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BLOG

CFPB Proposes to Bring Virtual Currencies Under Reg E

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On January 10, the CFPB proposed a new rule that would expand key definitions within the Electronic Funds Transfer Act (EFTA) to capture certain virtual currency products. If finalized, the rule would require many businesses to adjust their practices to provide the consumer protections that EFTA and Reg E demand.

EFTA and Reg E apply to electronic funds transfers that a financial institution debits from or credits to a consumer's account. The Bureau's new rule would interpret EFTA and Reg E to cover virtual currency accounts in addition to traditional checking and savings accounts.

The new rule would expand the following three key definitions from EFTA:

1. "Financial institution" would include nonbank entities that directly or indirectly hold a consumer's account, or that issue an access device, such as a debit card or PIN code that allows a consumer to initiate electronic funds transfers, and agree with a consumer to provide electronic fund transfer services. 90 Fed. Reg. 3,723, 3,725. This definition would include, for example, tech firms that offer digital payment options and virtual currency wallet providers.
2. "Fund" would include all assets that act or are used like money. The Bureau specifically noted that this definition would include stablecoins and any other similarly situated fungible assets that operate as a medium or exchange or means of paying for goods and services. at 3,726.
3. "Account" would include any virtual currency wallet that has features like deposit accounts or prepaid cards. The Bureau noted that these features include paying for goods or services from multiple merchants, ability to withdraw funds or obtain cash, or conducting person-to-person transfers.

These interpretations would dramatically expand the applications of the EFTA and Reg E. For example, certain video game accounts, virtual currency wallets, and credit card reward points accounts would now fall within their scope. *Id.* Additionally, newly regulated account providers that handle 50 million or more digital consumer payment transactions could qualify as "larger participants in the market," 12 C.F.R. § 1090.109(b)(1), giving the CFPB supervisory authority, 12 U.S.C. § 5514(a)(1)(B).

Providers of any newly regulated "accounts" would need to comply with Reg E's comprehensive regulatory scheme, which may require significant overhaul of their procedures related to disclosures and periodic statements, and they would also be required to investigate reports of unauthorized transactions. *See generally* 12 C.F.R. § 1005.1 *et seq.* Perhaps most importantly, virtual currency account providers would need to shift their policies to reimburse consumers for many unauthorized transactions. *See id.* § 1005.6.

Given the burdens that it would impose on a wide array of companies, the proposed rule is likely to face significant pushback.

Representatives of the tech and digital asset industries have criticized the CFPB's proposed rule as regulatory overreach adding the agency into an already overcrowded regulatory field with several agencies vying for control over a trillion-dollar industry that would instead benefit from its own comprehensive legislative framework by Congress.

The digital assets industry has also expressed concerns about the rule's application on large digital asset wallet providers. Although trading of digital assets would not fall under the proposed rule, facilitating payments made with digital assets would count toward a provider's 5 million transaction threshold for supervision.

Industry participants have called for the CFPB to—at a minimum—explicitly exempt wallet providers that don't take custody of user funds and software tools that auto-fill payment forms.

The Bureau is soliciting comments on the proposed rule until March 31. In addition to pressure from industries that would become regulated, the proposed rule must also survive a new administration that has touted its support for virtual currency. Companies that would be affected by this proposed rule should follow its development closely.

3 Min Read

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