

[Banking and Finance Law Daily Wrap Up, CREDIT, DEBIT and GIFT CARDS —PayPal files complaint against CFPB alleging Prepaid Accounts Rule is invalid, \(Dec. 13, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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By [Colleen M. Svelnis, J.D.](#)

PayPal has filed a complaint against the CFPB, alleging that its Prepaid Accounts Rule has resulting in consumer misunderstandings and deprives customers of benefits by not differentiating between its "digital wallet" and other prepaid cards.

PayPal, Inc. has filed a complaint against the Consumer Financial Protection Bureau and its Director, Kathleen Kraninger, in the U.S. District Court for the District of Columbia, challenging the Bureau's [Prepaid Accounts Rule](#). The rule, which went into [effect](#) April 1, 2019, 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](#), Oct. 5, 2016). PayPal's [complaint](#) contends that the rule "requires PayPal 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." PayPal alleges that the rule is unlawful under the Administrative Procedure Act and the U.S. Constitution and asks the court to vacate the rule and declare it unconstitutional and unenforceable (*PayPal v. CFPB*).

PayPal asserts that the rule has resulted in consumer misunderstandings and confusion and has deprived PayPal's customers of access to significant benefits offered by PayPal. According to the complaint, PayPal's primary consumer offering, the digital wallet, is "fundamentally different" from the general purpose reloadable (GPR) cards targeted by the rule. Nevertheless, digital wallets are subject to the same regulatory disclosure requirements as GPR cards.

Rulemaking process. PayPal stated that it engaged "extensively" with the CFPB throughout the rulemaking process, presenting evidence to the CFPB that PayPal's digital wallet offerings differed in significant ways from GPR cards.

According to PayPal, when a consumer authorizes a payment with his or her PayPal account, PayPal "accesses the consumer's credentials from its secured electronic platform, interfaces between the consumer and the intended recipient, and transfers money without the need for the consumer to expose his or her full sensitive financial credentials to the payment recipient." Although consumers have the ability to store money with PayPal, they can make purchases or send money with PayPal without doing so. PayPal stated in the complaint that the majority of its customers use the services to transfer funds and make purchases using linked financial instruments, not to store and spend cash balances.

However, the Bureau concluded that, because digital wallets do allow a consumer to store funds in them directly, they should be regulated the same way as the GPR cards. The complaint states that, while promulgating the rule, the Bureau cited no reports, studies, surveys, or research demonstrating that consumers acquire and use digital wallets in the same way they acquire and use GPR cards. Additionally, according to the complaint, the Bureau did not offer any analysis as to whether or how digital wallets posed risks for consumers similar to those posed by GPR cards.

Unlawful and invalid. PayPal asserts in the complaint that the rule is invalid under the Administrative Procedure Act (APA) and the U.S. Constitution, for three primary reasons.

1. The rule contravenes the Bureau's statutory authority by establishing a mandatory and misleading disclosure regime not authorized by federal law; and imposing a 30-day ban on consumers linking certain credit cards to their prepaid account, "a prohibition the law nowhere authorizes the Bureau to impose."
2. Even if the Bureau had the statutory authority, its one-size-fits-all rulemaking process was fundamentally flawed, marked by a misunderstanding of the different characteristics of digital wallets and tainted by an insufficient cost-benefit analysis that failed to properly weigh the benefits consumers might derive from the rule against the costs.
3. The Prepaid Accounts Rule is invalid because it violates the First Amendment of the U.S. Constitution and does not meet the standard requiring that the law or regulation directly advances a substantial government interest.

PayPal stated that the regulatory regime is "fundamentally ill-suited to PayPal digital wallets and is likely to mislead or confuse consumers." According to the complaint, under the Prepaid Accounts Rule, PayPal is mandated to make disclosures concerning fees that it does not charge and misrepresent the actual fees paid by most customers. "These mandatory disclosures undermine PayPal's own clear disclosures provided when consumers use their PayPal accounts," stated PayPal. The complaint also contends that the rule prohibits PayPal from including explanatory phrases within the disclosure box to describe the nature of these fee categories, stating that the "mandated short form disclosure regime forces PayPal to make disclosures that confuse consumers as to the products' actual costs yet bars PayPal from providing the very information that would assist consumers in making an informed decision."

The case is No. [19-3700](#).

Companies: PayPal, Inc.

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