

ALERT

CFPB Proposes Clarifications to the Scope of Regulation E for Digital Assets and Nonbank Payment Platforms

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On Jan. 10, 2025, the Consumer Financial Protection Bureau (“CFPB”) issued a proposed interpretive rule designed to clarify how the Electronic Fund Transfer Act (“EFTA”) and its implementing regulation, Regulation E, apply to modern digital payment systems (the “Proposed Rule”).¹ The Proposed Rule aims to ensure that the protective measures of Regulation E extend to consumers using digital wallets, payment apps, gaming platforms, and digital assets such as stablecoins.

EFTA and Regulation E protect consumers making electronic fund transfers (“EFTs”) using “accounts” established primarily for personal, family or household purposes. An EFT includes any transfer of funds that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of authorizing a financial institution to debit or credit a consumer’s account,² and traditionally includes, but is not limited to, point-of-sale transfers, ATM transfers, direct deposits or withdrawals, telephone transfers, and transfers initiated through a debit card transaction. EFTA and Regulation E offer protections including safeguards against unauthorized transactions, error resolution rights and disclosures.

The Proposed Rule reflects the CFPB’s intent to address perceived gaps in consumer protections as payment technologies evolve. By expanding the scope of Regulation E to align with evolving payment technologies, the CFPB seeks to provide consistent oversight and accountability across established and emerging platforms.

Key Features of the Proposed Rule

The Proposed Rule reflects the CFPB’s intent to ensure that consumers engaging with digital payment systems receive consistent protections, regardless of the technology or platform involved. By expanding its interpretation and clarifying key definitions within EFTA and the Regulation E framework, the CFPB is addressing perceived gaps that have emerged as nonbank providers and digital assets play an increasing role in the payments landscape. Below are the primary components of the Proposed Rule:

- **Clarifying “Funds” Under EFTA.** In the Proposed Rule, the CFPB provides critical interpretive guidance on how existing definitions under EFTA apply to nontraditional payment systems and digital assets. While “financial institution” is an explicitly defined term in EFTA and Regulation E, and it is well-established that financial institutions can include nonbank entities, the term “funds” is not defined. To address this gap, the CFPB draws on its regulatory authority and EFTA’s plain language and relevant case law to interpret “funds” broadly, to ensure that consumer protections extend to modern payment systems and emerging technologies, including digital assets, like stablecoins, when used in consumer transactions.

The Proposed Rule explains that, historically, the term “funds” has been understood to encompass more than fiat currency, including assets that act as a medium of exchange or can be readily converted into cash, such as checks, drafts, and negotiable instruments.³ The CFPB clarifies that “funds” would include both fiat currencies and digital assets, such as stablecoins and

¹ CFPB, Proposed Rule, Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family or Household Purposes Using Emerging Payment Mechanisms, 90 Fed. Reg. 3723 (Jan. 15, 2025), available [here](#).

² See 15 U.S.C. § 1693a(7); 12 C.F.R. § 1005.3(b).

³ See Proposed Rule at 3725.



other fungible assets, when used as a medium of exchange or means of payment.⁴ Notably, an asset's fluctuation in value does not exclude it from this definition. To support this interpretation, the CFPB cites recent court rulings, including one holding that cryptocurrency qualifies as "funds" under EFTA.⁵

This expanded definition of "funds" would extend the scope of Regulation E to industry stakeholders that store these digital assets or facilitate transfers of these digital assets. Interestingly, this Proposed Rule comes shortly after the CFPB declined to cover digital assets in its final rule defining larger participants in the market for general-use digital consumer payment applications.⁶

- **Extending EFTA Coverage to Nontraditional Consumer Accounts.** The Proposed Rule clarifies that the term "account" under EFTA and Regulation E applies not only to traditional financial accounts, such as checking and savings accounts, but also to other consumer asset accounts. Both EFTA and Regulation E define "account" broadly 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 financial institution and established primarily for personal, family or household purposes."⁷

The CFPB proposes to clarify that the clause "other consumer asset accounts" includes accounts that are not traditional deposit accounts but enable consumers to store funds and conduct electronic transactions.⁸ Depending on the facts and circumstances, the Proposed Rule identifies several types of accounts that could qualify as "accounts" under EFTA, including: (i) video game accounts that allow consumers to purchase virtual items from multiple game developers or players; (ii) virtual currency wallets that can be used to buy goods and services or make person-to-person transfers; and (iii) credit card rewards points accounts that enable consumers to buy points for purchases from multiple merchants.⁹ The CFPB, however, does not address whether these particular products may meet the definition of "prepaid account" under Regulation E and notes that the analysis will depend on the features of the product and is outside the scope of the Proposed Rule.¹⁰ As a general matter, whether a product is a "prepaid account" or not impacts the disclosures and error resolution program requirements under Regulation E.

Based on its proposed interpretation of "account," the CFPB maintains that nonbank entities, such as fintech companies, digital wallet providers and gaming platforms, are included in the definition of "financial institution" if they maintain consumer accounts that enable EFTs, and thus, EFTA's consumer protection requirements, such as error resolution rights, safeguards against unauthorized transactions and clear disclosures about account terms, would apply to these nontraditional accounts. By bringing these types of accounts within the scope of EFTA, the CFPB aims to provide consistent consumer protections regardless of whether consumers rely on traditional or nonbank financial platforms. The CFPB believes this clarification aligns with the legislative history of the EFTA, which intended for "account" to cover any asset account offering equivalent EFT services.

⁴ See *id.* at 3726.

⁵ *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498 (S.D.N.Y. 2023).

⁶ See 89 FR 99582 at 99612, available [here](#) ("The CFPB intends to continue to gather data and information regarding the nature of [digital asset] transactions and the impact of digital asset transactions on consumers, and to take further action as appropriate."). For more information regarding the Larger Participant Rule, please see our prior [Alert](#) "CFPB Finalizes Rule for Federal Oversight of Popular Digital Payment Apps".

⁷ 12 C.F.R. § 1005.2(b)(1); see also 15 U.S.C. § 1693a(2) (*emphasis added*).

⁸ "Other consumer asset accounts" also include prepaid accounts, which are already subject to Regulation E.

⁹ See Proposed Rule at 3726.

¹⁰ See *id.*, n.42.



- **Addressing Exemptions for Certain Transactions.** The Proposed Rule affirms that EFTA and Regulation E do not apply to transfers of funds primarily intended for the purchase or sale of securities or commodities regulated by the SEC or CFTC, or conducted through regulated broker-dealers or futures commission merchants. However, the CFPB clarifies that this exception is limited to investment-related transfers and does not apply when securities or commodities are used as “funds” in an “account” to purchase goods or services from a retailer. For example, while EFTA does not regulate the purchase of a stock, it does cover transactions where assets in a securities account are used to buy goods or services or obtain cash.

Implications and Next Steps

The Proposed Rule underscores the CFPB’s intent to strengthen consumer protections in the digital payments ecosystem, ensuring that evolving technologies operate with the same level of transparency and accountability as traditional financial institutions. But the Proposed Rule comes shortly before the Trump administration is set to take office, which will likely cause a shift in the regulatory and enforcement priorities of the CFPB.¹¹ It is unclear whether the CFPB will continue to pursue the Proposed Rule after the administration change.

As an interpretive rule, the Proposed Rule is not subject to the Administrative Procedures Act. Despite this, the CFPB is still accepting public comments on the Proposed Rule through March 31, 2025. Industry stakeholders are encouraged to submit comments to address potential operational challenges or provide feedback on how emerging technologies — such as stablecoins and payment-integrated gaming platforms — can be effectively regulated while fostering innovation and ensuring consumer protection.

Schulte Roth & Zabel’s lawyers are available to assist you in preparing a comment or addressing any questions you may have regarding these developments. Please contact the Schulte Roth & Zabel lawyer with whom you usually work, or any of the following attorneys:

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¹¹ For more information regarding changes to the CFPB under the Trump administration, please see our prior [Alert](#) “Navigating Regulatory Changes: What to Expect for the CFPB Under the Incoming Trump Administration”.



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