

## [Banking and Finance Law Daily Wrap Up, TOP STORY—PayPal seeks summary judgment in challenge to Prepaid Accounts Rule, \(May 8, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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By Nicole D. Prysby, J.D.

PayPal motioned for summary judgment in its case against the CFPB over the Prepaid Accounts Rule, arguing that the CFPB lacked the statutory authority to impose the rule requirements.

PayPal submitted a [motion for summary judgment](#) in its case against the Consumer Financial Protection Bureau over the Prepaid Accounts Rule. The rule amends Reg. E (12 CFR Part 1005) and Reg. Z (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 argued that the rule should be vacated because the CFPB lacks the statutory authority to impose disclosure requirements under the Electronic Fund Transfer Act (EFTA) and lacks the statutory authority under the Truth in Lending Act (TILA) to impose the 30-day credit linking ban. PayPal argued that the rule is arbitrary and capricious as applied to digital wallets because there is no rational justification for subjecting digital wallets to a regime designed for general purpose reloadable cards (GPR) cards. PayPal also argued that the CFPB failed to perform a cost-benefit analysis regarding application of the rule to digital wallets, because it ignored factors that distinguish digital wallets from GPR cards and that the rule violates the First Amendment (*PayPal, Inc. v. CFPB*, Case No. 19-2127).

In 2019, PayPal filed the complaint against the CFPB and its Director, Kathleen Kraninger, over the rule, which amends Reg. E (12 CFR Part 1005) and Reg. Z (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 (see [Banking and Finance Law Daily](#), Dec. 13, 2019). PayPal alleged that the rule requires it to make misleading and confusing disclosures about the fees and functionalities of its products and places unreasonable restrictions on consumers' abilities to link certain credit products to their PayPal accounts. The complaint asserted that the rule was invalid for three primary reasons: it contravenes the CFPB's statutory authority by establishing a mandatory and misleading disclosure regime not authorized by federal law; the rulemaking process was fundamentally flawed by a misunderstanding of the different characteristics of digital wallets and tainted by an insufficient cost-benefit analysis; and is invalid because it violates the First Amendment of the U.S. Constitution. In its response to the complaint (see [Banking and Finance Law Daily](#), April 14, 2020), the CFPB specifically denied that the regulatory regime is fundamentally ill-suited to PayPal digital wallets and is likely to mislead or confuse consumers and denied the allegation that "limited benefits of imposing the onerous disclosure requirements and substantive restrictions of the Prepaid Rule on digital wallets are clearly outweighed by the costs incurred by customer confusion and the restriction of consumer choice."

PayPal's [proposed summary judgment order](#) would have the court vacate the Prepaid Accounts Rule and enjoin the CFPB from enforcing it against PayPal. In its [memorandum in support](#) of summary judgment, PayPal made several arguments related to statutory authority the rulemaking process, and constitutionality. First, that the CFPB lacks the statutory authority under the EFTA to impose the rule's short form disclosure requirement, because it is only authorized under the EFTA to adopt model, optional disclosures. PayPal also argued that the CFPB lacks the statutory authority under the TILA to impose the 30-day credit linking ban, because the TILA is a disclosure statute which does not substantively regulate consumer credit. The CFPB's credit linking provision operates as a ban on acquiring and using credit, and therefore goes beyond the scope of disclosure requirements. PayPal argued that the rule is arbitrary and capricious as applied to digital wallets because there is no rational justification for subjecting digital wallets to a regime designed for GPR cards or to heightened regulation. PayPal argued that the CFPB failed to perform a cost-benefit analysis regarding application of the

rule to digital wallets, because it ignored factors that distinguish digital wallets from GPR cards. Finally, PayPal argued that the rule violates the First Amendment in that it compels PayPal to disclose information that is largely inapplicable to its products and likely to confuse its customers, while simultaneously prohibiting PayPal from presenting clarifications to dispel that confusion.

Companies: PayPal

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