

Client Alert

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CFPB Unveils Prototype Model Forms for Overdraft

By Rick Fischer, Oliver I. Ireland, and Amanda J. Mollo

On August 4, 2017, the Consumer Financial Protection Bureau (CFPB) released four “prototype” model overdraft disclosure forms styled under its “Know Before You Owe” initiatives with a press release. The CFPB said the forms were designed to clarify the risks and costs of overdraft coverage for consumers. The press release and forms were accompanied by a report entitled *Data Point: Frequent Overdrafters* (the “Report”), highlighting the habits of the small group of consumers who initiated the most overdrafts per year.

Similar in concept and design to the CFPB’s “Know Before You Owe Disclosures” for mortgages and prepaid accounts, the model form prototypes seek to simplify the current overdraft model disclosure form that financial institutions must provide before a consumer opts into the payment of overdraft fees on ATM and one-time debit card transactions, per Regulation E. The CFPB’s prototype forms seek to help consumers “evaluate the risks and benefits of opting-in.” However, the August 4 release does not request comments on the prototypes, which the CFPB says it is still “currently testing.”

The Report focuses on the costs associated with frequent use of overdraft protection, noting that “9 percent of all accounts. . . paid 79 percent of all overdraft and NSF fees” and that the typical charge of \$34 per overdrafting transaction, when applied to the typical frequent overdrafter’s 22 overdraft incidents per year, results in “almost \$450 more in overdraft fees than someone who has not [opted in].” Additionally, the CFPB’s Report claims that the most frequent overdrafters are some of the most vulnerable consumers in the market, with an average end-of-day balance of \$350 or less, and typical credit scores of less than 600.

The CFPB previously published a [white paper](#) in 2013 that highlighted consumer protection concerns related to overdraft and a 2014 [report](#) analyzing consumer experiences with overdraft coverage.

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