Submitted via electronic submission at https://www.regulations.gov

March 31, 2025

Comment Intake—2025 Emerging Payments Interpretive Rule
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Crypto Council for Innovation Comment on CFPB's Notice of Proposed Interpretive Rule on Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms (Docket No. CFPB-2025-0003)

The Crypto Council for Innovation (CCI) welcomes the opportunity to provide comments on the Consumer Financial Protection Bureau's (CFPB or Bureau) Notice of Proposed Interpretive Rule (NPIR or Proposal) on Electronic Fund Transfers and Remittance Transfers.

CCI is a global alliance of industry leaders within the digital assets industry and is committed to promoting the advantages of digital assets while showcasing their potential for transformation. CCI's members represent various sectors within the digital asset ecosystem and share a common objective: advocating for responsible global regulation of digital assets to unlock economic opportunities, enhancing quality of life, promoting financial inclusivity, safeguarding national security, and countering illicit activities. CCI firmly believes that achieving these objectives necessitates well-informed, evidence-driven policy choices achieved through collaborative participation.

To this end, CCI has long championed the development of modern, coherent, and fit-for-purpose policy frameworks to foster responsible crypto innovation in the United States. CCI supports the development of a robust, regulated, and vibrant crypto market in which individuals can participate with confidence that consumer protections are in place.

Against this backdrop, we have deep concerns with the CFPB's proposed interpretive rule and urge the Bureau to rescind the Proposal. More specifically, as detailed below, the Proposal, if enacted, would:

1. Contradict the recent White House Executive Order focused on advancing American digital asset leadership by introducing ambiguity, unnecessary cost, barriers to growth, and friction with broader Congressional and Administration efforts to enhance regulatory clarity and certainty;

2. Violate the Administrative Procedure Act (APA) by offering a substantive rulemaking under the false framing of an interpretive rule, thereby failing to perform a rigorous assessment, required cost-benefit analysis, and notice-and-comment process;
3. Exceed the CFPB's statutory authority by purporting to claim jurisdiction over activity that is inconsistent with the plain language of—and historical practice related to—the Electronic Fund Transfer Act (EFTA); and
4. Create substantial confusion and ambiguity within the marketplace by conflicting with existing and emerging state and federal regulatory frameworks.

I. The Proposal Directly Contradicts the President's White House Executive Order Focused on Strengthening American Leadership in Digital Assets and Technology.

On January 23, 2025, the President issued a White House Executive Order on "Strengthening American Leadership in Digital Financial Technology."[1] The Executive Order explicitly calls for a coordinated and comprehensive approach to digital asset regulation that fosters innovation, protects consumers, and reinforces American leadership in this critical sector. The Executive Order specifically directs federal agencies to provide regulatory clarity, support responsible innovation and financial inclusion, and streamline regulations through consistent and coordinated regulatory approaches.

The CFPB's proposed interpretive rule, however, does the opposite. By introducing ambiguity and uncertainty regarding the application of EFTA and Regulation E to digital assets, it creates a confusing and potentially hostile regulatory environment for innovators. This discourages investment, stifles development, and pushes companies to seek more favorable jurisdictions overseas, directly undermining the Executive Order's goal of maintaining American leadership in the digital asset space.

Furthermore, the Executive Order emphasizes the importance of a coordinated approach to digital asset regulation to be led by the President's Working Group on Digital Assets Markets. This Working Group does not currently include the CFPB, and many of its members have already commenced work to clarify and improve applicable regulatory frameworks.[2] The CFPB's unilateral action, taken without proper consultation with other agencies and stakeholders, contradicts this principle and risks creating a fragmented and inconsistent regulatory landscape. This only adds to the confusion and uncertainty faced by businesses operating in the digital asset space. This runs counter to the Executive Order's goal of promoting a clear and predictable

[1] The White House (2025) *Executive Order: Strengthening American leadership in Digital Financial Technology*. Available at: https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/.

[2] *See, e.g.,* U.S. Securities and Exchange Commission (SEC) (2025) *Crypto Task Force*. Available at: https://www.sec.gov/about/crypto-task-force.

regulatory framework that allows for responsible experimentation and investment in digital assets.

The Bureau's Proposal should accordingly be rescinded in favor of the thoughtful and coordinated approach required by the Executive Order. Moreover, going forward, the Bureau should defer to the work of the Presidential Working Group and Congress as they work to craft comprehensive and consistent regulatory frameworks for the digital asset space.

II. The Proposal, which is a Substantive Rulemaking Improperly Proposed by the Bureau as an Interpretive Rule, Violates the APA.

The CFPB's proposed interpretive rule is not merely a clarification of existing regulations; it is a substantive rulemaking disguised as an interpretation. By significantly expanding the definitions of "accounts" and "funds" to encompass—for the first time in the Bureau's history—a broad range of digital asset activities, the CFPB is attempting to expand its regulatory reach and impose new obligations on entities without following proper rulemaking procedures. These new obligations would be ambiguous and poorly understood by the public, as would how to comply with such obligations.

This approach undermines the principles of transparency and public participation that are fundamental to administrative law. Substantive changes with such far-reaching implications should be subject to the rulemaking process as mandated by the APA. Indeed, substantive rulemakings include those that "substantially affect[] the rights of those over whom the agency exercises authority."[3] In *Morton v. Ruiz*, the Supreme Court described a substantive rule - also referred to as a 'legislative-type rule' - as one that "affects individual rights and obligations."[4] As the Committee on Judicial Review Guidance on Interpretive Rules states, "An agency should not use an interpretive rule to create a standard independent of the statute or legislative rule it interprets."[5]

By issuing this Proposal as an interpretive rule, the Bureau is imposing new regulatory obligations on industry participants, and is circumventing the APA's proper rulemaking process. Indeed, the Proposal—though ambiguous and thinly reasoned—appears to significantly expand the scope of "funds" and "accounts" covered under EFTA, thereby directly impacting the rights and obligations of market participants and consumers alike. As such, it cannot properly be categorized as a mere interpretive rule. By circumventing APA requirements, the Bureau fails to provide affected stakeholders with a meaningful opportunity to understand and respond to the Proposal's impact.

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[3] Pickus v. United States Bd. of Parole, 507 F.2d 1107, 1113 (D.C. Cir. 1974).
[4] 415 U.S. 199 (1974); see also Chrysler Corp. v. Brown, 441 U.S. 281 (1979).
[5] Administrative Conference of the United States (2019) *Agency guidance through interpretive rules*. Available at: https://www.acus.gov/recommendation/agency-guidance-through-interpretive-rules#_ftn8.

Additionally, by circumventing the APA's mandated rulemaking process, the CFPB fails to conduct a proper cost-benefit analysis, which is a crucial component of sound regulatory decision-making. A thorough cost-benefit analysis would evaluate the potential economic impacts of the rule on both covered entities and consumers, ensuring that the benefits of the rule outweigh its costs. Without such an analysis, the CFPB cannot justify these significant changes it proposes to impose on the digital asset ecosystem, nor can stakeholders provide fully informed feedback. This lack of economic justification further underscores the need for the CFPB to withdraw its proposed interpretive rule.

III. The Proposal Violates the CFPB's Authority by Claiming Jurisdiction Over Activity that is Inconsistent with the Plain Language of the Statute and its Historical Practice.

The CFPB's proposed interpretive rule, which amounts to a substantive rulemaking, is inconsistent with the plain language of the EFTA and its implementing Regulation E, as well as its historical practice. More specifically, the Bureau is overbroad in for the first time potentially applying the terms "accounts" and "funds" to undefined categories of digital infrastructure, stablecoins, and digital assets. The Proposal would accordingly result in increased confusion and ambiguity within the marketplace given its overbroad terminology and generalized descriptions that lack specificity, thereby creating a substantial risk of regulatory overreach.

With respect to "accounts" under EFTA, the CFPB's overbroad language potentially suggests that this encompasses a range of virtual currency wallets, resulting in confusion as to whether it includes self-hosted and other wallet solutions. This language is accordingly imprecise, overbroad, and potentially legally unfounded. Notably, the CFPB's entire discussion of so-called virtual currency wallets consists of just a few lines, despite the Proposal's seemingly broad coverage. This lack of clarity on a complex technical subject matter risks capturing self-hosted wallets and other forms of software, which further illustrates the Proposal's ambiguity.

Indeed, EFTA requires an account to have a direct or indirect relationship with a financial institution, and the Official Interpretation of Section 3(a) of Regulation E further specifies the need for an "agreement for EFT services." Self-hosted wallets, by their very nature, do not meet these criteria, as they operate independently of any financial institution and have no account relationship with users, let alone a relationship that involves an agreement for EFT services. Moreover, a self-hosted wallet does not meet the statutory definition of a "financial institution" because it does not hold consumer funds, intermediate transactions, or provide EFT services as traditionally understood under EFTA.

Furthermore, the Proposal fails to clarify what qualifies as an account "established primarily for personal, family, or household purposes" leading to ambiguity for custodial wallets and accounts held at centralized exchanges. It is important to note that in *Yuille v. Uphold HQ Inc.*, the court rejected the application of the EFTA and Reg E to an account at a digital asset exchange because

it was primarily established for "profit-making purposes" and not "primarily for personal, family, or household purposes." 686 F. Supp. 3d 323, 341-42 (S.D.N.Y. 2023).

With respect to the definition of "funds," the Proposal again broadly suggests that stablecoins and other digital assets are covered absent analysis or discussion on the boundaries of such an interpretation. The governing statute and implementing regulations never considered novel instruments, such as digital currencies and stablecoins, and as such are an ill-fit. Such application without defining criteria amounts to regulatory overreach and would create significant confusion for market participants.

This ambiguity is compounded by inconsistent judicial interpretations. For instance, in *Rider v. Uphold HQ Inc*., the court suggested—without detailed analysis— that certain digital asset accounts could fall under EFTA's scope solely based on the "ordinary meaning" of "funds" rather than detailed statutory interpretation or any further analysis including whether digital asset accounts meet EFTA's definition of "account.". The court also did not consider the nature of such accounts nor provide clear criteria for distinguishing between different types of digital assets or their intended uses (657 F. Supp. 3d 491, 498 (S.D.N.Y. 2023)). It also considered the definition of funds and broadly asserted it could apply to different types of digital assets and instruments, without providing details on the boundaries of each application.

In contrast, other cases, such as the above-mentioned *Yuille v. Uphold HQ Inc.*, chose not to address whether the definition of funds includes cryptocurrencies, instead deciding the case by rejecting EFTA's applicability to digital asset accounts primarily used for profit-making purposes.

The lack of consistent standards and resulting ambiguity underscores the risk of regulatory overreach—if courts themselves struggle to determine whether digital assets constitute "funds" under EFTA and whether particular digital asset accounts are covered, the CFPB's attempt to impose broad, undefined coverage without clear statutory backing or criteria creates unnecessary uncertainty for market participants. By adopting an expansive definition for "funds" as well as "accounts" without clear limiting criteria or any refined analysis, the Proposal risks applying EFTA to assets and transactions far beyond the statute's original intent, further complicating the regulatory landscape rather than providing clarity.

IV. The Proposal Would Create Substantial Confusion and Ambiguity by Conflicting with Existing and Emerging State and Federal Regulatory Frameworks.

The current regulatory landscape for digital assets in the United States is already marked by fragmentation and ambiguity. Certain states have developed fit-for-purpose licensing and oversight frameworks specifically tailored to digital assets, and lawmakers in Congress have been working on bipartisan proposals to clarify federal oversight, including to provide the CFTC

with spot market oversight of digital commodities and the SEC with oversight over more clearly defined digital asset securities.[6] Indeed, the Consumer Financial Protection Act of 2010 (CFPA) itself carves out from CFPB authority any financial advisory services provided by an SEC-regulated entity, and specifically provides that the CFPB has no enforcement authority with respect to CFTC-regulated entities.[7] Additionally, as noted above, the White House Executive Order and this Administration are already working on ways to improve, modernize, and clarify regulatory frameworks that can advance the responsible growth of the digital assets industry.

Against this backdrop, the Proposal will result in potential overlap with state and federal regulators—thereby adding further complexity to the regulatory landscape in this country. The result would be duplicative and unnecessary regulation of digital assets, leading to additional confusion rather than furthering the goal of consumer protection. This regulatory confusion and unnecessary burden would be exacerbated by the Proposal's approach of broadly applying to ill-defined categories of financial instruments and activities.

Additionally, the Proposal front-runs Congress by seeking to extend the Bureau's jurisdiction, which would inject further uncertainty for consumers, market participants, and all state and federal regulators. For example, it remains unclear exactly what types of digital asset-related consumer financial products and services the Proposal would cover. To this end, the Proposal uses undefined blanket terms, such as "stablecoins" and "digital assets," and concludes that whether such instruments are covered is "fact specific." This cursory analysis will only result in more confusion and fragmentation of the regulatory landscape.

To the extent a new regulatory regime should be created for the digital asset space, a new legislative framework is the purview of Congress, not the Bureau. Rather than disrupt the market with an ambiguous and impracticable regime as contemplated by the Proposal, we respectfully submit that the much better approach is for the CFPB to recognize the existing role of peer state and federal regulators, while deferring policy decisions to Congress, including related to a comprehensive legislative framework for digital assets. We accordingly strongly urge the Bureau to rescind this proposed interpretive rule.

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[6] *See* Thompson, G. (2023) H.R.4763 - Financial Innovation and Technology for the 21st Century Act. Available at: https://tinyurl.com/yc38dmjn; *see also* Thompson, G. (2022) *H.R.7614 - Digital Commodity Exchange Act of 2022*. Available at: https://www.congress.gov/bill/117th-congress/house-bill/7614 [Defining "digital commodity" and providing CFTC regulatory jurisdiction over digital commodity markets]; Stabenow, D. (2022) *S.4760 - Digital Commodities Consumer Protection Act of 2022*. Available at: https://www.congress.gov/bill/117th-congress/senate-bill/4760. [Amending Commodity Exchange Act to provide CFTC regulatory jurisdiction over the digital commodity spot market].

[7] 12 U.S.C. 5481(15)(A)(viii); 12 U.S.C. 5517(j)(1).

CCI appreciates the opportunity to provide these comments. We would be pleased to further engage on the feedback detailed in this letter and ways to ensure the responsible growth of the digital asset industry.

Respectfully submitted,

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