



Blockchain & Digital Innovation Task Force

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Division of Banking & Financial Institutions

Disclaimer



The Division is providing this information as a service to the Blockchain & Digital Innovation Task Force. This presentation is not a statement of official Department of Administration policy, a legal interpretation, or legal advice.



Objectives

1. Introduce Division
2. Identify Topics
3. Consider Regulatory Gaps and Options
4. Discuss Policy Recommendations



About the Division

Mission:

To protect Montana citizens by regulating state-chartered and licensed financial institutions under its supervision:

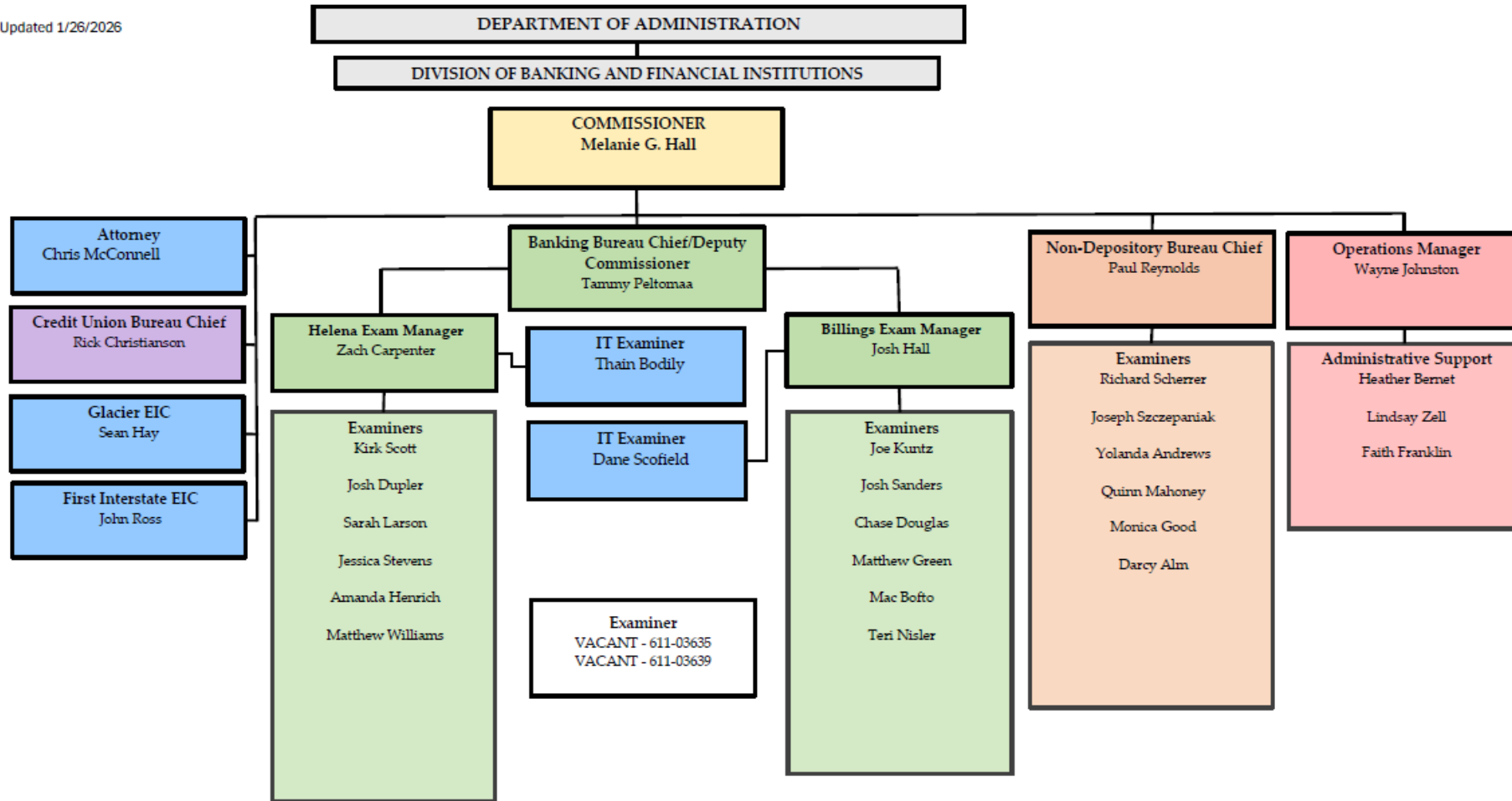
1. Protect Montanans who enter into consumer and residential mortgage loans with non-depository lenders.
2. Raise the regulator standards for financial services regulation in Montana.
3. Provide Montana citizens with a safe and sound system of state-chartered financial institutions.
4. Promote the dual regulatory system that allows state and federal governments to act independently.
5. Improve the distribution of information and services through web-based tools.
6. Create and maintain a highly qualified, professional, diverse, and responsive workforce.

<https://archive.legmt.gov/committees/interim/eaic/agency-oversight-division-banking-financial-institutions/>



Division Structure

Updated 1/26/2026



What we'll cover today.

- Loans of Money *(Title 31, Ch. 1, P. 1)*
- Deferred Deposit Loan Act *(Title 31, Ch. 1, P. 7)*
- Consumer Loan Act *(Title 32, Ch. 5)*
- Electronic Funds Transfer Act *(Title 32, Ch. 6)*
- Regulation of Escrow Business Act *(Title 32, Ch. 7)*

What we won't cover today.

- Banking Act *(Title 32, Ch. 1)*
- Mortgage Act *(Title 32, Ch. 9)*
- Commercial loans
- Retail installment contracts



LOANS OF MONEY

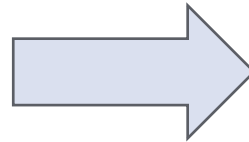
Title 31, Chapter 1, Part 1



Loans of Money – Title 31, Ch. 1, Part 1

General statutes governing loans of money and interest rates but do not provide their own definition of “money.”

The closest definition of “money” is in MCA § [30-1-201\(2\)\(y\) \(2025\)](#), which is part of Montana’s UCC provisions.



Money “means a **medium of exchange** currently **authorized or adopted** by a domestic or foreign government and is **not in an electronic form...**”

[SB 426](#) (2025 Mont. Leg, req. Sen. Morigeau, sponsor Sen. Ricci)



Loans of Money – Title 31, Ch. 1, Part 1

“Loan of money”

A loan of **money** is a contract by which a person delivers a sum of **money** to another person and the other person agrees to return at a future time a sum equivalent to that which the other person borrowed.

MCA § [31-1-101](#)



Loans of Money – Title 31, Ch. 1, Part 1

Money for purposes of Title 31 does not appear to include cryptocurrencies, if we apply the Title 30 definition of “money” to Title 31 and other statutes.

The 2023 Montana legislature’s decision to classify digital assets, including cryptocurrencies, as personal property rather than money could be interpreted as reinforcing the above conclusion.

MCA § [70-1-108](#)

[SB 178](#) (2023 Mont Leg, sponsor Sen. Zolnikov)



Loans of Money – Title 31, Ch. 1, Part 1

IMPLICATION: Montana’s laws refer to lending in “money”. Currently, “money” does not appear to include cryptocurrencies in Montana.

QUESTION: Is this something the task force wants to address to specifically permit loans under [Title 31, Ch. 1, Part 1](#) or Title 32 to include cryptocurrencies or digital assets?



Loans of Money – Title 31, Ch. 1, Part 1

QUESTION: If cryptocurrencies and digital assets do not fall under the definition of “money”, then does Title 31 apply at all to loans involving crypto or digital assets (i.e., personal property)?



Loans of Money – Title 31, Ch. 1, Part 1

“Loan for mere use”

A loan for mere use is governed by the law on loan for use.

MCA § [31-1-101](#)

A loan for use is a contract by which one gives to another the **temporary use** and **possession** of **personal property** and the latter agrees to return the same thing to the loaning person at a future time without reward for its use.

MCA § [70-7-102](#)



Loans of Money – Title 31, Ch. 1, Part 1

“Loan for mere use”

Involves **personal property**, which must be returned, with expectation that the identical item is returned and not something of equivalent value.

Basically, a gratuitous loan of **personal property**.



Loans of Money – Title 31, Ch. 1, Part 1

“Loan for mere use”

IMPLICATION: Crypto and digital assets might fall into this lending category of loans for mere use/gratuitous loans of personal property.

QUESTION: What is the benefit to industry or the consumer of a gratuitous crypto loan?



Loans of Money – Title 31, Ch. 1, Part 1

“Loan to be repaid in current money”

A borrower of **money**, *unless there is an express contract to the contrary*, must pay the amount due in such **money** as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

MCA § [31-1-102](#)



Loans of Money – Title 31, Ch. 1, Part 1

“Loan to be repaid in current money”

This protects a lender from money devaluation by ensuring repayment occurs in whatever constitutes money at the time of repayment.

However, the "express contract to the contrary" provision allows parties to negotiate different payment terms.



Loans of Money – Title 31, Ch. 1, Part 1

IMPLICATION: In general, MCA § [31-1-102](#) does not appear to allow repayment of money in crypto because crypto isn't money if the Title 30 definition is used.

QUESTIONS:

1. Does the “unless there is an express contract to the contrary” provision allow a person to contract for repayment of money in crypto, even if the original loan was for money?
2. Would this interpretation directly conflict with MCA § [31-1-101](#)?



DEFERRED DEPOSIT LOAN ACT

“Payday Loans”

Title 31, Chapter 1, Part 7



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

“Payday loans”

PURPOSE: To protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

MCA § [31-1-702\(1\)](#)

STATE REG: Department of Administration, Division of Banking and Financial Institutions

MCA § [31-1-702\(2\)](#)

DEFINITION: Deferred Deposit Lender, Loan, Account

MCA § [31-1-703](#)



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

SCOPE: Applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

MCA § [31-1-704](#)

LICENSING: A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

MCA § [31-1-705](#)



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

LOAN REQUIREMENTS:

- Can't exceed 31 days
- Must be between \$50 and \$300

MCA § [31-1-715](#)

RATE CAP: 36% per annum

MCA § [31-1-722\(2\)](#)

NSF FEE: ≤ \$30

MCA § [31-1-722\(3\)](#)



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

VOID: Any deferred deposit loan made by an unlicensed person is void.

The unlicensed person may not directly or indirectly collect, receive, or retain any loan principal, interest, fees, or other charges related to the loan.

MCA § [31-1-712\(4\)](#)



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

A “deferred deposit lender/licensee” is a person engaged in the business of making deferred deposit loans.

MCA § [31-1-703\(4\)](#)

A “deferred deposit loan” is an **arrangement**, including all representations made by the deferred deposit lender whether express or implied, in which:

... (c) a person accepts written authorization from a consumer to **electronically deduct** from the consumer’s **account** on a specific date **the amount of the loan** and **fees** that are authorized under this part.

MCA § [31-1-703\(5\)](#)

Note: -703(5)(a) and (5)(b) involve “checks,” which clearly are not cryptocurrency.



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

An “account” means any banking, checking, credit union, commercial, **savings**, savings and loan, brokerage, **investment**, or other kind of depository account held by a consumer.

MCA § [31-1-703\(1\)](#)

To date, crypto companies offer various types of accounts, including **savings**-like accounts and **investment** accounts, in addition to custodial accounts.



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

RESULT: Loan must be in USD (\$50-\$300).

Fees paid to lender cannot exceed 36% per year of the loan amount, which implies 36% of a \$50-\$300 loan.

Insufficient funds fee is in USD (\leq \$30).



Deferred Deposit Loan Act – Title 31, Ch. 1, Part 7

SCENARIO: A “payday” loan is in USD and repaid in USD, along with the fees in USD, while the lender can electronically deduct the USD loan amount and USD fee amount from a consumer’s crypto savings or investment account.

QUESTIONS:

1. What would be the advantages or disadvantages to this structure?
2. Does the task force want to address this?



CONSUMER LOAN ACT

Title 32, Chapter 5



Consumer Loan Act – Title 32, Ch. 5

PURPOSE: To regulate the business of making consumer loans in order to protect borrowers from abusive credit terms and to limit the interest and fees that can be charged on such loans.

STATE REG: Department of Administration, Division of Banking and Financial Institutions

MCA § [32-5-401](#)

DEFINITION: Consumer Loan, Interest

MCA § [32-5-102](#)



Consumer Loan Act – Title 32, Ch. 5

SCOPE: Applies to non-exempt persons who make or service **consumer loans** to individuals for personal, family, or household purposes, where the loan is not primarily secured by real estate.

EXEMPTED: Payday Loans, Mortgage Loans, < 4 loans

MCA § [32-5-102\(2\)\(b\)](#)

INAPPLICABLE: Banks, Building and Loan Associations, Savings and Loan Associations, Trust Companies, or Credit Unions

MCA § [32-5-103\(5\)\(a\)](#)



Other Implications

Other exempt persons: < 4 consumer loans per year

The Consumer Loan Act doesn't apply to a person who makes < 4 consumer loans a year:

- a) with their own funds
- b) doesn't represent themselves as a licensee
- c) must comply with [Title 31, Ch. 1, Part 1](#) "Loans of money"



Consumer Loan Act – Title 32, Ch. 5

A person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for interest, fees, other consideration, or expense, except as provided in and authorized by this chapter.

MCA § [32-5-103\(1\)](#)

VOID: A loan made in violation of the Act by a non-licensee is void.

MCA § [32-5-103\(4\)](#)



Consumer Loan Act – Title 32, Ch. 5

“CREDIT”

A consumer loan is **credit** offered or extended to an individual primarily for personal, family, or household purposes.

MCA § [32-5-102\(2\)\(a\)](#)

Credit is not defined in the Act.

QUESTION: No definition of credit. Does the task force want to create a definition or concept of credit that contemplates digital asset inclusion?



Consumer Loan Act – Title 32, Ch. 5

“INTEREST”

A licensee may contract for and receive **interest** on the principal amount of any loan.

The interest may not exceed 36% per year.

Interest is defined as **compensation** allowed for use, forbearance, or detention of **money**.

Compensation is not defined in the Act but is descriptively tied to **money**.



Consumer Loan Act – Title 32, Ch. 5

“FEES”

A licensee may charge a **fee** for each deferral of time of an installment payment or for any amount past due.

- The **fee** may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.

RESULT: Fee amounts paid in USD. Could a fee be charged/paid in cryptocurrency?

QUESTION: Does the task force want to suggest changes?



Consumer Loan Act – Title 32, Ch. 5

SCENARIO:

- Interest is defined as compensation.
- No definition of compensation.
- However, interest relates to the use, forbearance, or detention of money.
- Money is not cryptocurrency if Title 3 definition used.

QUESTION: Does the task force want to address this gap in definitions or relationship?



Consumer Loan Act – Title 32, Ch. 5

SCENARIO: Company offers crypto-collateralized personal loan and a revolving line of credit to eligible customers of its affiliate. Allows customers to leverage their crypto holdings to access cash.

QUESTION: Does the task force want to recommend legislation that specifically contemplates this scenario?



Consumer Loan Act – Wage Assignments

A **wage assignment** is a repayment method for a debt. It is an agreement that lets a licensee take part of a person's future paycheck directly to pay what that person already owes. It's a consumer loan that is secured by wages, and the law limits how much of your pay can be taken.

MCA § [32-5-310](#)

Wage assignments pertain to a person's **salary, wages, commissions, and other compensation** for services.

- Any assignment may not exceed 10%.



Consumer Loan Act – Wage Assignments

Salary, wages, and commissions are not defined in the Act.

Statute also does not include a definition for the phrase “other compensation” for services.

QUESTIONS:

1. It appears that this section does not specifically exclude crypto-wage assignments?
2. Does the task force want to address this or develop this scenario?



Other Implications

“Earned Wage Advance” products (aka Earned Wage Access)

- Allow a consumer to access a portion of their earned but unpaid income, either as a percentage of earned income or a set amount, prior to payday.
- On payday, the advance is then repaid through an employer payroll deduction or through a debit from the consumer’s bank account.

Mont. Atty General opinion ([Vol 59, # 2 - 2023](#))



Other Implications

“Earned Wage Advance” products

- Mont. Atty General opinion concludes certain EWA products are not “consumer loans” under MCA § [32-5-102](#) or “deferred deposit loans” under MCA § [31-1-703](#).

RESULT:

- Given the Mont. Atty General opinion, DOA/DBFI does not regulate this industry.
- CFPB and FTC might provide regulatory oversight of [direct-to-consumer EWA products](#).

Mont. Attorney General’s opinion ([Vol 59, # 2 - 2023](#))



ELECTRONIC FUNDS TRANSFER ACT

Title 32, Chapter 6



Electronic Funds Transfer Act - Title 32, Ch. 6

PURPOSE: Create regulatory cohesion between state and federal oversight rather than establishing independent state consumer protection measures?

POLICY: Electronic funds transfer (“EFT”) systems provide the consumer with both convenience and efficiency in making financial transactions.

[MCA § 32-6-102](#)

REG: CFPB ([Reg E](#) & [Fed EFTA](#)), Federal Reserve, FDIC, OCC, NCUA, FTC

DEFINITION: Financial Institutions, EFT, Merchant



Electronic Funds Transfer Act - Title 32, Ch. 6

The Act recognizes that Reg E already addresses many of the consumer issues relating to electronic funds transfer systems.

The Act effectively outsources most substantive consumer-protection oversight to the federal regime and existing safety-and-soundness supervision.



Electronic Funds Transfer Act - Title 32, Ch. 6

SCOPE: The Montana and Fed Act apply to “**financial institutions.**”

MCA § [32-6-102](#)

Montana

- Banks (state or federal)
- Savings and Loan Associations (state or federal)
- Credit Unions (state or federal)
- Consumer Loan Business (state-licensed)

MCA § [32-6-103\(5\)](#)

FED

- Banks (state or federal)
- Savings and Loan Associations (state or federal)
- Mutual Savings Bank
- Credit Unions (state or federal)
- Any other person who, directly or indirectly, **holds an account belonging to a customer.**

[15 USC § 1693a\(9\)](#)



Electronic Funds Transfer Act - Title 32, Ch. 6

SCOPE: Financial institutions must provide customers with detailed information about EFT services before authorization.

MCA § [32-6-104](#)

Financial institutions that **are subject to and in compliance with Regulation E** of the Fed EFTA must be considered to be in compliance with the MT EFTA.

MCA § [32-6-102\(2\)](#)

QUESTION: Does this mean that financial institutions that are subject to Reg E and not in compliance with Reg E are considered to be out of compliance with the MT EFTA as well?



Electronic Funds Transfer Act - Title 32, Ch. 6

LIABILITY:

- The liability for any unauthorized or erroneous EFT that does not fall upon a customer or a merchant falls upon the financial institution that carries out the transfer.

MCA § [32-6-303\(1\)](#)

- Customers must notify the financial institution within 60 days of the customer's periodic statement of any errors. The financial institution has 10 days to correct the error or give the customer an explanation of the reasons the institution believes the statement is correct.

MCA § [32-6-302](#)



Electronic Funds Transfer Act - Title 32, Ch. 6

LIABILITY:

- A **customer** whose account is debited by an EFT without the customer's authorization is not liable for the amount of the transaction, and the amount must be recredited to the customer's account.

MCA § [32-6-303\(1\)](#)

UNLESS:

- It's a standard lost or stolen card situation
(The customer is liable for the first \$50 of transactions made before the institution is notified of the loss or theft.)
- It's a "careless PIN" situation
(The customer is liable for half the value of all transactions made before the institution is notified of the loss or theft.)



Electronic Funds Transfer Act - Title 32, Ch. 6

LIABILITY:

- A **merchant** is liable for the amount of unauthorized EFTs requested from the premises ONLY IF the merchant:
 - is negligent in requiring a user of EFT services to furnish adequate self-identification (applies to the merchant's agent as well),
 - fails to retain a physical record of the transaction for 1 year following the transaction, or
 - breaches the warranty that an EFT from the terminal arises from a commercial transaction in which the customer receives goods or services of equal value.

MCA § [32-6-303\(3\)&\(4\)](#)



Electronic Funds Transfer Act - Title 32, Ch. 6

“Merchant”

A natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

MCA § [32-6-103\(6\)](#)

“Satellite terminals”

Any machine or device that is located off the premises of a financial institution and that a financial institution or its customers may use to carry out EFTs.

- **Includes:** ATMs, ITMs, and POS terminals.

MCA § [32-6-103\(9\)](#)



Electronic Funds Transfer Act - Title 32, Ch. 6

“ELECTRONIC FUND TRANSFER”

Any transfer of **funds**, other than a transaction originated by check, draft, or similar paper instrument 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 an **account**.

INCLUDES: POS transfers, ATM transfers, ITM transfers, direct deposits and withdrawals of funds, transfers initiated by phone, transfers resulting from a debit card transaction.

MCA § [32-6-103\(3\)\(a\)](#)



Electronic Funds Transfer Act - Title 32, Ch. 6

EFTA and Crypto – Federal Perspective

- Federal courts in NY and TX held that cryptocurrencies constitute “**funds**” within the meaning of the Fed EFTA and customers could proceed with EFTA claims against a crypto exchange/company.
- The NY court interpreted the terms “**funds**” and “**financial institution**” broadly as Congress intended.
- Plaintiffs brought claims for failing to correctly implement safety protection for crypto customers.

[Rider v. Uphold HQ, Inc.](#), 657 F. Supp. 3d 491 (S.D.N.Y. 2023)

[Fagan v. Nexo Capital Inc.](#), 2025 WL 2446301 (E.D. Tex. 2025)



Electronic Funds Transfer Act - Title 32, Ch. 6

EFTA and Crypto – Federal Perspective

- The NY court relied, in part, on the statutory language in 15 USC § 1693a(9) (defining a financial institution to include “any other person who, directly or indirectly, **holds an account belonging to a customer**”) to reach its conclusion.

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

- The TX court also adopted the NY court’s interpretation and application of the federal EFTA to crypto company, Nexo.

Fagan v. Nexo Capital Inc., 2025 WL 2446301 (E.D. Tex. 2025)



Electronic Funds Transfer Act - Title 32, Ch. 6

SCENARIO:

The MT EFTA doesn't have a catch-all definition of "financial institution" like the Fed EFTA. However, the MT EFTA infers that financial institutions that are subject to the Fed EFTA and that are not in compliance with Reg E would be considered in noncompliance under the MT EFTA.

QUESTION:

Does the task force want to recommend legislation clarifying application of the MT EFTA to EFTs of digital assets used in consumer transactions?



Electronic Funds Transfer Act - Title 32, Ch. 6

EFTA and CFPB – Proposed/Withdrawn rule

- In January 2025, the CFPB aimed to help clarify the Fed EFTA's application to the crypto consumer ecosystem and emerging payment mechanisms.
- The purpose was to assist companies, investors, and other market participants evaluating existing statutory and regulatory requirements governing EFTs.
- The proposed rule would clarify when the Fed EFTA/Reg E applies to digital assets used as a medium of exchange.



Electronic Funds Transfer Act - Title 32, Ch. 6

EFTA and CFPB – Proposed Rule

PROPOSAL: The rule would treat many virtual currency wallets and stablecoin products that consumers use to buy goods/services or make person to person payments as “accounts” and would treat stablecoins and some other crypto assets as “funds.”

SCENARIO: Covered providers would have to give Reg E style disclosures, provide periodic statements, investigate and resolve errors, and reimburse many unauthorized transfers, just like banks do for debit cards.

[CFPB Proposed Rule](#) re. 12 CFR Part 1005 (90 FR 3723, Jan. 15, 2025)



Electronic Funds Transfer Act - Title 32, Ch. 6

EFTA and CFPB – Withdrawn Rule

STATUS: The CFPB withdrew its proposed interpretative rule in May 2025 primarily because further rulemaking action with respect to this proposal did not align with current agency needs, priorities, or objectives. The CFPB said it will not take any further action on this proposed interpretive rule.

[FR Doc. 2025-08646](#) (May 2025)

OUTCOME: Rely on Ct. decisions, not CFPB for guidance.



Electronic Funds Transfer Act - Title 32, Ch. 6

CRIMINAL: MCA § [32-6-106](#) imposes criminal liability on the unauthorized disclosure of EFT records. The statute appears aimed at protecting consumer records rather than compensating for unauthorized EFTs, mishandled errors, or fraud.

QUESTION: Does the task force want to change this or have victims continue to rely on property crime statutes?



Electronic Funds Transfer Act - Title 32, Ch. 6

QUESTION: Is a pure on-chain transfer of crypto between self-custody wallets outside traditional Reg E compliance or MT EFTA?



Electronic Funds Transfer Act - Title 32, Ch. 6

QUESTIONS:

1. When a crypto transaction moves funds into or out of a fiat-denominated consumer account (e.g., ACH transfer of money from a bank to a crypto exchange, or a debit card purchase of crypto), is that part of the transaction covered by MT EFTA or Reg E?
2. If not, should it be?



Electronic Funds Transfer Act - Title 32, Ch. 6

QUESTIONS:

1. What remedies, if any, does MT's EFTA provide to crypto consumer transactions?
2. What remedies should there be?



Electronic Funds Transfer Act - Title 32, Ch. 6

QUESTIONS:

1. Should “Crypto” ATMs fall within the scope of the MT ETFA or the federal EFT?
2. Should “Crypto” ATMs be considered satellite terminals?
3. Does the task force want to suggest a “Crypto” ATM regulatory scheme?



REGULATION OF ESCROW BUSINESS ACT

Title 32, Chapter 7, Part 1



Regulation of Escrow Businesses Act - Title 32, Ch. 7

PURPOSE: Oversight and regulation of the escrow industry to protect Montana citizens, ensure fairness within the industry, and safeguard consumers' property.

MCA § [32-7-101\(2\)](#)

STATE REG: Department of Administration, Division of Banking and Financial Institutions

MCA § [32-7-101\(2\)](#)

DEFINITION: Escrow, Escrow Business, Licensees, etc.

MCA § [32-7-102](#)



Regulation of Escrow Businesses Act - Title 32, Ch. 7

“ESCROW”

Any transaction in which one person

- for the purpose of affecting the sale, transfer, encumbrance, or lease of real or personal property to another person, **or**,
- for the purpose of making payments under any encumbrance of the property.

MCA § [32-7-102\(2\)](#)



Regulation of Escrow Businesses Act - Title 32, Ch. 7

“**ESCROW**”

...delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person

- to be held by that third person until the happening of
 - a specified event, **or**,
 - the performance of a prescribed condition.



Regulation of Escrow Businesses Act - Title 32, Ch. 7

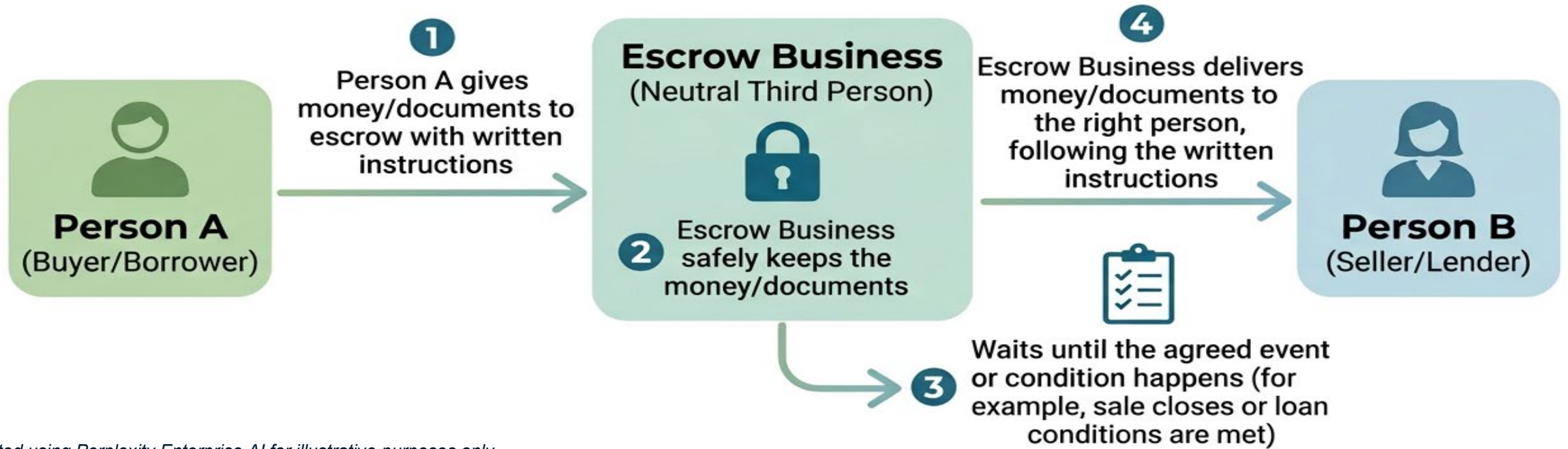
“ESCROW”

...when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any agents or employees pursuant to the written escrow instructions.



What is Escrow? (MCA 32-7-102)

A neutral third person holds money or documents until conditions are met.



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Escrow = a neutral third person temporarily holds money or valuable items in a property deal and only releases them when written conditions are met.



Regulation of Escrow Businesses Act - Title 32, Ch. 7

ESCROW BUSINESS: “A commercial activity characterized by the regular and continuous carrying on of escrow transactions.”

LICENSEE: “A person holding a valid license under this part as an escrow business.”

MCA § [32-7-102\(3\)&\(4\)](#)

EXEMPTED ENTITIES: Attorneys and public accountants not actively engaged in escrow business, CSI-regulated title abstractors/searchers, DBFI-licensed mortgage entities, audited financial institutions, licensed real estate brokers, court-ordered persons, loan closers at financial institutions/independent contract couriers.

MCA § [32-7-103](#)



Regulation of Escrow Businesses Act - Title 32, Ch. 7

ESCROW DEPOSITS

- “All **money** deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a **financial institution**... doing business in this state”
 - Money is not defined in the Act. If we use the definition of money in Title 30, then money is not cryptocurrency.
 - Financial institution definition is from the MT EFTA. It is uncertain whether the MT EFTA considers crypto companies as financial institutions.

MCA § [32-7-117](#)



Regulation of Escrow Businesses Act - Title 32, Ch. 7

SCENARIO: Person A wants to sell an autographed Babe Ruth baseball to Person B. Both Person A and Person B want to use a MT licensed escrow business to complete the transaction. Both Person A and Person B want to use cryptocurrency to pay for the transaction.

QUESTION: Should Montana law expressly authorize or regulate the use of cryptocurrency as consideration in escrow transactions?



Regulation of Escrow Businesses Act - Title 32, Ch. 7

ESCROW DEPOSITS

- “must be kept, separate, distinct, and apart from **funds** belonging to the escrow business.”
- “the **funds**, when deposited, must be designated as ‘escrow accounts’ or given some other appropriate designation indicating that the **funds** are not **funds** of the escrow business.”
- Funds are not defined in the Act. The term appears to be used interchangeably with money in some situations and separately in others.

MCA § [32-7-117](#)



Regulation of Escrow Businesses Act - Title 32, Ch. 7

ESCROW DEPOSITS

- “An escrow business may not disburse **funds** from any escrow account until **cash, items, or drafts** in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and **are available for withdrawal** from the account as a matter of right.”

MCA § [32-7-117](#)



Regulation of Escrow Businesses Act - Title 32, Ch. 7

ESCROW DEPOSITS

- “Available for withdrawal from the account as a matter of right” means that the **bank** or **savings and loan association** in which an **item** has been deposited considers the **item** available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that **item**.”

MCA § [32-7-117\(5\)\(a\)](#)

QUESTIONS:

- Does this suggest that a bank or savings and loan association are the only financial entities permitted to act as the escrow business’s intermediary?
- Are crypto exchanges precluded to act as the escrow business’s financial entity with “escrow accounts”?



Regulation of Escrow Businesses Act - Title 32, Ch. 7

ESCROW DEPOSITS

- **“Item”** means any check, including a cashier’s check, negotiable order of withdrawal, share draft, traveler’s check, or money order.

MCA [§ 32-7-117\(5\)\(b\)](#)

QUESTION:

Crypto is not cash. Crypto is not a share draft. Crypto is not within the definition of “item.” Do the current definitions in the Act create a regulatory gap or a prohibition?



Regulation of Escrow Businesses Act - Title 32, Ch. 7

What DBFI is seeing:

Licensed MT escrow businesses:

- livestock/feed escrow transactions
- traditional escrow transactions related to real estate purchases
- escrow transactions involving domain names, motor vehicles, merchandise

What DBFI is not seeing yet:

- Unlicensed escrow activities involving cryptocurrencies.
- Crypto escrow companies expanding into MT like California-based [Guaranty Escrow](#)
- Digital currency real estate escrows
- Bitcoin escrow





Questions?

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