

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PAYPAL, INC.,
2211 North First Street
San Jose, CA 95131,

Plaintiff,

v.

Civil Action No. 19-3700

CONSUMER FINANCIAL PROTECTION
BUREAU,
1700 G Street NW
Washington, DC 20552,

and

KATHY KRANINGER, in her official capacity
as Director, Consumer Financial Protection
Bureau,
1700 G Street NW
Washington, DC 20552,

Defendants.

COMPLAINT

Plaintiff PayPal, Inc. (“PayPal”), by and through its attorneys, hereby alleges as follows:

INTRODUCTION

1. For nearly two decades, PayPal has been a leader in facilitating fast, secure, convenient, and affordable digital and mobile payments on behalf of consumers and merchants worldwide. Its mission is to enable its customers to participate fully in the global economy and to improve their financial health by enabling them to access, receive, and move their money across the globe, anytime, on any platform, and through any device. PayPal fully embraces the mission of the Consumer Financial Protection Bureau (“the CFPB” or “the Bureau”) to protect

consumers and regulations that empower consumers to make informed financial decisions. As part of that commitment, PayPal makes its customers the central focus of all that it does and has built a robust compliance program that puts the safeguarding of its consumers at the forefront of its products and services.

2. This action challenges a rule promulgated by the CFPB that 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. As a result, the Bureau's rulemaking has resulted in consumer misunderstandings and confusion and has deprived PayPal's customers of access to significant benefits offered by PayPal. The Rule, entitled the "Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) Rule" ("the Prepaid Rule," "the Final Rule," or "the Rule"),¹ emerged from a CFPB initiative to regulate a product known commonly as a "prepaid card" or "general purpose reloadable card" ("GPR card"). A GPR card typically is a physical card whose core function is to store a consumer's funds until the consumer wishes to use the card to spend or transfer those funds. GPR cards are generally purchased at retail locations like drugstores and supermarkets, loaded (or reloaded) with funds provided in cash or by direct deposit, and then used by consumers similarly to bank debit cards.

3. PayPal's primary consumer offering is a "digital wallet." Digital wallets are fundamentally different from GPR cards. Like physical wallets, digital wallets permit consumers to keep their payment credentials—such as debit cards, credit cards, and bank account

¹ PayPal's references to "the Rule" correspond to several related final rules that collectively implement the regulations at issue here. *See* 81 Fed. Reg. 83,934 (Nov. 22, 2016) (Final Rule); 82 Fed. Reg. 18,975 (Apr. 25, 2017) (delaying implementation of the Final Rule by six months); 83 Fed. Reg. 6364 (Feb. 13, 2018) (amending the Final Rule and delaying its implementation until April 1, 2019).

information—in a single place that can be accessed to make purchases or to transfer funds. 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 (if, for example, the consumer receives a payment from another party and does not immediately transfer those funds to a bank account), they can make purchases or send money with PayPal without doing so. Indeed, the majority of PayPal’s customers use PayPal’s services to transfer funds and make purchases using linked financial instruments, not to store and spend cash balances.

4. Although a GPR card is materially different from a digital wallet, the Bureau nevertheless decided, arbitrarily, to subject both offerings to the same regulatory disclosure regime. PayPal 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 and warning of negative consequences to consumers should the CFPB ultimately apply a GPR-card disclosure regime to digital wallets. Contrary to its mission of protecting U.S. consumers, however, the CFPB unreasonably dismissed PayPal’s evidence and finalized a Rule that treats identically GPR cards and PayPal’s very different digital wallet products.

5. The Bureau did not attempt to justify this result by pointing to empirical evidence—it 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. Nor did the Bureau offer any analysis as to whether or how digital wallets posed risks for consumers similar to those

posed by GPR cards. The proposed rule instead offered a mere three-paragraph description of digital wallets, which acknowledged that digital wallets are distinct from products such as GPR cards because digital wallets are principally used “to store the consumer’s bank account, debit card, credit card, and/or prepaid card *credentials*.”² The proposed rule further noted that “there may be significant variations in how funds are held in digital wallets and how payments are processed by digital wallets and that payment processing by digital wallets is evolving quickly.”³ Nevertheless, the Bureau concluded that, because digital wallets *may* “allow a consumer to store funds in [them] directly,” they should be regulated the same way as the GPR cards that were the real subject of the Bureau’s rulemaking.⁴ The Bureau thus seized on an occasional and incidental feature of digital wallets to impose on digital wallets a sweeping regulation designed for GPR cards.

6. The resulting regulatory regime is fundamentally ill-suited to PayPal digital wallets and is likely to mislead or confuse consumers. The Rule mandates PayPal make disclosures concerning fees that PayPal 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. For example, the Rule mandates that customers be given—and actually view—“short form” fee disclosures. The requirements for this short form disclosure are extremely prescriptive and rigid. Certain fee categories must be placed in specified positions and presented in certain font sizes, largely because the CFPB deemed these categories most significant for GPR-card customers—and regardless of their relevance to

² “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z),” 79 Fed. Reg. 77,102, 77,110 (Dec. 23, 2014) (emphasis added).

³ *Id.*

⁴ *Id.*

PayPal's products. The Rule further *prohibits* PayPal from including explanatory phrases within the disclosure box to describe the nature of these fee categories. Additionally, for each required fee category, the Rule states that the highest possible fee under the worst-case scenario must be disclosed, even if the fee would rarely be incurred by the typical consumer (and would *never* be incurred without further customer authorization). In other words, the Rule's 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.

7. As a result of these compulsory disclosure requirements, PayPal must present the following short form to customers:

Monthly Fee	Per purchase	ATM withdrawal	Cash reload
\$0	\$0	N/A	N/A
ATM balance inquiry (in-network or out-of-network)			N/A
Customer Service (automated or live agent)			\$0
Inactivity			\$0
We charge 3 other types of fees. Here are some of them:			
Electronic withdrawal (standard or Instant)			\$0 or 1%*(max \$10)
International transaction (excluding ATM withdrawal and balance inquiry)			2.5%*
*This fee can be lower depending on how and where this account is used.			
No overdraft/credit feature.			
Not FDIC insured.			
For general information about prepaid accounts, visit cfpb.gov/prepaid .			
Find details and conditions for all fees and services in the PayPal Cash Account Long Form, which can be accessed in the applicable Terms and Conditions on PayPal.com			

8. As PayPal foresaw throughout the rulemaking process, this disclosure has confused many PayPal customers. As a result of the mandatory disclosures, customers mistakenly believe that PayPal charges fees to access funds stored as a balance with PayPal, to make a purchase with a merchant, or to send money to friends or family in the United States. To

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