

## **[Banking and Finance Law Daily Wrap Up, CREDIT, DEBIT AND GIFT CARDS—Bureau responds to PayPal complaint challenging Prepaid Accounts Rule, \(Apr. 14, 2020\)](#)**

Banking and Finance Law Daily Wrap Up

[Click to open document in a browser](#)

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

The CFPB has responded to a complaint filed against it by PayPal alleging that the Bureau's Prepaid Accounts Rule failed to properly distinguish digital wallets from other prepaid accounts.

The Consumer Financial Protection Bureau has filed a [response](#) to a complaint filed in the U.S. District Court for the District of Columbia by PayPal, Inc. The complaint against the Bureau and CFPB Director Kathleen Kraninger alleged that the Bureau's Prepaid Accounts Rule has resulted in consumer misunderstandings and deprives customers of benefits by not differentiating between its "digital wallet" and other prepaid cards.

The [Prepaid Accounts 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).

The [complaint](#) asserted that the rule was invalid 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 (see [Banking and Finance Law Daily](#), Dec. 13, 2019).

The Bureau denied each allegation in the complaint not specifically admitted which did not require a legal conclusion. The Bureau specifically denied that the regulatory regime is "fundamentally ill-suited to PayPal digital wallets and is likely to mislead or confuse consumers." Additionally, the CFPB response referred the court to the laws and regulations at issue for a complete and accurate statement of their contents.

CFPB denied that during the rulemaking process it "irrationally disregarded" PayPal's concerns that PayPal's digital wallet is "fundamentally different" from the general purpose reloadable (GPR) cards targeted by the rule. The CFPB took issue with PayPal's characterization of "digital wallets" and referred to the preamble of the Prepaid Accounts Rule for an "accurate description" of digital wallets. Otherwise, the Bureau denied the allegations to the extent that they are inconsistent with that description. The CFPB response noted that the use of the terms "digital wallet," "digital wallet users" and "the digital wallet provider" were vaguely defined and ambiguous.

With reference to PayPal's allegations related to how PayPal charges customer fees, CFPB gave the information from the most recent disclosures that PayPal has submitted to the Bureau for its PayPal Cash, PayPal Cash Plus, and Venmo accounts, which indicate that, for those accounts, PayPal does not charge fees to transfer

a balance from a PayPal account to a linked bank account (or, for PayPal Cash and PayPal Cash Plus, to a debit card) using the default standard service and that customers can pay a 1 percent fee, capped at \$10, for expedited service that effectuates the transfer "instantly." Additionally, these disclosures indicate that PayPal does not charge fees to open or maintain the accounts, to make purchases from merchants, or to obtain customer service.

The Bureau 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." Additionally, the Bureau denied that "while the benefits of applying the Prepaid Rule to digital wallets are minimal, the costs are significant." The Bureau also denied that the 30-day ban on consumers' ability to link credit products offered by PayPal's business partners also imposes costs by making it more difficult for consumers to obtain the benefits of offerings from PayPal and its partner credit card issuers.

The case is No. [1:19-CV-03700-RJL](#).

Companies: PayPal, Inc.

Attorneys: Daniel Kearney (Wilmer Cutler Pickering Hale and Dorr LLP) for PayPal, Inc. Julia Lynn Szybala for the CFPB and Kathy Kraninger.

LitigationEnforcement: CFPB ChecksElectronicTransfers CreditDebitGiftCards GCNNews TruthInLending