets” subject to Regulation E’s prepaid account provisions, nor does it explain when they

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are instead subject to that rule's gift card provisions. Indeed, as the proposed interpretation does not change regulatory text or add explanatory commentary, it is likely to create more questions than it answers. But, because the CFPB will almost certainly have new leadership by March, the future of this proposed interpretation is unclear, at best.

I. The Existing Legal Framework

Congress passed EFTA in 1978.[5] As noted in EFTA itself, Congress found “the use of electronic systems to transfer funds provide[d] the potential for substantial benefits to consumers.”[6] “However,” it continued, “due to the unique characteristics of such systems, the application of existing consumer protection legislation [was] unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.”[7] EFTA was enacted “to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems,” though Congress ultimately considered “the provision of individual consumer rights” EFTA's primary objective.[8]

EFTA largely applies only to “electronic fund transfer[s]”—defined by the statute as “any transfer of funds . . . initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.”[9] It covers “financial institution[s],” broadly defined as “any . . . person who, directly or indirectly, holds an account belonging to a consumer,”[10] and “accounts,” defined as “asset accounts . . . established primarily for personal, family, or household purposes.”[11]

Despite the term's presence throughout the statute, EFTA never defines “funds.” It also excludes from its coverage “the purchase or sale of securities or commodities” in certain circumstances.[12]

The CFPB implements EFTA in Regulation E.^[13] Like EFTA, Regulation E also does not provide a definition for “funds.”

II. The Proposed Interpretive Rule

The CFPB’s proposed rule would interpret “funds” as used in Regulation E 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.”^[14] The Bureau would then explicitly state this definition “include[s] 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,” though the CFPB does not address any specific type of cryptocurrencies, such as Bitcoin or Ethereum.^[15]

The proposed rule would also provide several examples of covered “accounts,” including:

- 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.^[16]

The CFPB notes in support that some courts have already interpreted “funds” to include digital assets.^[17] Likewise, both EFTA and Regulation E define “accounts” as “asset accounts . . . established primarily for personal, family, or household purposes,”^[18] leading courts to find the term adequately described digital asset accounts as the CFPB now proposes.^[19]

The CFPB provides a lengthy narrative underpinning its proposed interpretations of “funds” and “accounts” in EFTA and Regulation E. It cites Facebook’s proposed Libra stablecoin in 2019 and

video game virtual currencies as key developments motivating it to now propose this interpretation.[20] However, the CFPB does not explain why it did not propose to add a “funds” definition to Regulation E using notice and comment rulemaking.

As for video game currencies, an increasingly large number of titles allow players to convert fiat currency into in-game currency, which they may, in turn, convert into in-game assets or, in some cases, transfer to other players.[21] Some titles allow players to then convert their in-game currency back into fiat currency—such as Linden Lab’s Second Life, according to a CFPB report.[22] Alternatively, other titles may not allow conversion to fiat money, but do allow players to share in-game currency between them, effectively enabling third-party markets where these transfers occur in exchange for fiat currencies anyway—such as in Riot Games’ League of Legends, according to the same CFPB report.[23] The increasingly blurred line between digital, video game, and fiat currencies carries consequences: a famous battle in CCP Games’ Eve Online resulted in destroyed virtual assets totaling \$300,000.00 in non-virtual value.[24]

Against this backdrop, with digital assets and alternative currencies increasingly used by consumers, the CFPB asserts its proposed guidance will assist industry participants in avoiding potential liability or a patchwork of inconsistent decisions and state law.[25] The Bureau also contends its interpretation further ensures EFTA’s and Regulation E’s core purpose of protecting consumers.

III. Potential Impact

A. Potential Application

The Proposed Interpretive Rule is just that: a *proposed* interpretation. The CFPB gave the public until March 31, 2025, to submit comments on the proposal, after which the CFPB will decide whether

and how to finalize its interpretation.[26] If the Bureau does implement the interpretation without significant change, and the interpretation is not rejected in a court challenge, it will impact a broad swath of companies across the digital asset industries.

EFTA and Regulation E effectively define entities they regulate as “financial institutions.”[27] If covered, financial institutions must provide consumers initial disclosures and periodic statements for accounts they hold.[28] They must also investigate and correct certain errors using enumerated procedures and within a defined time frame.[29] They may also be unable to recover funds transferred without the consumer’s authorization from the consumer in certain circumstances.[30] If adopted, the CFPB’s proposed interpretive rule could suddenly subject digital asset businesses to these requirements.

B. Potential Securities Exception

Regulation E specifically excludes from “electronic fund transfers” “any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is: [r]egulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission; [p]urchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or [h]eld in book-entry form by a Federal Reserve Bank or Federal agency.”[31] The CFPB, for its part, recognizes this exception in its proposed interpretation, but cautions the carve out is significantly narrower than it may appear although it provides little practical guidance.[32]

The securities exception only applies to those transfers *primarily intended* to purchase or sell a security or commodity.[33] In the CFPB’s view, then, any transfer of digital assets for another, consumer

purchase—even from an account generally intended for securities and investments—could be outside of the exception.^[34] “Put another way, EFTA . . . 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.”^[35] Given the ongoing debate about the application of the securities laws to cryptocurrencies, the breadth of this exception remains unclear.

If you are interested in submitting a comment letter or have questions about the potential application of the proposal, please reach out.

^[1] Press Release, Consumer Fin. Prot. Bureau, CFPB Seeks Input on Digital Payment Privacy and Consumer Protections (Jan. 10, 2025), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-input-on-digital-payment-privacy-and-consumer-protections/>.

^[2] 15 U.S.C. § 1693c; 12 C.F.R. §§ 1005.4, 1005.7, 1005.8, 1005.16, & 1005.19.

^[3] 15 U.S.C. § 1693f; 12 C.F.R. §§ 1005.8 & 1005.11.

^[4] 15 U.S.C. §§ 1693g & 1693h; 12 C.F.R. § 1005.6.

^[5] 15 U.S.C. §§ 1693, et seq.

^[6] 15 U.S.C. § 1693(a).

^[7] *Id.*

^[8] 15 U.S.C. § 1693(b).

^[9] 15 U.S.C. § 1693a(7).

^[10] 15 U.S.C. § 1693a(9).

^[11] 15 U.S.C. § 1693a(2).

[12] 15 U.S.C. §§ 1693a(7)(C) & (D).

[13] 15 U.S.C. §§ 1693(a)(1) & (2); 15 U.S.C. § 1693a(4); 12 C.F.R. Part 1005.

[14] Proposed Interpretation at 12.

[15] *Id.* at 12 and n.36.

[16] *Id.* at 14.

[17] *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498-499 (S.D.N.Y. 2023) (citing *United States v. Issoifov*, 45 F.4th 899, 913-14 (6th Cir. 2022) and *United States v. Day*, 700 F.3d 713, 725 (4th Cir. 2012)).

[18] 15 U.S.C. § 1693a(2).

[19] *Rider*, 657 F. Supp. 3d at 498.

[20] Proposed Interpretation at 5-8.

[21] Consumer Fin. Prot. Bureau, Banking In Video Games and Virtual Worlds, at 19-20 (April 2024), https://files.consumerfinance.gov/f/documents/cfpb_banking-in-video-games-and-virtual-worlds_2024-04.pdf .

[22] *Id.* at 19.

[23] *Id.* at 20.

[24] Wired, Inside the Epic Online Space Battle that Cost Gamers \$300,000 (Feb 8, 2014 at 6:30 a.m.), <https://www.wired.com/2014/02/eve-online-battle-of-b-r/>.

[25] Proposed Interpretation at 9.

[26] *Id.* at 1-2.

[27] 12 C.F.R. § 1005.2(i).

[28] 12 C.F.R. §§ 1005.4, 1005.7 & 1005.9(b).

[29] 12 C.F.R. § 1005.11.

[30] 12 C.F.R. § 1005.6.

[31] 12 C.F.R. § 1005.3(c)(4).

[32] Proposed Interpretation at 15.

[33] 12 C.F.R. § 1005.3(c)(4) (“Any transfer of funds the *primary purpose of which* is the purchase or sale of a security or commodity”) (emphasis added).

[34] Proposed Interpretation at 15.

[35] *Id.*

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