

# The Banking Law Journal

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# Federal District Court Finds Consumer Wire Transfers Are Subject to the Electronic Fund Transfer Act

*By Eric Hail, Ted Huffman, Christina Grigorian and Asena Baran\**

*In this article, the authors review a federal district court decision holding that a bank may be liable under the Electronic Fund Transfer Act for unauthorized consumer wires initiated using a bank's electronic banking platforms.*

In an apparent departure from decades of jurisprudence acknowledging the exemption of wire transfers from the ambit of the Electronic Fund Transfer Act (EFTA or the Act), one federal district court, in *New York v. Citibank, N.A.*,<sup>1</sup> recently found that a bank may be liable under EFTA for unauthorized consumer wires initiated using a bank's electronic banking platforms. While this ruling is not binding authority in any federal circuit and might not sway other courts to adopt its logic, it does signal a need for financial institutions to prepare for legal challenges to their policies and practices regarding wire transfers.

## THE OBLIGATIONS OF FINANCIAL INSTITUTIONS UNDER EFTA

EFTA – along with its implementing Regulation E – imposes various obligations on financial institutions related to electronic fund transfers. The Act specifically requires financial institutions to provide lengthy written disclosures to certain customers, investigate and resolve allegedly unauthorized electronic fund transfers, and, in many instances, assume liability for the bulk of consumer losses stemming from such unauthorized transactions. As applied, EFTA limits a consumer's liability in connection with an unauthorized electronic fund transfer if the customer properly notifies their financial institution of the transaction within 60 days. A financial institution is generally required to investigate and resolve disputed fund transfers within 10 business days of the impacted consumer's notice. If the investigation determines that an electronic fund transfer was indeed unauthorized, the financial institution is liable to cover all but \$50 to \$500 of the loss, depending on when the consumer gave notice.

EFTA violations can subject financial institutions to both civil penalties and regulatory enforcement problems. The Act expressly permits private rights of

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<sup>1</sup> See *New York v. Citibank, N.A.*, Case No. 24-CV-659 (S.D.N.Y. Jan. 21, 2025).

action with statutory penalties, whether such cases are filed as class actions or on an individualized, consumer-by-consumer basis. The Act separately allocates regulatory enforcement authority among multiple administrative agencies, including the federal banking agencies, the administrator of the National Credit Union Administration, the Secretary of Transportation, the Securities and Exchange Commission (SEC), the Consumer Financial Protection Bureau (CFPB), and the Federal Trade Commission (FTC).

### **PRIOR JURISPRUDENCE EXEMPTING WIRE TRANSFERS FROM THE SCOPE OF EFTA**

Until this past month, courts generally held that bank wires are not “electronic fund transfers” subject to EFTA. These courts often applied the statute’s plain language in reaching that conclusion.

EFTA notably defines an “electronic fund transfer” as “any transfer of funds . . . initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape,” excluding “any transfer of funds . . . made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer.”<sup>2</sup> Unlike many traditional electronic fund transfers involving the transfer of money to or from a customer’s account, wire transfers involve a financial institution sending funds to another financial institution on a wire network like Fedwire or the Clearing House Interbank Payments System (CHIPS).

Regulation E explicitly excludes “wire or other similar transfers” from the Act’s definition of “electronic fund transfer.”<sup>3</sup> Many courts have likewise cited Regulation E’s definition of “electronic fund transfer” to support their findings that the EFTA does not regulate wire transfers.<sup>4</sup>

### **SOUTHERN DISTRICT OF NEW YORK DISTRICT COURT FINDS THAT EFTA EXTENDS TO CONSUMER WIRE TRANSFERS**

A federal district court in the Southern District of New York recently took a different view regarding EFTA’s non-applicability to wire transfers. In a

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<sup>2</sup> 15 U.S.C. § 1693a (7)(b).

<sup>3</sup> See 12 C.F.R. § 1005.3(c)(3); 12 C.F.R. § 205.3(c)(3).

<sup>4</sup> See *Nazimuddin v. Wells Fargo Bank, N.A.*, Case No. 24-20343 (5th Cir. Jan. 6, 2025) (“Because Regulation E excludes ‘wire or other similar transfers’ from the definition of ‘electronic fund transfer,’ the EFTA does not apply to the wire transfers of which Plaintiff complains in this case.”); *Stepakoff v. IberiaBank Corp.*, 637 F. Supp. 3d 1309 (S.D. Fla. Oct. 31, 2022) (“Count I fails to state a claim for relief because [Regulation E] exempts the requested wire transfer at issue from EFTA coverage.”); *Fischer & Mandell LLP v. Citibank, N.A.*, Case No. 09 Civ. 1160 (S.D.N.Y. June 22, 2009) (“Regulation E explicitly excludes from the coverage of the EFTA transfers of funds made through checks and wire transfers.”).

decision issued just this past month, the district court found that EFTA does indeed extend to consumer wires initiated using a bank's electronic banking platform. The court reasoned that EFTA's language covers "consumer portions of transactions while forgoing regulation of purely interbank transfers," such that the component of an electronic wire transfer that does not involve a purely interbank transfer of funds is within the ambit of the Act.

The district court postured that a single wire transfer is, in reality, a series of three consecutive but independent transfers of funds.

The first transaction occurs when a consumer initiates a wire transfer by sending a payment order to its financial institution, instructing it to transfer funds from its account to a recipient's account at another financial institution.

The second transaction occurs when the consumer's financial institution, through a wire network like Fedwire or CHIPS, transfers the funds to the recipient's financial institution.

And the third transaction occurs when the recipient's financial institution transfers the funds to the recipient's account.

Within this framework, the district court reasoned that since the first transaction comprising a wire transfer does not involve an interbank transfer, if a consumer sends a payment order to its financial institution electronically, such as via a bank's online banking portal, then EFTA applies to that first step of the wire transfer process. Therefore, the court held that a bank may be liable under EFTA for failing to investigate and resolve allegedly unauthorized wire transfers initiated using the bank's electronic banking platforms. The court noted that its piecemeal analysis of a wire transfer, differentiating the initial transaction as "ancillary to an interbank wire," comports with Congressional intent to protect consumer interests in enacting the EFTA.

## **POTENTIAL IMPLICATIONS FOR FINANCIAL INSTITUTIONS MOVING FORWARD**

The Southern District of New York's recent decision raises important questions for banks as to whether they need to address EFTA-compliance issues regarding their wire transfer practices. Even if other courts continue to exempt all wire transfers from EFTA, class action plaintiffs' attorneys may be emboldened by the recent case law to justify new legal actions against financial institutions, especially in New York federal court, notwithstanding that many banks' customer account agreements include provisions mandating arbitration. The risk alone should be enough to cause banks to take caution moving forward.

Yet, financial institutions seeking to comply with the new case law will unfortunately be faced with a somewhat burdensome task. Long-standing



consumer contracts and standard form customer account and disclosure statements would need to be updated and amended in mass with all applicable customers of the bank. New wire dispute resolution processes would need to be developed, audited and communicated during training sessions for bank staff. Finally, because the EFTA shifts significant liability to banks for unauthorized transactions, many banks may also begin to impose additional security measures to protect against unauthorized wires, which would increase the administrative expense for these types of transactions and could impede the ordinary speed of wire transfers moving forward.