

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 24-5146

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PAYPAL, INC.,

Plaintiff-Appellee,

v.

CONSUMER FINANCIAL PROTECTION BUREAU, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia
Case No. 1:19-cv-3700

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

Plaintiff-Appellee is PayPal, Inc. Defendants-Appellants are the Consumer Financial Protection Bureau (CFPB) and Rohit Chopra, in his official capacity as Director of the CFPB. There are no intervenors and no amici at this time.

B. Rulings Under Review

Appellants seek review of the memorandum opinion and accompanying order of the Honorable Richard Leon in *PayPal, Inc. v. CFPB*, No. 1:19-cv-3700 (D.D.C.), entered on March 29, 2024. ECF Nos. 48, 49. The opinion and order have no official citations at this time.

C. Related Cases

The case on review was previously before this Court under Case No. 21-5057. *See PayPal, Inc. v. CFPB*, 58 F.4th 1273 (D.C. Cir. 2023). There are no other related cases.

Dated: October 25, 2024

/s/ Ryan Cooper
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GLOSSARY

CFPB Consumer Financial Protection Bureau

EFTA Electronic Fund Transfer Act

GPR card General-purpose reloadable card

INTRODUCTION

Prepaid products are among the fastest growing consumer financial products, as more and more consumers use them in a wide variety of transactions. Yet, for years, it had been difficult for consumers to understand what they were signing up for before they opened a prepaid account. In some cases, companies did not disclose key account information upfront at all, and when they did, variations in how account terms were described and displayed made it challenging for consumers to quickly find and evaluate the information. Consumers often did not get full information about accounts' fees and features until they started using the accounts—at which point it could be hard to change course.

To address these problems (among others), the Consumer Financial Protection Bureau (CFPB) promulgated the Prepaid Rule, which, for the first time, requires prepaid account providers to disclose the specific terms of prepaid accounts before consumers sign up for them. Under the Rule, companies now must give consumers two disclosures before they open an account—a “short form” that provides a quick, easy-to-use overview of the account’s key fees and features, and a “long form” that consumers can reference for comprehensive details about the account. Together, the disclosures ensure that consumers have the information they need to pick the products that best suit their needs.

Digital wallets with prepaid account functionality are not exempted from the Rule's scope. Some digital wallets simply act as a pass-through that allow consumers to store and use payment credentials for other accounts (such as a credit card) but cannot store funds. Those digital wallets are not covered. But other digital wallets come bundled with a prepaid account, that, like other prepaid accounts, allows consumers to load funds that can then be used in everyday financial transactions. These digital-wallet prepaid accounts are covered by the Rule and therefore must provide the upfront disclosures.

PayPal, Inc., brought suit to challenge the Prepaid Rule's short-form disclosure requirements' applicability to digital-wallet prepaid accounts. The district court granted summary judgement to PayPal, holding that it was arbitrary and capricious for the CFPB to require digital wallets to comply with the short-form disclosure requirement. That holding was wrong. The CFPB considered the claimed differences between digital-wallet prepaid accounts and other types of prepaid accounts, reasonably concluded that those differences did not warrant creating a bespoke disclosure regime for a type of prepaid product that consumers could use in just the same way as other prepaid products, and reasonably explained that conclusion in promulgating the Rule. While PayPal may not agree with the agency's policy judgment, Congress and the Administrative Procedure Act leave those judgments to the agency.

STATEMENT OF JURISDICTION

Plaintiffs assert claims under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and invoked the district court's jurisdiction under 28 U.S.C. § 1331. ECF No. 1 at 12 (J.A. __). The district court entered final judgment for the plaintiffs on March 29, 2024. ECF No. 49 (J.A. __). The CFPB filed a timely notice of appeal on May 24, 2024. ECF No. 50 (J.A. __); Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether it was arbitrary or capricious for the CFPB to require prepaid accounts with digital-wallet functionality to provide the same standardized short-form disclosure of the account's terms as is required of all other prepaid accounts?
2. Whether the CFPB appropriately assessed the benefits and costs of requiring prepaid accounts with digital-wallet functionality to provide the same standardized short-form disclosure of the account's terms as is required of all other prepaid accounts?

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are provided in an addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in response to the 2008 financial crisis. Pub. L. No. 111-203, 124 Stat. 1376. Title X of that law created the Consumer Financial Protection Bureau (CFPB) and gave it primary authority for “regulat[ing] the offering and provision of consumer financial products or services under the Federal consumer financial laws.” 12 U.S.C. § 5491(a). Congress directed the CFPB to use this authority to ensure that consumers have access to markets for consumer financial products and services and that those markets are “fair, transparent, and competitive.” *Id.* § 5511(a).

The CFPB has various tools to accomplish its mandate, including the authority to promulgate rules. This case involves a rule promulgated pursuant to two the CFPB’s statutory authorities: the Electronic Fund Transfer Act (EFTA), 15 U.S.C. §§ 1693-1693r, and section 1032 of the Dodd-Frank Act, 12 U.S.C. § 5532.

EFTA requires financial institutions to disclose “the terms and conditions of electronic fund transfers involving a consumer’s account” and generally to provide advance notice of any disadvantageous change in those terms, 15 U.S.C. § 1693c(a)-(b), in addition to providing other protections like limiting consumers’ liability for unauthorized transfers, *id.* § 1693g, and allowing consumers to stop

payment of preauthorized electronic transfers from their accounts, *id.* § 1693e(a). EFTA initially gave the Board of Governors of the Federal Reserve System (the Board) authority to promulgate rules implementing the law. Pub. L. No. 95-630, § 2001 (1978). Pursuant to that authority, the Board issued so-called “Regulation E,” which it amended several times over the years. *See* 81 Fed. Reg. 83934, 83945-47 (Nov. 22, 2016) (J.A. __). The Dodd-Frank Act transferred most of the authority to implement EFTA to the CFPB, and the authority to issue rules under EFTA is now primarily vested in the CFPB. *See* 12 U.S.C. § 5581(b)(1); 15 U.S.C. § 1693b.

Section 1032 of the Dodd-Frank Act authorizes the CFPB to adopt rules “to ensure that the features of any consumer financial product or service ... are fully, accurately, and effectively disclosed” so that consumers can “understand the costs, benefits, and risks associated with the product or service.” 12 U.S.C. § 5532(a).

B. Prepaid Products

Prepaid products are financial products that allow a consumer to load and store funds for later use in making purchases and conducting other transactions. *See* 81 Fed. Reg. at 83934 (J.A. __). Prepaid products have been one of the fastest growing types of payment instruments in the United States and are used to fund billions of transactions very year. *Id.*

One of the most common types of prepaid products is a general-purpose reloadable (GPR) card. Consumers can obtain GPR cards at retail stores or online,

load them with funds, and then use them to make in-person and online purchases, to access the stored funds at ATMs, or to conduct peer-to-peer transfers. *Id.* at 83936-37 (J.A. __). The label GPR “card” is something of a misnomer, as the product does not necessarily involve a physical card. *Id.* at 83936 (J.A. __). There are also “virtual” GPR cards that use mobile applications or other technology to provide consumers the same functionality as a physical GPR card. *Id.* Other prepaid products include those used by third parties to distribute funds to consumers, such as cards used for payroll, student loan disbursements, insurance proceeds, and certain government benefits. *Id.*

Some prepaid products come as part of a digital wallet. A digital wallet in and of itself is not a prepaid product. Rather, a digital wallet is a product that allows a consumer to store various payment credentials (such as debit cards, credit cards, and checking accounts) and to access those credentials to make payments at stores, online, or in a mobile application. *Id.* at 83943 (J.A. __). But some digital wallets include an asset account—and, apart from being bundled with digital-wallet functionality, those asset accounts are no different than other prepaid products. Digital-wallet asset accounts are referred to in this brief as “prepaid accounts with digital-wallet functionality” or, simply, “digital-wallet prepaid accounts.” Prepaid accounts with digital-wallet functionality (much like GPR cards

and other prepaid products) allow consumers to load and store funds and then access the funds to make purchases or conduct other transactions. *Id.*

All these different types of prepaid products (including prepaid products with digital-wallet functionality) have one thing in common: They can be loaded with funds and then used to conduct various types of transactions, including online and in-store purchases, ATM withdrawals, and peer-to-peer transfers. *Id.* (J.A. __).

C. The Prepaid Rule

Shortly after assuming its authorities under the federal consumer financial laws, the CFPB began considering whether and how to regulate products in the fast-growing prepaid market. Regulation E (the rule implementing EFTA) had for many years covered a few specific types of prepaid products—payroll cards and certain government benefit prepaid accounts. *Id.* at 83936. (J.A. __). But historically it was less clear what rules applied to other types of prepaid products, such as GPR cards and digital-wallet prepaid accounts. *Id.* In assessing how to resolve this regulatory uncertainty, the CFPB issued an advance notice of proposed rulemaking in 2012 and considered comments responding to it; met with industry, consumer groups, and advocacy organizations; undertook market research and monitoring; and studied 325 publicly available prepaid account agreements. *Id.* at 83954, 83956 (J.A. __). One focus of these efforts was to evaluate how the fees and other terms of prepaid products should be disclosed. *Id.* at 83953 (J.A. __). The

CFPB developed prototype disclosures for informing consumers about these products and conducted focus groups, interviewed consumers one-on-one, and solicited online feedback to assess what kind of disclosures would be most effective. *Id.* at 83954-56 (J.A. ___).

Based on those activities, in November 2016, the CFPB finalized a rule to govern prepaid products—titled “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z).” 81 Fed. Reg. 83934 (Nov. 22, 2016) (J.A. ___). In January 2018, before the Rule took effect, the CFPB issued another final rule modifying several aspects of the original rule. 83 Fed. Reg. 6364 (Feb. 13, 2018) (J.A. ___). After that rule and an earlier one delayed the effective date to give industry more time to come into compliance, the Prepaid Rule took effect on April 1, 2019. 82 Fed. Reg. 18975 (Apr. 25, 2017) (J.A. ___). Under the Prepaid Rule, Regulation E’s preexisting protections, such as limits on consumers’ liability in the event of erroneous transfers, now unambiguously apply to all prepaid accounts. *See* 81 Fed. Reg. at 83965 (J.A. ___). The Prepaid Rule also imposes a few specific requirements just for prepaid accounts, including requiring that consumers be provided certain disclosures before they acquire a prepaid account. *E.g., id.* at 83934 (J.A. ___).

Two aspects of the Prepaid Rule are relevant to this litigation. First, in the final rule, the CFPB declined to exempt prepaid accounts with digital-wallet

functionality. Instead, the CFPB made the policy judgment that consumers are entitled to the Prepaid Rule's protections regardless of whether the specific account they acquire is bundled with digital-wallet functionality. Second, the Prepaid Rule requires all prepaid accounts (including prepaid accounts with digital-wallet functionality) to provide consumers with a standard short-form disclosure of certain fees and features of the account.

D. Covered Prepaid Accounts

The Prepaid Rule amended Regulation E's definition of a covered "account" to specifically include any "prepaid account." 81 Fed. Reg. at 83965 (J.A. __). The Rule sets forth a comprehensive definition of the "prepaid account[s]" now covered by Regulation E. 12 C.F.R. § 1005.2(b)(3)(i). The term includes payroll cards, government benefit accounts, and accounts marketed or labeled as "prepaid" that can be used to buy goods or services from multiple, unaffiliated merchants or at ATM machines. *Id.* § 1005.2(b)(3)(i)(A)-(C). The term also includes, with limited exceptions, accounts that are "issued on a prepaid basis" or are "capable of being loaded with funds" after issuance "[w]hose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers." *Id.* § 1005.2(b)(3)(i)(D). The Rule's definition of "prepaid account" thus captures a broad range of accounts that can be loaded with funds and used for transactions—

including GPR cards, payroll card accounts, government benefit accounts, certain non-reloadable accounts, student loan disbursement cards, and prison release cards. *Id.* § 1005.2(b)(3)(i). The Rule expressly exempts several types of products (including, for example, certain gift certificates and gift cards) from the definition of a prepaid account. *Id.* § 1005.2(b)(3)(ii). There is, however, no exemption for prepaid accounts with digital-wallet functionality. *Id.*

To be clear, not all digital wallets are prepaid accounts covered by the Prepaid Rule. The Rule's official interpretations, adopted along with the Rule, clarify that to qualify as a "prepaid account," a product "must be capable of holding funds, rather than merely acting as a pass-through vehicle." 12 C.F.R. pt. 1005, Supp. I, ¶ 2(b)(3)(i)-6. So, as the official interpretations specifically explain, a digital wallet that only stores credentials for a consumer's other accounts and that cannot itself store funds is not a prepaid account. *Id.* But, if a digital wallet can store funds that consumers can use to conduct transactions, then the account is covered. *Id.* Put differently, whether a prepaid account has built-in digital-wallet functionality is not relevant to whether it is covered by the Rule.

Some commenters on the proposed rule urged the CFPB to exempt all digital wallets from the definition of a covered prepaid account. *E.g.*, Admin. Record Vol. 2, ECF No. 25 ("2AR") 5867, 5489-90, (J.A. __, __ - __). Other commenters disagreed, arguing that broad coverage was important to prevent evasion. *E.g.*,

2AR.5548, 7665 (J.A. __). After considering these comments, the CFPB declined to narrow the Rule's scope, not least because carving out certain specific types of products would both create substantial complexity as well as potentially confuse consumers about what protections apply to similar products. 81 Fed. Reg. at 83966, 83971 (J.A. __, __). And when a digital wallet not only acts as a pass-through for other accounts but also comes with its own asset account that can store funds, that digital wallet operates just like other prepaid accounts: A consumer can load funds into the account and use those funds to make purchases from a wide variety of merchants and to conduct person-to-person transfers. *Id.* at 83972 (J.A. __).

Given these similarities, the CFPB concluded that consumers using prepaid accounts that include digital-wallet functionality should get the same protections as consumers who use other types of prepaid accounts. *Id.* For example, just like other prepaid accounts, a prepaid account tied to a digital wallet could fall victim to erroneous transactions—so consumers holding those accounts should benefit from Regulation E's error-resolution protections. *Id.* And it made sense to give providers of digital-wallet prepaid accounts the same flexibilities with respect to those protections as providers of other types of prepaid products enjoy. *See* 12 C.F.R. § 1005.18(e) (modifying the error-resolution requirements for prepaid accounts, such as by not requiring companies to provide provisional credit to

consumers with unverified accounts during the course of an error investigation). Likewise, the CFPB made the policy judgment that consumers acquiring digital-wallet prepaid accounts should get the same opportunity as consumers of other prepaid products to learn about the product's fees (or lack thereof) upfront, even though most digital wallets did not charge many fees at the time. 81 Fed. Reg. at 83972 (J.A. ___).

E. The Short-Form Disclosure Requirement

The Prepaid Rule adopted new disclosure requirements that apply to all prepaid accounts (including prepaid accounts with digital-wallet functionality). Those disclosure requirements aim to ensure that consumers get the information they need to make an informed decision about a prepaid product before they acquire it. Of course, disclosures cannot help consumers make informed decisions unless consumers actually read and understand them. So, in crafting the Rule's disclosure requirements, the CFPB carefully balanced the need to provide useful information against concerns about information overload. 81 Fed. Reg. at 84010 (J.A. ___).

To strike that balance, the Rule generally requires financial institutions to provide consumers both a "short form" and "long form" disclosure before the consumer acquires a prepaid account. 12 C.F.R. § 1005.18(b). The two disclosures are designed to work together: The short form provides a snapshot of key fees and

information in a standardized format that lends itself to quick review and comprehension, while the companion long-form disclosure provides an unabridged description of all the fees and features of the account. 81 Fed. Reg. at 84007-08 (J.A. __ - __). The long form alone would not be sufficient because its potential size and complexity could lead consumers to disregard it in some circumstances. *Id.* at 84014 (J.A. ____). At the same time, the short form alone would not be sufficient because it does not provide the full universe of potentially relevant information. *Id.* PayPal challenges only the short-form disclosure.

The short-form disclosure provides a snapshot of an account's key fees and other features in a form that consumers are likely to read and understand. *See, e.g.*, 81 Fed. Reg. at 84013-14, 84276, 84278 (J.A. __ - __, __, __). To start, the Rule ensures that the short-form disclosure provides a consistent and manageable set of information by specifying what information must be included. The disclosure includes two sections listing relevant fees—a “static” and a “dynamic” section—as well as final section providing other useful information. 81 Fed. Reg. at 83934 (J.A. __).

The short-form disclosure's top, “static” section must list seven specific fees that tend to be the most important for assessing the cost of a prepaid account, including any: (1) periodic fee (e.g., a monthly fee); (2) per purchase fee; (3) ATM withdrawal fee; (4) cash reload fee; (5) ATM balance inquiry fee; (6) customer

service fee; and (7) inactivity fee. 12 C.F.R. § 1005.18(b)(2)(i)-(vii). To maintain the uniformity that makes it easier for consumers to quickly read and understand the disclosure, these fees must appear on the short form even if the account does not offer the service or does not charge for it. 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(2)-1; 81 Fed. Reg. at 84025 (J.A. ___). In that event, the disclosure may simply note that the fee is not applicable or that the amount of the fee is \$0. 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(2)-1.

The short-form disclosure next includes a “dynamic” section. This section must disclose how many other types of fees the account charges and list the two that generate the most revenue from consumers (if they exceed a de minimis threshold). 12 C.F.R. § 1005.18(b)(2)(viii)-(ix). The “dynamic” section of the disclosure helps ensure that the disclosure will remain relevant as the market evolves and companies begin charging new types of fees. 81 Fed. Reg. at 84041 (J.A. ___). It also reduces incentives for companies to obscure a product’s true costs by reducing the fees that must appear on every disclosure (in the “static” section) while increasing others. *Id.* The CFPB also deemed this section of the disclosure particularly important for prepaid products that already had different fee structures, such as prepaid accounts with digital-wallet functionality (which, at the time the Rule was issued, generally did not charge the seven fees that must always be disclosed in the “static” section of short form). *Id.*

The short-form disclosure must also include other, non-fee information that could be important to consumers. *See* 12 C.F.R. § 1005.18(b)(2)(x)-(xiii). For example, the short form must state whether the account is eligible for FDIC insurance and whether the consumer must register the account to be covered. *Id.* § 1005.18(b)(2)(xi).

To keep the short form simple and digestible, the Rule also limits footnotes and caveats within the short form. This is particularly relevant where a fee could be waived or otherwise vary. In those instances, the Rule generally requires disclosure of the highest fee that could be charged, followed by an asterisk or other symbol referencing a statement that the “fee can be lower depending on how and where this card is used,” or something substantially similar. *Id.* § 1005.18(b)(3)(i). The short-form disclosure itself generally cannot describe the specific conditions under which the fee may be lower or waived, but the financial institution can provide those details anywhere else it wants, including immediately outside the short-form disclosure box or elsewhere on the same webpage, mobile screen, or packaging. *See* 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(3)(i)-1; *see also* 81 Fed. Reg. at 84064 (J.A. ___). And the additional details must be provided in the accompanying long-form disclosure. 12 C.F.R. § 1005.18(b)(4)(ii).

The Rule also includes a variety of formatting requirements designed to ensure that the short-form disclosure has a standardized appearance that is easy for

consumers to read and comprehend. For example, the fees must be displayed in a table. 12 C.F.R. § 1005.18(b)(6)(iii). Moreover, the disclosure must use a single, easy-to-read type in a single color, against a background that provides a clear contrast. *Id.* § 1005.18(b)(7)(ii)(A). The Rule also specifies minimum type sizes for each piece of information. *Id.* § 1005.18(b)(7)(ii)(B)(1). In addition, the disclosed information must generally be displayed in a specified order that maintains consistency and facilitates easy comparison. *Id.* § 1005.18(b)(7)(i)(A). The Rule also requires certain information to be bolded and prohibits certain terms from being in larger type than others. *Id.* § 1005.18(b)(7)(ii)(B)(1). These provisions serve to draw consumers' attention to the most important information and to make all the information easier to digest. *See* 81 Fed. Reg. at 84011, 84013 (J.A. __, __).

In crafting the short form's standardized format, the CFPB recognized that consumers acquire prepaid accounts in many different ways, including in stores, online, and by phone—and designed the disclosure regime to be adaptable to all these contexts. *See* 81 Fed. Reg. at 84008 (J.A. __). For instance, the Rule prescribes minimum type sizes in terms of both a “point” size for printed disclosures and “pixels” for online disclosures. *Id.* at 84085 (J.A. __); 12 C.F.R. § 1005.18(b)(7)(ii)(B). Those minimum type sizes were set to accommodate the limited space on “J-hook” packages for prepaid accounts sold in stores, but the

Rule also permits providers to use larger type if space permits, like with an online disclosure. 81 Fed. Reg. at 84085 (J.A. ___); 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(7)(ii)-1. It also explains how to provide disclosures when space is even more tight, like on a mobile phone screen. 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(6)(i)(B)-2.

The Rule also provides several model forms that illustrate how to implement the its requirements. *See* 12 C.F.R. pt. 1005, Appx. A-10(a)-(e). *See* 81 Fed. Reg. at 84340-44 (J.A. ___); 12 C.F.R. pt. 1005, Appx. A-10(a)-(e). One such model form looks like this:

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$5.99[†]	\$0	\$0 in-network \$1.99 out-of-network	\$3.99*
ATM balance inquiry (in-network or out-of-network)			\$0 or \$0.50
Customer service (automated or live agent)			\$0 or \$0.50* per call
Inactivity (after 12 months with no transactions)			\$1.00 per month
We charge 4 other types of fees. Here are some of them:			
[Additional fee type]			\$0.50 or \$1.00
[Additional fee type]			\$3.00
[†] No monthly fee with direct deposit or 30 transactions per month. [*] This fee can be lower depending on how and where this card is used.			
You may be offered overdraft/credit after 30 days. Fees would apply. Register your card for FDIC insurance eligibility and other protections. For general information about prepaid accounts, visit cfpb.gov/prepaid . Find details and conditions for all fees and services inside the package, or call 800-234-5678 or visit xyz.com/prepaid .			

12 C.F.R. pt. 1005, Appx. A-10(c). The model forms are optional but offer a safe harbor to institutions that use them appropriately. 12 C.F.R. pt. 1005, Supp. I, ¶ A-1.

F. Procedural History

Plaintiff PayPal, Inc. is a large online payments company that offers a variety of prepaid products including a GPR card and a digital-wallet prepaid account. ECF No. 1 at 1, 13-15 (J.A. __, __-__); 2AR.561 (J.A. __); 2AR.729 (J.A. __). PayPal filed this lawsuit in December 2019 to challenge two provisions of the Prepaid Rule: (1) the short-form disclosure requirement, 12 C.F.R. § 1005.18(b), and (2) a provision (not at issue in this appeal) requiring providers to wait thirty days before linking credit to a prepaid account, *id.* § 1026.61(c). ECF No. 1 at 31-41 (J.A. __-__). PayPal alleged that those provisions of the Rule exceed the CFPB's statutory authority, are arbitrary and capricious as applied to prepaid accounts with digital-wallet functionality, and rely on an arbitrary and capricious cost-benefit analysis as applied to prepaid accounts with digital-wallet functionality. *Id.* It also alleged that the short-form disclosure requirement violates the First Amendment. *Id.*

The district court granted summary judgment to PayPal on December 30, 2020, and vacated both challenged provisions on the ground that they exceeded the CFPB's statutory authority. ECF No. 27 (J.A. __). The Court did not reach PayPal's other claims. *Id.* at 20 n.9 (J.A. __).

The CFPB appealed the district court's vacatur of the short-form disclosure requirement. ECF No. 30 (J.A. __). This Court reversed in a unanimous decision

authored by Judge Rao and held that the CFPB had statutory authority to adopt the short-form disclosure provisions. *See PayPal, Inc. v. CFPB*, 58 F.4th 1273 (D.C. Cir. 2023) (J.A. __). The Court remanded for consideration of PayPal’s remaining claims. *Id.*

On remand, the parties re-briefed the remaining issues: whether it was arbitrary or capricious for the CFPB to require digital-wallet prepaid accounts to comply with the short-form disclosure requirement, whether the CFPB adequately assessed the benefits and costs of requiring digital-wallet prepaid accounts to provide the short-form disclosure, and whether the short-form disclosure requirement violates the First Amendment. ECF Nos. 38, 39, 41, 43, 44, 45. On July 6, 2023, the district court held a hearing on the parties’ renewed cross-motions for summary judgment. (J.A. __). On March 29, 2024, the district court again granted PayPal summary judgment. ECF No. 48 (“Op.”) (J.A. __.)

The district court held that it was arbitrary and capricious for the CFPB to apply the short-form disclosure requirement to prepaid accounts with digital-wallet functionality. *Id.* at 11-20 (J.A. __ - __). The court found that “digital wallets are different in kind from GPR cards and other types of prepaid products.” *Id.* at 12 (J.A. __). The court reasoned that “digital wallets are not primarily used to access funds or to function as a substitute checking account” and “do not require a consumer to preload or prefund an account before they can use it.” *Id.* It also noted

that the “business model” of digital-wallet prepaid accounts did “not depend on charging usage fees to consumers” and that those accounts are not procured at “brick-and-mortar retail locations.” *Id.* Ultimately, the court concluded that these differences between digital-wallet prepaid accounts and other prepaid accounts should have persuaded the CFPB to exempt digital-wallet prepaid accounts from the short-form disclosure requirement.

The district court rejected the CFPB’s reasoning for requiring all prepaid accounts (including those with digital-wallet functionality) to provide the short-form disclosure. For example, the court disagreed with the CFPB’s policy judgment that a consistent disclosure is appropriate for all prepaid accounts because all prepaid accounts allow consumers to load, store, and spend funds. In the court’s view, the CFPB had not adequately explained why that shared “balance functionality” justified consistent regulatory treatment given that a comment letter from PayPal had explained that PayPal customers only “rare[ly]” used the balance functionality of their PayPal digital-wallet prepaid accounts. *Id.* at 19 (J.A. __). The court also rejected the CFPB’s goal of avoiding “patchwork regulation” because, in the court’s view, prepaid accounts with digital-wallet functionality and those without it “are not similar in the ways that count.” *Id.* at 18-19 (J.A. __).

The court also dismissed the CFPB’s explanation that requiring the same disclosure was warranted because digital-wallet prepaid accounts could begin

charging more fees in the future. *Id.* at 15-16 (J.A. ___). The court deemed this reasoning not only “badly speculative,” but also “senseless” given that PayPal had said in a comment letter that digital wallets’ “revenue model ... is not dependent on charging fees to consumers” and that this “model [wa]s not likely to change.” *Id.* at 15 (J.A. ___). In the court’s view, the “static” fees on the short-form disclosure would not be relevant to digital-wallet prepaid accounts “either now or in the conceivable future,” including because—again, in the court’s telling—“many of them” (like “anything ATM related”) “are not even supported by the product’s functionality.” *Id.*

The district court also held that the CFPB failed to adequately assess the costs and benefits of applying the short-form disclosure requirement to prepaid accounts with digital-wallet functionality. *Id.* at 20-23 (J.A. __ - __). The district court faulted the CFPB for the fact that the Prepaid Rule’s discussion of costs and benefits, although lengthy, addressed prepaid products categorically rather than “specifically” addressing prepaid products with digital-wallet functionality. *Id.* at 20-21 (J.A. __). According to the court, the general discussion of costs and benefits did “not apply” to digital-wallet prepaid accounts, except perhaps “the few pages” discussing how “web-based providers” should deliver the disclosures. *Id.* at 22 (J.A. __). And it faulted the CFPB for “ignor[ing]” concerns that the short-form disclosure would “risk inadvertently stunting the continuing development of digital

wallet products” and concerns that consumers would be confused by disclosures listing “\$0” or “N/A” for some fees or by the disclosure of the highest-possible fee with a short explanation that the fee could be lower depending on the circumstances. *Id.* at 22-23 (J.A. __ - __).

The court, however, also acknowledged, that the Rule’s preamble does include several pages specifically discussing digital wallets. *Id.* at 21 (J.A. __). But it dismissed the relevance of that discussion because the pages specifically addressing digital-wallet prepaid accounts were not “among the forty pages devoted to the agency’s Dodd-Frank obligation” to assess costs and benefits. *Id.* In addition to being located in the wrong section of preamble, the court deemed the specific discussion of digital-wallet prepaid accounts inadequate because it was “speculative” and did not provide a “thoughtful quantitative and qualitative weighing of the Rule’s costs and benefits with respect to digital wallets.” *Id.*

The district court did not reach PayPal’s First Amendment claim. *Id.* at 11 (J.A. __).

On the basis of PayPal’s arbitrary-and-capricious challenges, the district court vacated the short-form disclosure requirement as applied to digital wallets. *Id.* at 24 (J.A. __); *see also* ECF No. 49 at 1-2 (J.A. __ - __). In an accompanying order, the court also granted relief it had not addressed in the opinion itself: It

enjoined the CFPB from enforcing the short-form disclosure requirement against PayPal altogether. ECF No. 49 at 2 (J.A. ___).

This appeal followed. ECF No. 50 (J.A. ___).

SUMMARY OF ARGUMENT

1. The CFPB acted reasonably when it included prepaid accounts with digital-wallet functionality within the scope of the Prepaid Rule because prepaid accounts tied to a digital wallet share a fundamental similarity with other prepaid accounts: they allow for funds to be loaded, stored, and used in a variety of transactions. Treating all prepaid accounts the same ensures that consumers receive the same protections regardless of what type of prepaid account they open or how they acquire it.

The CFPB also acted reasonably when it declined to exempt digital-wallet prepaid accounts from the short-form disclosure requirement because carving out an exemption for digital-wallet prepaid accounts would create a patchwork regulatory regime rife with complexity. And consumers benefit from a standardized disclosure that provides a snapshot of account terms regardless of what type of account they acquire. Ultimately, the agency's decision not to create an individualized disclosure regime for digital-wallet prepaid accounts was a policy judgment that Congress left to the agency.

Contrary to the district court's conclusion, the CFPB adequately considered the differences between digital-wallet prepaid accounts and other prepaid accounts—and it reasonably explained why those differences did not warrant a special exemption from the Rule's disclosure requirements. First, the agency reasonably determined that the fact that digital-wallet prepaid accounts generally did not charge many user fees at the time of the rulemaking was immaterial. The short-form disclosure still provides useful information—about, for example, services that are free, features that are not offered, and whether the account is FDIC-insured. And the CFPB reasonably—and, as it turns out, correctly—predicted that digital-wallet providers could begin charging fees in the future. Second, the agency reasonably determined that the fact that many digital-wallet prepaid account users do not utilize their accounts' prepaid functionality is immaterial because, among other reasons, more users might utilize their account's prepaid functionality as the market evolves and the disclosure still benefits consumers who do utilize that functionality. Third, the agency reasonably determined that the fact that digital wallets are acquired online was immaterial because consumers benefit from a standardized disclosure no matter how they acquire an account.

2. The CFPB also complied with its statutory obligation to consider the costs and benefits of the short-form disclosure. The Rule's cost-benefit discussion fully

applies to digital-wallet prepaid accounts. There is no requirement that an agency separately discuss the costs and benefits of a rule for each affected product. And, in any event, the Rule does specifically discuss the costs and benefits of the disclosure in the digital-wallet context. While the district court objected that the CFPB did not consider that the short-form disclosure would confuse digital-wallet consumers and stifle innovation, that objection is unfounded because the only evidentiary basis for those purported costs are unsupported and speculative comment letters.

STANDARD OF REVIEW

Under the Administrative Procedure Act (APA), the court may set aside a rule if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). “[T]he scope of review under the ‘arbitrary and capricious’ standard is narrow,” and, when applying that standard, “a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 30 (1983). To survive arbitrary-and-capricious review, all that is required is that the agency have “articulate[d] a satisfactory explanation for its action.” *Id.* Under this “deferential” standard, agency actions are “presumptively valid provided [they] meet[] a minimum rationality standard.” *Alon Ref. Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 641 (D.C. Cir. 2019). Accordingly, agency actions should be upheld so long as they

are “reasonable and reasonably explained.” *Jackson v. Mabus*, 808 F.3d 933, 936 (D.C. Cir. 2015).

ARGUMENT

I. The short-form disclosure requirement is not arbitrary and capricious as applied to digital-wallet prepaid accounts.

The Prepaid Rule’s short-form disclosure requirements are not arbitrary and capricious as applied to digital-wallet prepaid accounts. The CFPB reasonably included all prepaid accounts, including ones bundled with digital-wallet functionality, within the scope of the Prepaid Rule because all prepaid accounts share the same basic function: they all allow for funds to be loaded, stored, and used to conduct various transactions. Indeed, PayPal concedes it was reasonable to apply most of the Prepaid Rule to digital-wallet prepaid accounts and instead contends only that it was arbitrary and capricious not to exempt those accounts from the Rule’s short-form disclosure requirement. But the CFPB also acted reasonably in declining to grant digital-wallet prepaid accounts that special exemption, and the district court accordingly erred in vacating the short-form disclosure requirement as applied to digital wallets.¹

¹ The district court actually went further and, in the judgment, enjoined the CFPB “from enforcing the short-form disclosure requirement against plaintiff” altogether. ECF 184 at 2 (J.A. ___). That relief, which the district court did not address in its opinion, is improper for the additional reason that it is overly broad. PayPal offers prepaid products other than its digital-wallet prepaid accounts—including a GPR card—and the district court’s opinion provides no

A. The CFPB reasonably included digital-wallet prepaid accounts within the scope of the Prepaid Rule.

The CFPB acted well within the bounds of its discretion when it included prepaid accounts with digital-wallet functionality within the scope of the Prepaid Rule. Before the Prepaid Rule, it was unclear what protections applied to digital-wallet prepaid accounts—for instance, whether they were subject to Regulation E’s limited-liability and error-resolution protections, and what information providers were required to disclose. The Prepaid Rule solved this problem by making clear that prepaid accounts (including digital-wallet prepaid accounts) were “accounts” subject to Regulation E generally, and it made clear that Regulation E’s protections to extended to those accounts, thereby ensuring that all prepaid users received the same protections. *See* 81 Fed. Reg. at 83966, 83971-72 (J.A. __, __ - __).

Consistent with this goal, the CFPB made the judgment that consumers who use prepaid accounts with digital-wallet functionality should get the same protections as consumers who use other types of prepaid accounts. *Id.* at 83972 (J.A. __). Prepaid accounts with digital-wallet functionality “operate in large part in a similar manner to physical or online prepaid accounts.” *Id.* at 83972 (J.A. __). Like other prepaid accounts, digital-wallet prepaid accounts allow a consumer to “load funds into the account, spend the funds at multiple unaffiliated merchants (or

basis to bar the CFPB from enforcing the short-form disclosure requirements with respect to those other PayPal prepaid accounts.

conduct [person-to-person] transfers), and reload the account once the funds are depleted.” *Id.* Given that fundamental similarity, the agency explained, “consumers who transact using digital wallets deserve the same protections as consumers who use other prepaid accounts.” 81 Fed. Reg. at 83972, 84015 (J.A. __, __). And treating all prepaid products the same avoids creating a complex, “patchwork regulatory regime” that would likely result in “consumer confusion as to what protections apply to similar accounts.” *Id.* at 83966, 84015 (J.A. __, __). That decision was entirely reasonable. Indeed, PayPal does not appear to dispute the reasonableness of including digital-wallet prepaid accounts within the scope of the Prepaid Rule generally. *See* ECF 39-2 at 1-2 (asking the court to vacate only the short-form disclosure requirement).

B. The CFPB reasonably declined to exempt digital-wallet prepaid accounts from the short-form disclosure requirement.

PayPal nonetheless contends that the CFPB should have exempted digital-wallet prepaid accounts from one specific portion of the rules governing prepaid accounts—the short-form disclosure requirement. But the CFPB acted well within the bounds of its discretion in declining to create an exemption to the short-form disclosure requirement for digital-wallet prepaid accounts. Such an exemption would create a regulatory patchwork and deprive consumers of the benefit of having a single, standardized disclosure that applies to all prepaid accounts. And, while the district court emphasized various differences between digital-wallet

prepaid accounts and other types of prepaid accounts, the CFPB considered these differences and reasonably determined that they did not warrant creating a different disclosure regime for prepaid accounts with digital-wallet functionality.

1. The CFPB reasonably determined that all prepaid accounts should have the same standardized disclosure.

The CFPB made the reasonable policy judgment that the same standardized disclosures should be provided for all prepaid accounts. For one, “creating an individualized disclosure regime for different types of prepaid accounts” would needlessly “create a patchwork regulatory regime”—a result the CFPB sought to avoid. 81 Fed. Reg. at 84015 (J.A. __). As the CFPB explained, trying “to carve out very specific types of products” would create “substantial complexity” and “could result in consumer confusion.” *Id.* at 83966 (J.A. __).

In addition, exempting digital-wallet prepaid accounts would deprive consumers of the benefits of a standardized disclosure. A standardized disclosure is easier for consumers to understand. Variations in how information is disclosed can make the information harder to digest, so the CFPB created a single disclosure for all prepaid accounts to make it easier for consumers to choose the best accounts for them. *Id.* at 84014 (J.A. __). The agency explained that it “developed the short form as a concise snapshot of a prepaid account’s key features that is both easily noticeable and digestible by consumers” and that “standardization” of the short form “ensures that consumers will be provided certain key fee information about

prepaid accounts in a consistent manner regardless” of how they obtain a prepaid account or what type of prepaid account it is. *Id.* at 83963, 84014 (J.A. __, __). The standardized disclosure also facilitates comparison shopping by allowing consumers to easily understand a product’s key terms and quickly compare them to others. *See id.* at 83954 (J.A. __).

The CFPB reasonably explained why it was not carving digital-wallet prepaid accounts out of the short-form disclosure requirement, and its “policy judgment” on that “is entitled to substantial deference,” *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 563 F.3d 466, 487 (D.C. Cir. 2009). While PayPal may wish that the CFPB had chosen a different policy, it is well established that a court may not “substitute its own policy judgment” for that of the agency. *EarthReports, Inc. v. FERC*, 828 F.3d 949, 954-55 (D.C. Cir. 2016).

2. The CFPB considered the differences between digital-wallet prepaid accounts and other prepaid accounts and reasonably concluded that those differences did not warrant special regulatory treatment.

The CFPB considered the differences between digital-wallet prepaid accounts and other types of prepaid accounts and reasonably concluded that they did not warrant special regulatory treatment. The district court faulted the CFPB for “cavalierly dismiss[ing]” distinctions that the district court viewed as making digital-wallet prepaid accounts “different in kind” from other prepaid products—namely, that (1) “their underlying business model does not depend on charging

usage fees to consumers”; (2) they “are not primarily used to access funds or to function as a substitute checking account”; and (3) “they are not available in brick-and-mortar retail locations, instead existing only in the digital space.” Op. at 12 (J.A. ___). But, in fact, the CFPB considered each of those three distinctions and concluded that none warranted treating digital-wallet prepaid accounts differently. That policy judgment was “reasonable and reasonably explained,” and it was therefore improper for the district court to vacate the rule as arbitrary and capricious. *Stilwell v. Off. of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009) (“Under *State Farm*, [a court] must uphold [a] rule so long as it is reasonable and reasonably explained.”).

a. The CFPB reasonably explained why it did not matter that digital-wallet prepaid accounts had different fee models at the time the Rule was promulgated.

To begin, the CFPB reasonably explained why it was not exempting digital-wallet prepaid accounts from the short-form disclosure requirement even though those accounts generally had different fee models at the time. As the CFPB explained, no such exemption was warranted for two reasons: (1) the short-form disclosure would still provide consumers with useful information even if the account does not charge the fees featured most prominently on the short-form disclosure, and (2) digital-wallet prepaid accounts could begin charging more fees

in the future. Both of those explanations readily satisfy the APA's reasonableness requirements.

1. First, the short-form disclosure is still useful to consumers even when the account does not charge the fees featured most prominently on the disclosure. According to the district court, it did not make sense for the CFPB to require digital-wallet prepaid accounts to provide the short-form disclosure because “none of the seven fees that comprise the top, ‘static’ section of the short form is applicable to digital wallet products.” Op. at 14 (J.A. ___). Besides being factually mistaken (more on that shortly), the CFPB acknowledged that, at the time of the rulemaking, many digital-wallet prepaid accounts did not charge those user fees—but it explained that consumers would still benefit from the disclosure. 81 Fed. Reg. at 83972, 84015 (J.A. ___). As the CFPB explained, even where products do not charge as many fees, the short-form disclosure still provides useful information about what features are provided for free and what features are not available, and it concluded that “consumers of digital wallets should have the same opportunity to review fees (or lack thereof) in the short form disclosure as consumers of other prepaid accounts.” *Id.* at 84015 (J.A. ___). The CFPB's policy determination that consumers may benefit from knowing when a feature is free or unavailable is hardly unreasonable. A standardized nutrition disclosure does not become less useful on a diet soda simply because it indicates zero calories and zero sugar. To

the contrary, that is helpful information to many consumers who are monitoring their diet. Likewise, many digital-wallet users may open an account with the understanding that it is free, and the “static” portion of the short-form disclosure will allow them to confirm whether that is accurate.

Beyond that, consumers also benefit from the information in the *other* parts of the short-form disclosure. The CFPB anticipated that different prepaid products would likely charge different types of fees and included the dynamic section of the short form for precisely that reason—to provide consumers with information about how many other types of fees are charged and the amounts of the two fees that generate the most revenue. *See* 12 C.F.R. § 1005.18(b)(2)(viii)-(ix). In the preamble, the CFPB explained that, among other things, this dynamic section could “be useful to reflect the fees of certain types of prepaid accounts, such as mobile wallets, that are less likely to charge the types of fees that are represented in the static portion of the short form.” *Id.* at 84044 (J.A. __). The short form’s dynamic section also “allows the short form to capture future fee types charged ... under new pricing models that emerge over time,” thereby preventing the disclosure from becoming “ossified and anachronistic” as the market evolves. *Id.* at 84041 (J.A. __); *see also id.* (explaining that the dynamic section is “particularly important for certain virtual wallets ... that may have pricing structures that do not

mirror those of GPR cards or other more traditional prepaid products” as well as “for capturing potential major evolutions in pricing structures”).

Beyond that, the short-form disclosure also includes non-fee information that is helpful to consumers regardless of what fees are (or are not) charged for the account. *See* 12 C.F.R. § 1005.18(b)(2)(x)-(xiii). For instance, the disclosure allows consumers to easily determine “whether the prepaid accounts are eligible for FDIC or NCUA insurance.” 81 Fed. Reg. at 84014 (J.A. ___).

2. In any event, the CFPB also reasonably determined that it should not exempt digital-wallet prepaid accounts from the short-form disclosure requirement because those accounts could begin charging more fees in the future. *See id.* at 83972 (J.A. ___) (“[W]hile ... most digital wallets available today do not typically charge many fees ... it is impossible to rule out that existing or new digital wallet providers will charge such fees in the future. If fees do become standard in this space, consumers ought to know what those fees are and when they will be imposed.”); *id.* at 84015 (J.A. ___) (“While the majority of digital wallet models currently on the market may not charge usage fees, as one commenter asserted, this may not hold true in the future, especially if these products become more widely used and the features and services offered broaden.”). That predictive judgment independently provided a reasonable basis to decline to exempt digital-wallet prepaid accounts from the otherwise applicable disclosure requirements.

This Court’s precedent teaches that that “agencies can, of course, adopt prophylactic rules to prevent potential problems before they arise.” *Stilwell*, 569 F.3d at 519 (D.C. Cir. 2009). The CFPB decided to require the same short-form disclosure for digital-wallet prepaid accounts in part to ensure consumers would not be caught off-guard by unexpected fees if digital-wallet prepaid accounts began charging more fees in the future. 81 Fed. Reg. at 84015 (J.A. __). When it comes to “predictive judgments” like this, “[t]he ‘arbitrary and capricious’ standard is particularly deferential.” *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1105 (D.C. Cir. 2009). Accordingly, the CFPB’s prediction that digital-wallet providers could begin charging more fees is entitled “to the benefit of the doubt.” *Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1020 (D.C. Cir. 2022).

But rather than given the CFPB’s predictive judgment the benefit of the doubt, the district court instead criticized it as “speculative” and “senseless.” Op. at 15 (J.A. __). It was neither.

Far from being “pure speculation,” *id.*, the CFPB’s judgment that providers could begin charging more fees for digital-wallet prepaid accounts in the future was based on the common-sense notion that companies could charge more fees, “especially if these products become more widely used and the features and services offered broaden.” 81 Fed. Reg. at 84015 (J.A. __). That sort of judgment grounded in “informed conjecture” is presumptively reasonable and need not be

supported further by “empirical data.” *Nasdaq Stock Mkt. LLC v. SEC*, 38 F.4th 1126, 1142 (D.C. Cir. 2022) (quotation omitted); *see also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 521 (2009) (explaining that an agency’s predictive judgment “merits deference” “even in the absence of evidence”). An agency is well within its rights to make a prediction, as the CFPB did here, based on its “expertise and first-hand experience with trends in the [relevant] industry.” *Coal. of MISO Transmission Customers*, 45 F.4th at 1020; *see also Great Lakes Commc’n Corp. v. FCC*, 3 F.4th 470, 476 (D.C. Cir. 2021) (explaining that an agency can “reasonably rely on common sense and predictive judgments within its expertise even if not explicitly backed by information in the record” (quotation omitted)). Thus, the district court was wrong to reject the agency’s predictive judgment as speculative.

The district court also erred in dismissing the CFPB’s prediction as “senseless.” Op. at 15 (J.A. ___). The court deemed it “senseless” to think digital-wallet prepaid accounts might begin charging more fees in the future for two reasons—both of them mistaken. For one, the district court thought that “the underlying revenue model of digital wallet providers is not dependent on charging fees to consumers” and that model is “is not likely to change.” Op. at 15 (J.A. ___). But the district court could not appropriately substitute its own prediction for that of the expert agency. *E.g., EarthReports*, 828 F.3d at 954-55. And its basis for

doing so was particularly weak. As support for its own prediction, the district court offered no reasoning or evidence—beyond PayPal’s say-so in a 2015 comment letter describing its own fee model and future plans. *See id.* (citing 2AR.5880-81 (J.A. __ - __)). Needless to say, PayPal had a clear vested interest at that time in representing that it would never begin charging fees. And it was hardly senseless for the CFPB to predict that companies might seek to boost their profits by charging more fees to users, even if they started out principally earning revenue from other sources.

Indeed, the CFPB’s predictive judgment has proven true. Notwithstanding PayPal’s representations in its 2015 comment letter that its revenue model was “not likely to change,” Op. at 15 (quoting 2AR.5880 (J.A. __)), PayPal today charges users of its digital-wallet prepaid accounts a variety of fees that are prominently featured on the short-form disclosure. *See* PayPal, PayPal Balance Short Form Disclosure (Aug. 14, 2024), https://www.paypal.com/us/legalhub/pp-short-form?locale.x=en_US.² PayPal’s Balance Account (which is the asset

² The Court can take judicial notice of the fees currently charged by PayPal that are listed in its publicly available short-form disclosure because that information “is not subject to reasonable dispute” and “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see also United States v. Manning*, 841 F. App’x 242, 243 (D.C. Cir. 2021) (explaining that judicial notice may be taken at any stage of the proceeding, including on appeal). Moreover, the Court may consider this evidence even though it is outside the administrative record because it “bears directly upon the plausibility of certain predictions made by the [agency] in promulgating the [challenged regulation].” *Amoco Oil Co. v. EPA*, 501 F.2d 722, 729 & n.10 (D.C. Cir. 1974) (“Rule-making is necessarily forward-looking, and by the time judicial review is secured events may have progressed sufficiently to indicate the

account tied to PayPal’s digital wallet) charges users two of the fees included in the static section of the short form (ATM withdrawal fee and a cash reload fee). *Id.* In the dynamic section of the short form, PayPal indicates that it charges seven other fees, and discloses two of them (an electronic withdrawal fee and a fee for buying or selling cryptocurrency). *Id.* Given that PayPal today charges its users an assortment of fees for its prepaid account tied to a digital wallet, it is in no position to question the reasonableness of the CFPB’s prediction that the digital-wallet providers’ revenue model could evolve with time.

Second, the district court also erred in concluding that CFPB’s predictive judgment was “senseless” because many of the fees included in the static section of the short form—like “anything ATM related”—“are not even supported by the product’s functionality” and thus would “have no obvious place in the digital wallet setting” even “in the conceivable future.” Op. at 15 (J.A. __). That is simply wrong: As discussed above, PayPal currently charges two of the seven static fees, including ATM withdrawal fees, for its digital-wallet prepaid account. Nothing about a digital-wallet prepaid account makes it incompatible with ATM withdrawals or any of the other fees featured in the top, “static” section of the

truth or falsity of agency predictions. We do not think a court need blind itself to such events.”); *see also Great Lakes Commc’n Corp. v. FCC*, 3 F.4th 470, 478 (D.C. Cir. 2021) (acknowledging that courts may consider “subsequent events” when they bear “directly on the plausibility of agency predictions that were essential to the rule”); *Nio v. U.S. Dep’t of Homeland Sec.*, 385 F. Supp. 3d 44, 61–62 (D.D.C. 2019) (applying *Amoco Oil* and citing other cases).

short-form disclosure. In short, there was nothing speculative or senseless about the CFPB's prediction that digital-wallet providers could begin charging more fees. That prediction was prescient.

b. The CFPB reasonably explained why it did not matter that many consumers may not heavily use the prepaid account functionality of their digital wallets.

Next, the CFPB also reasonably declined to exempt digital-wallet prepaid accounts from the short-form disclosure requirement even if, as the district court put it, “digital wallets are not primarily used to access funds or to function as a substitute checking account.” Op. at 12 (J.A.____). For one, the CFPB found that “consumers increasingly use digital wallets to conduct daily financial transactions.” 81 Fed. Reg. at 83968 (J.A.____). And it concluded that digital wallets “operate very much like” other prepaid accounts when “they are used to access funds the consumer has deposited into the account in advance.” *Id.* The district court rejected this reasoning because, in its view, digital-wallet users utilize their prepaid account “so rarely ... that it is almost theoretical.” Op. at 19 (J.A.____). But the district court's assertion that digital-wallet users rarely utilize prepaid-account functionality does not render the agency's decision to apply the short-form disclosure requirement to digital-wallet prepaid accounts arbitrary and capricious for four reasons.

First, the district court's only evidence for its contention that digital-wallet users generally do not use their prepaid accounts was again just PayPal's self-serving say-so in a comment letter. *Id.* PayPal's comment letter is vague on the point: It says that "most" of PayPal's digital-wallet customers do not "pre-load a balance"; that "only a small fraction" of PayPal digital-wallet transactions "are funded by" the prepaid account rather than through a stored payment credential; and that its digital wallet customers "hold a balance" only in "rare cases." 2AR.5868 (J.A. ___). But PayPal provides no specific percentages showing how many consumers use the prepaid account feature. And while PayPal highlights that its U.S. customers at the time held an "average account balance" of \$6, *id.*, the (assertedly) many accounts holding \$0 would presumably be bringing down that average, and the number therefore does not reveal the average amounts held by the unknown number of customers who *do* use the prepaid-account feature. It was reasonable for the agency to ensure that the consumers who would use the prepaid-account functionality would receive the same upfront disclosure about the account as consumers get for any other prepaid account.

Second, the CFPB reasonably concluded that, regardless of how heavily digital-wallet users utilized prepaid-functionality at the time, they could begin using that functionality more in the future. *See* 81 Fed. Reg. at 83968 (J.A. ___) (discussing possibility that digital-wallet prepaid products could become "more

widely used”). After all, providers presumably offer the feature in hopes that consumers will increasingly use it. And the CFPB’s prediction that digital-wallet users may increasingly use prepaid functionality is entitled to the benefit of the doubt. *See supra* Argument § I.B.2.a.

Third, the consumers who do use the prepaid account feature of their digital-wallet prepaid accounts—at the time of the Rule or in the future—would have the same use for the short form’s snapshot of the account’s key features and fees as do consumers of other types of prepaid accounts. *See* 81 Fed. Reg. 84007. The fact that some other digital-wallet users may not use the prepaid account feature is no reason to withhold a useful disclosure from consumers who do use that feature. The information, moreover, can be helpful to consumers who do not currently use the prepaid account functionality but may in the future—and so would want to know what fees could be charged if they did.

Fourth, the disclosure alerts consumers that they are, in fact, acquiring a prepaid account, not just a digital wallet with passthrough functionality. The district court expressed concern that providing the short-form disclosure to digital-wallet customers would cause “confusion and alarm.” *Op.* at 14 (J.A. ___). But it is unclear how a disclosure with straightforward information about an account would cause confusion unless the consumer otherwise did not realize they were acquiring a prepaid account at all (perhaps because thought they were acquiring a digital

wallet with only pass-through functionality). But ensuring that consumers know what kind of product they are acquiring is a feature, not a bug. And giving consumers that information upfront ensures they learn about it before it is “too late” to make an informed decision about whether to acquire the account. 81 Fed. Reg. at 84010 (J.A. ___).

c. The CFPB reasonably explained why it did not matter that digital-wallet prepaid accounts are acquired online.

Finally, turn to the district court’s objection that digital-wallet prepaid accounts “are not available in brick-and-mortar retail locations.” Op. at 12 (J.A. ___). The CFPB considered that fact and explained why it did not matter: Consumers benefit from receiving the same standardized disclosure “regardless of how or where they shop for or obtain prepaid accounts”—whether by looking at a package on a “J-hook” in a retail store or by looking at accounts online. 81 Fed. Reg. at 84014 (J.A. ___). Indeed, the CFPB found that “certain providers of prepaid accounts online may have been presenting disclosures on their Web sites in a way that made it difficult for consumers to have the chance to review them prior to acquisition.” *Id.* at 84017 (J.A. ___). That made it all the more important to guarantee consumers a clear, easy-to-use disclosure regardless of whether they obtained the account online or in person at a store.

The district court ignored this reasoning and instead emphasized that the CFPB designed the short-form disclosure to fit on the physical packaging for GPR cards displayed on J-hooks at brick-and-mortar stores—and that this was not relevant “in the digital wallet context.” Op. at 13-14 (J.A. __ - __). That reasoning is flawed for two reasons.

First, it ignores the CFPB’s explanation that consumers should get the same opportunity to review the same information in the same easily digestible way regardless of whether they were looking at accounts online or in a store. *See* 81 Fed. Reg. at 84014 (J.A. __). That is particularly relevant given the prevalence of virtual GPR cards—cards that operate like a physical GPR cards but exist “only electronically.” 81 Fed. Reg. at 83936. In crafting the Rule, the CFPB was conscious of “a significant increase in the use of virtual prepaid products” particularly “by underserved consumers.” *Id.* at 83953 (J.A. __). Those products, like digital-wallet prepaid accounts, are offered online. And it was entirely reasonable for the agency to require companies to provide the short-form disclosure to all consumers obtaining prepaid accounts, whether online or in person. 81 Fed. Reg. at 84008 (J.A. __).

Second, the district court’s focus on the short form’s suitability for J-hook packaging ignores that the Rule tailors its formatting requirements for when an account is offered online rather than on a J-hook in a store. For example, while the

CFPB selected minimum type sizes that could fit on a J-hook package, those sizes are only minimums. *Id.* at 84085 (J.A. __) (“Financial institutions are encouraged, but not required, to use larger type sizes when providing pre-acquisition disclosures for prepaid accounts in less space-restrictive settings.”). Providers may use larger type sizes when space permits, as with an online disclosure. 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(7)(ii)-1. In addition, the formatting provisions specify the minimum type sizes both in terms of a “point” size (for printed disclosures) and “pixels” (for online disclosures). *Id.* § 1005.18(b)(7)(ii)(B). The Rule also offers guidance for how to provide the short-form disclosure when space is more limited than a J-hook package, like on a mobile phone. *Id.* pt. 1005, Supp. I, ¶ 18(b)(6)(i)(B)-2. In short, the CFPB went to great pains to ensure that the short form is digestible and accessible no matter how it is delivered. *E.g.*, 81 Fed. Reg. at 84008 (J.A. __). And the fact that digital-wallet prepaid accounts are offered online provided no reason to exempt those accounts from the short-form disclosure requirement.

II. The CFPB adequately assessed the costs and benefits of the short-form disclosure requirement as applied to digital wallets.

The CFPB also satisfied its obligation under section 1022 of the Dodd-Frank Act to “consider ... the potential benefits and costs” of the short-form disclosure requirement. 12 U.S.C. § 5512(b)(2)(A). This “court reviews cost-benefit analyses ‘deferentially.’” *Cigar Ass’n of Am. v. FDA*, 5 F.4th 68, 76 (D.C. Cir. 2021)

(quotation omitted)). And when reviewing a cost-benefit analysis, courts apply the same arbitrary-and-capricious standard that governs administrative decision-making generally. *E.g.*, *City of Portland v. EPA*, 507 F.3d 706, 713 (D.C. Cir. 2007) (explaining that rulemaking cannot be justified with “arbitrary and capricious cost-benefit analyses”); *accord* *Op.* at 10-11 n.3. To satisfy that standard, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Bloomberg L.P. v. SEC*, 45 F.4th 462, 472 (D.C. Cir. 2022).

The CFPB carefully considered the benefits and costs of the short-form disclosure requirement. The preamble to the Prepaid Rule contains a lengthy cost-benefit discussion. 81 Fed. Reg. at 84271-307 (J.A. __). In that discussion, the CFPB explained that the short-form disclosure requirement would make it easier for consumers to find, understand, and use information pertaining to the costs and terms of prepaid accounts, and would thereby help consumers make informed decisions and encourage competition. 81 Fed. Reg. at 84276, 84278-79, 84287 (J.A. __, __ - __, __). The agency also considered the costs of the short-form disclosure requirement. It noted that prepaid providers may incur costs associated with developing the short-form disclosure, keeping it up-to-date, and delivering it to consumers but concluded those costs would be modest. *Id.* at 84280-86 (J.A. __ - __). The agency also followed section 1022’s instruction to specifically consider

the impact on “access” to financial products, and it concluded that any impact on access to financial products would be minimal, given the modest costs expected to be incurred by prepaid providers. *Id.* at 84271 (J.A. __). This analysis readily satisfies the CFPB’s obligations under section 1022 of the Dodd-Frank Act.

The district court nonetheless held that the CFPB failed to appropriately consider the costs and benefits of the short-form disclosure requirement for two reasons: (1) the court found that the agency failed to specifically consider the costs and benefits of “applying the short-form disclosure mandate specifically to digital wallets”; and (2) the court found that the agency failed to address two specific costs of applying the short-form disclosure requirement to digital-wallet prepaid accounts: consumer confusion and the stifling of innovation. Both findings are erroneous.

A. The CFPB’s benefit-cost discussion encompasses digital wallets.

The district court deemed the preamble’s discussion of the costs and benefits of the short-form disclosure requirement deficient because, it said, the CFPB did not address the costs and benefits of “applying the short-form disclosure mandate specifically to digital wallets.” *Op.* at 20-21 (J.A. __). That is wrong on several levels: (1) it misses that the CFPB’s general discussion of the short-form disclosure’s benefits and costs applies with full force to all prepaid accounts including digital-wallet prepaid accounts; (2) it wrongly assumes that the CFPB

was required to specifically discuss the benefits and costs of applying the short-form disclosure to digital-wallet prepaid accounts; and (3) it ignores that the CFPB did specifically consider the benefits and costs specific to digital-wallet prepaid accounts elsewhere in the preamble.

a. The preamble's discussion of the short-form disclosure requirement's benefits and costs applies with full force to all prepaid accounts, including digital-wallet prepaid accounts. The benefit-cost discussion notes the benefits that the short-form disclosure provides to consumers by providing helpful information and facilitating informed decision-making, and the discussion acknowledges some modest costs that will be incurred by prepaid providers who are required to develop, maintain, and distribute the disclosure. 81 Fed. Reg. at 84276-86 (J.A. ___). That analysis applies broadly to GPR cards, digital-wallet prepaid accounts, and other types of prepaid accounts.

In the district court's view, the preamble's general benefit-cost discussion "does not 'apply fully' to digital wallet products." Op. at 22 (J.A. ___). For one, the court asserts that the "only part of the cost-benefit analysis that arguably rings true for digital wallets is the few pages discussing how web-based providers should deliver the mandated disclosures." *Id.* But just because some of the discussion of costs and benefits does not explicitly reference digital-wallet prepaid accounts does not mean that the analysis is inapplicable to digital-wallet prepaid accounts. The

cost-benefit discussion pertaining to the disclosure requirements focuses on the benefits that the disclosures will provide to consumers and the minimal costs they will impose on providers. That analysis is applicable regardless of how the disclosure is delivered.

The district court then faults the CFPB for never testing the disclosure “in an electronic setting.” Op. at 22 (J.A. __). But an agency is not required to conduct empirical research or collect data to satisfy its benefit-cost obligations. *See Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 379 (D.C. Cir. 2013) (holding that an agency’s “statutory obligation to consider and evaluate potential costs and benefits” does not imply that the agency must conduct a “rigorous, quantitative economic analysis” (quotation omitted)); *see also Chamber of Com. of U.S. v. SEC*, 412 F.3d 133, 142 (D.C. Cir. 2005) (“[A]n agency need not—indeed cannot—base its every action upon empirical data.”). And, as the CFPB explained, there was no reason to think that putting the same information on a screen rather than on paper (with appropriate formatting adjustments) would make it any less understandable. 81 Fed. Reg. at 84283 (J.A. __). Accordingly, the CFPB’s reasoned decision not to conduct consumer testing on digital disclosures does not undermine that applicability of the cost-benefit discussion to digital-wallet prepaid accounts.

b. Because the general cost-benefit discussion applies with full force to all prepaid accounts, there was no need for the CFPB to specifically discuss the costs

and benefits for digital-wallet prepaid accounts in particular. Indeed, there is no requirement that an agency must always separately consider the costs and benefits of a rulemaking for every product or industry affected by the rule.

This Court squarely made that point in *Cigar Association of America v. FDA*, 5 F.4th 68, 76 (D.C. Cir. 2021). There, the Court reviewed the FDA's discussion of the costs and benefits of a rule deeming a variety of products subject to premarket review under the Tobacco Control Act. The challengers argued that the FDA's cost-benefit discussion was deficient, because while the agency offered "detailed analysis" of the costs and benefits of subjecting e-cigarettes to premarket review, it "failed to analyze the specific costs and benefits of subjecting cigars and pipe tobacco" to premarket review. *Id.* at 76. The Court was unpersuaded. It noted both the "deferential review" that applies in the cost-benefit context and the absence of any authority "for the proposition that FDA needed to consider the benefits of premarket review specifically for each industry or product affected" by the rule. *Id.* Ultimately, the Court concluded that the FDA has complied with its cost-benefit obligations notwithstanding the fact that the agency had not specifically considered the benefits and of the rule as applied to cigars and pipe tobacco. *Id.*

That holding is consistent with the weight of authority. Indeed, "there is no legal support for the proposition that every product or industry affected by a

rulemaking is entitled to a separate cost-benefit analysis.” *Nicopure Labs, LLC v. FDA*, 266 F. Supp. 3d 360, 407 (D.D.C. 2017); *Cigar Ass’n of Am. v. FDA*, No. 16-cv-01460, 2022 WL 2438512, at *8 (D.D.C. July 5, 2022) (same); cf. *Huntco Pawn Holdings, LLC v. U.S. Dep’t of Def.*, 240 F. Supp. 3d 206, 222 (D.D.C. 2016) (“These explanations appear to apply fully to the specific types of fees [at issue], and the Department was not required to apply this reasoning separately for each specific type of fee.”). The district court breezed past this caselaw by stating that while it might apply in “other cases” it does not apply “in this one.” Op. at 22 (J.A. __). But this Court’s decision in *Cigar Association* removes any ambiguity as to whether an agency is required to specifically consider the benefits and costs of every product affected by a rule. 5 F.4th at 76. It is not, and the district court’s approach to assessing the sufficiency of the CFPB’s cost-benefit discussion is irreconcilable with *Cigar Association*.

The district court cites *GPA Midstream Association v. United States Department of Transportation*, 67 F.4th 1188, 1201 (D.C. Cir. 2023), in support of its holding that the CFPB’s cost-benefit discussion is deficient because it spent too little time specifically addressing digital wallets. Op. at 23 (J.A. __). In that case, this Court held that the agency altogether “failed to consider how” one type of pipeline was “different from” another. 67 F.4th at 1199. Specifically, the agency “never considered” in its rulemaking (and “never disputed” in litigation) that it

would be more costly for one type of pipeline to comply with the rule. *Id.* The agency's failure to consider a conceded differential in compliance costs fatally undermined its benefit-cost analysis. *Id.* at 1201. Here, by contrast, no one has pointed to any meaningful differences in the costs or benefits of digital-wallet prepaid accounts that the CFPB failed to consider. *See infra* Argument § II.B. Thus, *GPA Midstream* is distinguishable, and the case provides no support for the district court's holding that the CFPB was required to separately consider the benefits and costs of applying the short-form disclosure to digital-wallet prepaid accounts.

c. In any event, the CFPB *did* specifically consider the benefits and costs of requiring digital-wallet prepaid accounts to comply with the short-form disclosure. The Prepaid Rule's preamble addressed the benefits of avoiding a patchwork regulatory regime that could leave consumers confused and giving digital-wallet prepaid account consumers information upfront about an account's fees or lack thereof. 81 Fed. Reg. at 83966, 83971-72 (J.A. __, __ - __). Although this digital-wallet-specific discussion did not appear in the section exclusively devoted to discussing benefits and costs under section 1022 of the Dodd-Frank Act, that section expressly incorporated the rest of the preamble by reference. *Id.* at 84269 (J.A. __).

Moreover, the section of the preamble specifically devoted to benefits and costs under section 1022 does address digital-wallet prepaid accounts where there is reason to think the type of account might make a difference. The cost-benefit discussion, for instance, acknowledges that digital-wallet prepaid accounts charged fewer fees (at the time) but explained that consumers would still benefit from knowing what fees were charged and what features were free. 81 Fed. Reg. at 84271 (J.A. __). The cost-benefit discussion also separately addresses accounts acquired online such as digital-wallet prepaid accounts: It noted that digital disclosures would provide consumers with useful information, and separately considered the costs providers would incur in the online context. *Id.* at 84282-86 (J.A. __).

B. The CFPB adequately addressed comments asserting that requiring the short-form disclosure for digital-wallet prepaid accounts would stifle innovation and cause consumer confusion.

The district court also erred in concluding that the CFPB failed to address two significant costs particular to digital-wallet prepaid accounts: (1) the risk “of consumer confusion resulting from the use of the short form in the digital wallet setting” and (2) the risk of “inadvertently stunting the continuing development of digital wallet products.” *Op.* at 22-23 (J.A. __). In fact, the CFPB adequately considered both purported risks, and neither casts any doubt on the agency’s

decision to require digital-wallet prepaid accounts to comply with the short-form disclosure requirement.

a. The district court's concern that the short-form disclosure would result in consumer confusion and alarm is baseless. The only evidence the district court cites is PayPal's own comment letter. *See Op.* at 14 (J.A. __) (citing 2AR.10434-37 (J.A. __ - __)). For one, while PayPal's comment letter warned that digital-wallet prepaid account consumers would be confused by the disclosure's listing of free or inapplicable features, it offered no evidence (or even reasoning) to support that claim. *See* 2AR.10436 (J.A. __). An agency is not required to respond to pure speculation. *E.g., Sierra Club v. EPA*, 895 F.3d 1, 18-19 (D.C. Cir. 2018) (holding that an agency is not required to respond to "insignificant comments" that "contained only speculation"); *Home Box Off., Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977) (similar). And the CFPB especially did not need to respond to PayPal's speculation here given that there is no reason to think consumers would be confused by a disclosure stating that a fee is either "\$0" or "N/A."

In any event, the CFPB expressly addressed this concern in the preamble. The agency explained that its consumer testing showed that nearly every consumer understood that "\$0" meant the service was free and that "N/A" meant the service was not offered. 81 Fed. Reg. at 84025 (J.A. __). While that testing did not survey digital-wallet customers specifically, there is no reason to think they would react

differently: “\$0” and “N/A” are simple, intuitive terms that most consumers will not struggle to comprehend.

The district goes on to clarify that its concern is not just that consumers won’t understand what “\$0” or “N/A” mean, but that the short form may create “alarm in consumers who might question ‘why’ they are being confronted with ‘all these terms and conditions.’” Op. at 23 (J.A. __). In support, the court points to a handful of consumer complaints cited by PayPal in its briefing. *See* Op. at 23 (J.A. __) (citing ECF 39-1 at 24 n.6). But apart from being outside the administrative record, PayPal’s cherry-picked complaints do not even show that the short-form disclosure caused any alarm. For instance, while PayPal cited consumer feedback that it “seems like there’s a fee for any way you use your money,” ECF 39-1 at 24 n.6, it strains credulity to think a disclosure listing a bunch of \$0 fees would cause that mistaken impression. If there were such confusion, the more plausible explanation is that it was caused by PayPal’s *long-form* disclosure, on which PayPal has chosen to list only the services for which it charges, while omitting altogether the commonly-used services (such as transferring funds to or from a linked bank account) that it offers for free.³ The Rule leaves it fully within

³ *See* PayPal, PayPal Balance Long Form Disclosure (Jan. 16, 2024), https://www.paypalobjects.com/marketing/ua/pdf/US/en/PayPal_Balance_Long_Form_Disclosure-061722.pdf?locale.x=en_US.

PayPal’s power to eliminate this confusion by simply listing on the long-form disclosure any services it offers for “\$0.” *See* 12 C.F.R. § 1005.18(b)(4)(ii).

The district court also expresses concern that requiring prepaid providers to “highlight the highest possible fees” on the short-form disclosure is misleading and alarming to consumers. *Op.* at 23 (J.A. __). But, for starters, this concern has nothing to do with the supposedly “distinct[.]” features of prepaid accounts with digital-wallet functionality, and thus does not support PayPal’s claim that the CFPB should have specifically exempted digital-wallet prepaid accounts from the short-form disclosure. In any event, the CFPB considered this concern and reasonably concluded it was unfounded. 81 Fed. Reg. at 84024. The agency explained that the rule requiring providers to list only the highest possible fee—with a brief notation that the amount could be lower depending on how the account was used—served to promote “simplicity and clarity,” which “are important goals for the short form disclosure.” *Id.* But the agency also explained that a prepaid provider may provide further clarifying information anywhere else, including immediately outside the short-form disclosure box. *Id.*; *see also* 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(3)(i)-1. Thus, there is minimal risk that a consumer will be misled.

For that reason, the district court’s reliance on *Merck & Co., Inc. v. HHS* 962 F.3d 531, 538, 540 (D.C. Cir. 2020), is misplaced. In *Merck*, this Court invalidated a rule that required drug companies to disclose a wholesale price that consumers

never paid and were “unlikely to understand.” *Id.* Here, the short-form disclosure includes accurate information that consumers are perfectly able to comprehend. The district court impermissibly “substitute[d] its judgment for that of the agency” in concluding that the CFPB had not adequately accounted for the risk of consumer confusion or alarm. *See State Farm*, 463 U.S. at 30.

b. The district court also exceeded the bounds of arbitrary-and-capricious review in faulting the CFPB for not addressing the concern that the short-form disclosure would stifle innovation in the digital-wallet space. *See Op.* at 22 (J.A. ___). While the district court points to a handful of comments claiming that the Rule would somehow stifle innovation, *see id.* at 22 (J.A. ___) (citing 2AR.5267-68, 5862, 10435 (J.A. ___ - ___, ___, ___)), it is not at all clear why that would be. And the comments did not offer an explanation. The CFPB had no obligation to respond to such unsupported speculation. *E.g., Sierra Club*, 895 F.3d at 18–19; *Home Box Off.*, 567 F.2d at 35 n.58. The district court points to no comment that provided any “elaboration” on the concerns about innovation, and the CFPB had no obligation to grapple with comments that did no “more than simply state” that innovation would be chilled, without “explain[ing] why.” *Pub. Citizen, Inc. v. FAA*, 988 F.2d 186, 197 (D.C. Cir. 1993).

CONCLUSION

The district court’s judgment should be reversed.

Dated: October 25, 2024

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This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,884 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared using Microsoft Word in Times New Roman 14-point font, a proportionally spaced typeface.

Dated: October 25, 2024

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STATUTORY ADDENDUM

12 C.F.R. § 1005.18ADD-1

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on October 25, 2024. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 25, 2024

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