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Regulation E Model Forms May Not Always Be a Safe Harbor



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In an [opinion](#) written by U.S. District of Delaware circuit judge Stephanos Bibas that begins, “A good template serves as a guide, not gospel,” Del-One Federal Credit Union was denied the safe harbor typically proffered by use of model forms in a potential class action regarding its overdraft fees.

The model language in question (found in [Appendix A-9 of Reg. E](#)) states, “An overdraft occurs when you do not have sufficient money in your account to cover a transaction, but we pay it anyway.” However, the credit union had an atypical overdraft fee policy that caused customers to incur a fee even when they always had sufficient funds in their account for present transactions, but did not have sufficient funds in their account to also cover scheduled future transactions, like a utility bill. The fee was charged to customers whether or not they deposited funds in time to sufficiently cover those future bills, and even though the credit union never had to “shell out anything” on the customer’s behalf. Thus, the fee was charged in contradiction of the model language that said that the fee would only be charged when the credit union paid the transaction, despite insufficient funds in the account.

This case is an excellent reminder to all financial institutions utilizing model language to make sure that their policies are consistent with the model language, and to not just assume the language will provide a safe harbor from liability and class actions.
