



March 26, 2025

Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Via www.regulations.gov

Re: Docket Number CFPB-2025-0003, Proposed Interpretative Rule on Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms

The National Consumer Law Center (“NCLC”), on behalf of its low-income clients, is pleased to respond to the Consumer Financial Protection Bureau’s (CFPB) Notice of Proposed Interpretive Rule on Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms.¹

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

1. Introduction

It is undeniable that in the past decade, the United States has seen a wide variety of new types of payment mechanisms offered by non-traditional banking and payment companies. One area of emerging payments involves the use of crypto-assets. The lack of clarity of consumer financial protection laws that apply to these emerging payment mechanisms subject consumers to more risk and, therefore, potentially greater harm.

The CFPB has a mandate to promote fair, transparent, and competitive markets and to advance the underlying goal of Electronic Fund Transfer Act (EFTA) to create confidence in electronic

¹ See CFPB, Notice of proposed interpretive rule: Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms, 90 Fed Reg. 3723 (January 15, 2025).

fund transfer mechanisms by establishing a framework of rights, liabilities, and responsibilities.² Congress intended the EFTA to have a broad, liberal construction to promote the rights of consumers.³ As such, NCLC supports the CFPB’s proposed interpretive rule, which provides a consistent framework for the applicability of EFTA and Regulation E with respect to a range of emerging payment mechanisms, ensuring that consumers are protected and that similar products are treated similarly under the law.

2. Consumers utilizing crypto-assets as payments need the protection of the Electronic Fund Transfer Act.

The Electronic Fund Transfer Act was enacted in 1978. At the time, consumers were only beginning to engage in electronic transactions. In less than 50 years, the landscape of how consumers make payments and fund transfers has dramatically changed. Yet Congress drafted the EFTA with the view that electronic fund transfer services would continue to evolve.⁴

One of these newer forms of payment technologies and methods includes crypto-assets. Several large, well-capitalized crypto firms have stated that they are focused on making crypto and blockchain-based ledgers a mainstream payment method for American consumers. For example, at least one major payment provider has created a stablecoin expressly intended to facilitate consumers’ purchase of household goods and services,⁵ while another crypto “native” firm has created a platform where retail merchants are provided crypto wallets that can receive direct crypto payments from customers, without the need to convert crypto assets into fiat currency to settle the transaction.⁶ Reports claim that the platform processes payments for thousands of merchants, for “on-chain” payments worth billions of dollars.⁷

Consumers need protection when crypto-assets are used for payments. Crypto-assets are one of the top vectors for fraud and other illegal activity, and consumers will continue to suffer harm without clear legal remedies. “Cryptocurrency” is the second largest category of payment method reported by fraud victims to the FTC in terms of number of dollars lost (after bank

² See 12 U.S.C. 5511(a); 15 U.S.C. 1693(b).

³ See, e.g., *Curtis v. Propel Prop. Tax Funding, L.L.C.*, 915 F.3d 234 (4th Cir. 2019) (citing cases).

⁴ See the Bureau’s own analysis at 90 Fed Reg. 3723 (January 15, 2025). “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 electronic fund transfer services.’” *citing* 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”).

⁵ PayPal, “*Designed for Payments. 1 USD: 1 PYUSD on PayPal.*” (accessed March 20, 2025), available at <https://www.paypal.com/us/webapps/mpp/digital-wallet/manage-money/crypto/pyusd>.

⁶ Coinbase, “*A new Standard for onchain payments.*” (accessed March 20, 2025), available at <https://www.coinbase.com/commerce>.

⁷ Akolkar, Bhushan, “*New Payments Protocol for Coinbase Commerce to Facilitate Instant Crypto Settlements.*” CoinGape (blog), (Nov. 17, 2023), available at <https://coingape.com/new-payments-protocol-for-coinbasecommerce-to-facilitate-instant-crypto-settlements/>.

transfer or payment) for all of 2023 and 2024.⁸ Crypto platforms are not just prone to fraud by third parties; several crypto firms that suffered losses or became insolvent during the 2022 crash in the crypto markets engaged in practices many believe were unfair, abusive, or deceptive.⁹

The EFTA will help protect consumers from fraud and other problems in connection with crypto payments. It provides a right to dispute unauthorized transfers and other errors and provides a clear framework for investigation and remediation of those problems. It specifies requirements for authorization of recurring, preauthorized electronic fund transfers and gives consumers the right to stop those transfers. It prohibits creditors from compelling repayment of credit through electronic fund transfer. The Act also requires clear and readily understandable disclosures of fees. The EFTA also has fee disclosure provisions that apply to automated teller machines (ATMs), which could be useful for the explosion of crypto ATMs.

While Congress is considering legislation to regulate crypto-assets, including stablecoins, that does not obviate the need for the CFPB to ensure that consumer electronic fund transfers using crypto-assets receive EFTA protections when they are used as a form of consumer payment. The prudential regulation framework being developed by Congress does not address the consumer protection issues posed by crypto payments; the EFTA does.¹⁰

As such, NCLC supports the proposed interpretive rule. We also support the clarification that the EFTA covers other forms of funds such as credit card rewards and funds redeemed on gaming platforms.

3. The proposed interpretive rule correctly clarifies that the definitions of “account,” “electronic fund transfer,” and “financial institution” under the EFTA cover crypto-assets.

Because the scope of the EFTA is determined primarily by three defined terms— (1) “account,” (2) “electronic fund transfer,” and (3) “financial institution,” NCLC supports the proposed interpretive rule’s clarification of these three terms to cover crypto-assets.

(1) “Account”

⁸ FTC fraud reports by payment method, available at <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/PaymentContactMethods> . The FTC can identify the payment method that the criminal used in only a small fraction of fraud reports, and fraud is underreported in general, so the FTC’s numbers vastly understate the amount of fraud facilitated by crypto-assets.

⁹ Federal Trade Commission, “*FTC Reaches Settlement with Crypto Company Voyager Digital; Charges Former Executive with Falsely Claiming Consumers’ Deposits Were Insured by FDIC*,” (Oct. 12, 2023), available at <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-reaches-settlement-crypto-company-voyagerdigital-charges-former-executive-falsely-claiming>.

¹⁰ See Coalition Letter to Senate Banking Committee and House Financial Services Committee Opposing the GENIUS and STABLE Acts (February 26, 2025), available at <https://www.nclc.org/wp-content/uploads/2025/02/Coalition-Letter-Opposing-GENIUS-STABLE-Acts.pdf>. For example, neither the GENIUS or STABLE Act make clear that stablecoins, when used as a consumer payment method, are covered by the Electronic Fund Transfer Act’s protections against unauthorized charges and errors.

The EFTA defines “account” 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, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement.”¹¹ NCLC agrees with the CFPB that “the legislative history confirms that Congress intended EFTA to cover more than checking or savings accounts, ‘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.’”¹²

NCLC agrees with the CFPB’s analysis that the phrase “other asset account” in the definition of “account” in 1693a(2) includes asset accounts established primarily for a consumer’s individual, family, or household use into which funds can be deposited by the consumer or on their behalf and which have features of deposit or savings accounts such as paying for goods or services from multiple merchants; ability to withdraw funds or obtain cash; or conducting person-to-person transfers. The Bureau also clarifies that 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 could all be considered “accounts” under EFTA.¹³ This clarification is necessary and important to protect consumers and to further the purpose of the EFTA, “to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems,” with “the primary objective of... the provision of individual consumer rights.”¹⁴

(2) Electronic Fund Transfer and the Definition of “Funds”

The EFTA defines “electronic fund transfer” as “any transfer of *funds*, other than a transaction originated by check, draft, or similar paper instrument, which is 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.”¹⁵

NCLC supports the clarification under the proposed interpretive rule that “funds” under the EFTA as implemented in Regulation E include digital assets other than U.S. dollars or other fiat currencies. For example, one federal district court held that cryptocurrency is a “digital form of

¹¹ 15 U.S.C. § 1693a(2). *See also* 12 C.F.R. § 1005.2 (b)(1).

¹² 90 Fed Reg. 3723, 3726 (January 15, 2025), citing *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498 (S.D.N.Y. 2023).

¹³ 90 Fed Reg. 3723, 3726 (January 15, 2025).

¹⁴ 15 U.S.C. § 1693(b).

¹⁵ 15 U.S.C. § 1693a(7). *See also* 12 C.F.R. § 1005.3(b)(1): The term “electronic fund transfer” 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.

liquid, monetary assets,” constituting “funds” under the EFTA.¹⁶ That same court reasoned that nothing in the EFTA limits coverage to fiat currencies or excludes crypto-assets, as the EFTA was intended to be flexible and broad to reach situations not expressly anticipated by Congress.¹⁷ Additionally, other courts interpreting “funds” in the context of federal money transmitter and money laundering statutes have reached similar conclusions, finding that Bitcoin and digital currencies constitute funds.¹⁸

The CFPB also clarifies that 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, while recognizing that some digital assets may not be “funds” if they cannot be used to make payments or cannot be readily exchanged for fiat currency.¹⁹ NCLC agrees that the plain language used in the EFTA and the reasoning of judicial decisions, as well as the CFPB’s experience in market monitoring, supports these determinations.

Although the EFTA and Regulation E both contain specific securities and commodities exceptions to the definition of electronic fund transfer,²⁰ Regulation E specifies that the exception applies only if the transfer of funds is for the primary purpose of purchasing or selling a security or commodity. Moreover, the security or commodity must be one (i) regulated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC); (ii) purchased or sold through a broker-dealer regulated by the SEC or through a futures commissions merchant regulated by the CFTC; or (iii) held in book-entry form by a Federal Reserve Bank or Federal Agency.²¹

NCLC agrees with the CFPB’s clarification that the exception would not apply to crypto-assets that are being utilized as payments, and which constitute “funds” in an “account” to purchase goods or services.²² In particular, the exception for transfers to purchase securities or commodities does not apply if the primary purpose of the transfer of the crypto-asset is:

- to or from an account denominated in dollars, including a stablecoin or another convertible virtual currency account;
- made with a debit card or other access device to purchase goods or services or to obtain cash (like at a crypto kiosk);
- for the purpose of transferring funds to other persons or accounts; or

¹⁶ *Rider v. Uphold HQ Inc.*, 657 F. Supp. 3d 491, 498 (S.D.N.Y. 2023) (The court discussed various other sources that define “funds” outside of the EFTA and concluded that crypto-assets are “funds” under the EFTA because they are a digital form of liquid, monetary assets).

¹⁷ *Nero v. Uphold HQ, Inc.*, 688 F. Supp. 3d 134 (S.D.N.Y. 2023).

¹⁸ *United States v. Iossifov*, 45 F.4th 899, 913 (6th Cir. 2022), cert. denied, 143 S. Ct. 812 (2023) (noting that courts have “unanimously determined that Bitcoin” is encompassed by the terms “funds” and “monetary instrument”); *United States v. Budovsky*, 2015 WL 5602853 at *14 (S.D.N.Y. Sept. 23, 2015) (holding that “funds” include “assets that ‘can be used to pay for things in the colloquial sense’,” and the digital currency at issue constituted “funds”).

¹⁹ 90 Fed Reg. 3723, 3726 (January 15, 2025).

²⁰ 15 U.S.C. § 1693a(7)(c); 12 C.F.R. § 1005.3(c).

²¹ 12 C.F.R. § 1005.3(c)(4).

²² *See* 90 Fed Reg. 3723, 3727 n.50 (January 15, 2025).

- to pay interest.

Those transfers of crypto-assets are EFTs and subject to the EFTA.²³

(3) “Financial institution”

The term “financial institution” means a “State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, *or any other person* who, directly or indirectly, holds an account belonging to a consumer.”²⁴ NCLC agrees with the CFPB’s clarification that the term “financial institution” includes nonbank entities like crypto exchanges, digital wallets, peer-to-peer payment platforms, and other 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.²⁵ Thus, because fintech companies, crypto wallets, and p2p platforms hold “accounts,” as discussed above, they are financial institutions.

4. NCLC supports the proposed interpretive rule’s coverage of funds stored through gaming platforms, credit card rewards, and similar funds.

In the background to its proposed interpretive rule, the CFPB referenced a report it published in April 2024, describing the business practices of game players converting U.S. dollars into virtual currencies.²⁶ Additionally, many individual consumers have submitted comments to the proposed interpretive rule detailing problems they have encountered with these gaming platforms and their virtual currencies.

A May 2024 report also highlighted consumer frustration with credit card reward programs.²⁷

These other types of platforms hold funds of real value to consumers, and they need the protections of the EFTA. Thus, NCLC supports the recommendations made by the CFPB in its interpretative rule to provide EFTA protection to consumers who utilize these platforms and

²³ The CFPB does allude to the Official Commentary to Regulation E which makes clear that EFTs from a securities account to purchase goods or services or obtain cash are regulated under the EFTA. *See id.*

²⁴ 15 U.S.C. § 1693a(9) (emphasis added). *See also* 12 C.F.R. § 1005.2(i): “Financial institution” 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 electronic fund transfer services, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376.

²⁵ 90 Fed Reg. 3723, 3725 (January 15, 2025).

²⁶ *See* CFPB, *Banking in video games and virtual worlds* (Apr. 4, 2024), <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-video-games/>.

²⁷ *See* CFPB, Press Release, CFPB Report Highlights Consumer Frustrations with Credit Card Rewards Programs (May 9, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-highlights-consumer-frustrations-with-credit-card-rewards-programs/>; CFPB, Credit Card Rewards: Issue Spotlight (May 2024), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-rewards_issue-spotlight_2024-05.pdf.

currencies.

5. Conclusion

Consumers need clarity about the application of the EFTA and Regulation E to emerging payment mechanisms. More specifically, consumers utilizing crypto-assets as payments and holding funds in accounts through gaming platforms, credit card rewards, and similar devices need the protection of the EFTA— its error resolution procedures, limits on consumer liability for unauthorized EFTs, and requirements for initial and ongoing disclosures. As such, NCLC supports the proposed interpretive rule.

We welcome questions on this matter, directed to Carla Sanchez-Adams at csanchezadams@nclc.org. Thank you for your consideration.

Sincerely,

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Senior Attorney
National Consumer Law Center
(on behalf of its low-income clients)