



New lawsuit alleges CFPB Prepaid Rule requires use of certain fee terminology without permitting clarification, thereby violating free speech

Blockchain and Digital Assets News and Trends

13 December 2019

By: Margo H. K. Tank

In a lawsuit in DC federal court on December 12, PayPal challenged a rule implemented by the Consumer Financial Protection Bureau (CFPB) for prepaid cards. The rule, entitled the Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), and referred to as the Prepaid Rule (see 81 Fed. Reg. 83934 (November 22, 2016 final rule); 82 Fed. Reg. 18975 (April 25, 2017); 83 Fed. Reg. 6364 (Feb 13 2018), in addition to applying specific disclosure and other requirements to general purpose reloadable cards, also applies to digital wallets. Digital wallets may function similarly to prepaid cards, but, in certain instances, some functionality is distinguishable.

In its complaint, filed as *PayPal Inc. v. CFPB, et al.*, case no. 19-03700 (Distr. Ct. DC 2019), PayPal has claimed that the Prepaid Rule "is fundamentally ill-suited to PayPal digital wallets and is likely to mislead or confuse consumers." At issue is a requirement under the Prepaid Rule that requires disclosure of "short form" fees, defined as periodic fees, per-purchase fees, ATM withdrawal fees and cash reload fees, "even if such fees are \$0 or if they relate to features not offered for a particular prepaid account product."

Further, the complaint suggests "certain fee categories must be placed in specified positions and presented in certain font sizes," and "the Rule further *prohibits* PayPal from including explanatory phrases within the disclosure box [] to describe the nature of these fee categories" thereby causing customer confusion, and such requirements are in violation of the First Amendment.

With respect to the First Amendment claim, PayPal alleges that the Prepaid Rule violates its right to free speech by forcing it to "convey the government's chosen message without regard for whether that compelled speech meaningfully advances the government's professed interests."

The suit asks that the rule be vacated and declared arbitrary, an abuse of discretion and unconstitutional.

The outcome of this case may have an impact on other federally mandated forms that dictate the form and substance of disclosures with insufficient flexibility to deviate from the requirements.

You also may be interested in our Insights piece on the application of the Prepaid Rule and Regulation E to virtual currency wallets ([available here](#)).

AUTHORS



Margo H. K. Tank

Partner

Washington, DC | T: +1 202 799 4000

margo.tank@dlapiper.com
