

[Banking and Finance Law Daily Wrap Up, CHECKS AND ELECTRONIC TRANSFERS—CFPB seeks summary judgment in opposing PayPal's challenge to Prepaid Accounts Rule, \(Jul. 9, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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By Nicole D. Prysby, J.D.

The CFPB's brief argues that the Bureau exercised its broad authority in adopting the rule after a conducting a cost-benefit analysis and that the rule is neither arbitrary nor capricious.

The Consumer Financial Protection Bureau has submitted a memorandum opposing summary judgment in favor of PayPal, Inc. and asserting that the court should grant summary judgment in the Bureau's favor, in a case involving PayPal's challenge to the Prepaid Accounts Rule. The Bureau argued that it reasonable exercised its broad authority in adopting the Rule's short-form disclosure requirements and the 30-day waiting period. It also [argued](#) that the Rule is not arbitrary or capricious, that the Bureau considered the benefits and costs of the Rule, and that the short-form disclosure requirements do no violate the First Amendment (*PayPal, Inc. v. Consumer Financial Protection Bureau*, D.D.C, Case No. 1:19-cv-03700-RJL.).

As previously reported, PayPal motioned for summary judgment in its case against the Consumer Financial Protection Bureau over the Prepaid Accounts Rule. The Rule amends Reg. E—Electronic Fund Transfers (12 CFR Part 1005) and Reg. Z—Truth in Lending (12 CFR Part 1026) and the regulations' official interpretations to give prepaid account consumers protections similar to those for checking account and credit card consumers. PayPal specifically took aim at two provisions in the Rule: a requirement that companies give consumers an upfront "short-form" disclosure that provides a snapshot of key fees and other terms of the prepaid account and a 30-day waiting period for linking credit to a new prepaid account in certain circumstances (see [Banking and Finance Law Daily](#), May 8, 2020).

Highlights of CFPB's brief. In its memorandum opposing PayPal's motion for summary judgment and supporting its own cross-motion for summary judgment, the Bureau argued that it reasonably exercised its broad authority in adopting the short-form disclosure requirements and the 30-day waiting period. Both the Electronic Fund Transfer Act (EFTA) and section 1032 of the Dodd-Frank Act authorized the Bureau to adopt the short-form disclosure requirements. EFTA provides various protections for consumers who use electronic fund transfer services, including a requirement that financial institutions disclose the terms and conditions of electronic fund transfers involving a consumer's account, in accordance with regulations of the Bureau. And nothing in EFTA forecloses the Bureau from prescribing rules regarding a disclosure's form. The Dodd-Frank Act independently authorizes the Rule's short-form disclosure requirements, in that it authorizes the Bureau to "prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks." 12 U.S.C. § 5532(a).

Similarly, both the Truth in Lending Act (TILA) and the Dodd-Frank Act authorize the waiting period for linking certain credit to a prepaid account. Congress vested the Bureau with broad rulemaking authority under TILA and did not preclude it from adopting a waiting period. The Bureau reasonably determined that requiring 30 days to elapse before certain credit could be linked to a prepaid account effectuates TILA's purposes by promoting the informed and voluntary use of credit. The waiting period is also authorized by the Dodd-Frank Act, which authorizes the Bureau to adopt rules "to ensure that the features of any consumer financial product or service"—such as credit or a prepaid card—"are fully, accurately, and effectively disclosed." The Bureau determined that the waiting period would make disclosures about both the potentially linked credit and the prepaid account more "effective" by giving consumers space to focus on each independently.

The Rule is not arbitrary or capricious, the CFPB maintained. The Bureau explained why it declined to carve out digital wallets with asset accounts from the Rule's scope: consumers can use those accounts in the same way as other prepaid products—to store funds for use in a wide variety of transactions—so they should receive the same protections. The Bureau also thoroughly explained the reasons behind the short-form disclosure requirements. And it explained its reasons for applying the waiting period to digital wallets with asset accounts in the very limited circumstances covered by the Rule—and in fact undertook a separate rulemaking devoted in part to that very topic.

According to the brief, the Bureau also thoroughly considered the benefits and costs of the Rule. The Bureau specifically addressed the benefits and costs of the 30-day waiting period provision for covered digital wallets in the 2018 amendments to the Rule. It also addressed the benefits and costs of applying the Rule to digital wallets with asset accounts specifically—including the benefits of avoiding a patchwork regulatory regime that could leave consumers confused, ensuring that consumers who get digital-wallet asset accounts enjoy the same protections as consumers of other similar types of accounts, and giving digital wallet consumers information up front about an account's fees or lack thereof. And even if it had not, nothing in section 1022 (or any other provision) requires the Bureau to separately discuss the benefits and costs of applying a rule to each specific type of product that the rule covers, the CFPB contended.

Finally, the Bureau argued that the Rule's disclosure requirements are entirely consistent with the First Amendment. The disclosure requirements advance the government's interest in ensuring that consumers get easily digestible information about the fees and other terms of prepaid accounts so that they can make better informed financial decisions, and the short-form disclosure requirements are not so burdensome as to restrict or chill protected speech.

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Companies: PayPal, Inc.

LitigationEnforcement: CFPB ChecksElectronicTransfers CreditDebitGiftCards DistrictofColumbiaNews DoddFrankAct GCNNews TruthInLending