

111TH CONGRESS
1ST SESSION

H. R. 3904

To amend the Truth in Lending Act to establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at depository institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 2009

Mrs. MALONEY (for herself, Mr. FRANK of Massachusetts, Ms. WATERS, Mr. MAFFEI, Mr. MILLER of North Carolina, Mr. HINOJOSA, Ms. MOORE of Wisconsin, Mr. HODES, Mr. CAPUANO, Mr. ACKERMAN, Mr. KANJORSKI, Mr. ELLISON, Mr. GUTIERREZ, Ms. SPEIER, Ms. ESHOO, and Mr. JONES) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at depository institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Overdraft Protection
5 Act of 2009”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 Section 102 of the Truth in Lending Act (15 U.S.C.
3 1601) is amended by adding at the end the following new
4 subsection:

5 “(c) FAIRNESS AND ACCOUNTABILITY IN OVER-
6 DRAFT COVERAGE.—

7 “(1) FINDINGS.—The Congress also finds
8 that—

9 “(A) overdraft coverage is a form of short-
10 term credit that depository institutions provide
11 for consumer transaction accounts. Historically,
12 depository institutions covered overdrafts for a
13 fee on an ad hoc basis;

14 “(B) with the growth in specially designed
15 software programs and in consumer use of debit
16 cards, overdraft coverage for a fee has become
17 more prevalent;

18 “(C) most depository institutions do not
19 notify consumers when adding this feature to
20 their transaction accounts, and some do not
21 permit consumers to eliminate this feature from
22 such accounts;

23 “(D) most depository institutions collect a
24 high flat fee, including for small dollar trans-
25 actions, each time the institution covers an
26 overdraft, in some cases impose multiple over-

1 draft coverage fees within a single day, and
2 many charge additional fees for each day dur-
3 ing which the account remains overdrawn; and

4 “(E) such abusive and misleading practices
5 in connection with overdraft coverage fees have
6 deprived consumers of meaningful choices about
7 their accounts and placed significant financial
8 burdens on low- and moderate-income con-
9 sumers.

10 “(2) PURPOSE.—It is the purpose of this title
11 to protect consumers by limiting abusive and mis-
12 leading overdraft coverage fees and practices, and by
13 providing meaningful disclosures and consumer
14 choice in connection with overdraft coverage fees.”.

15 **SEC. 3. DEFINITIONS.**

16 (a) ADDITIONAL DEFINITIONS.—Section 103 of the
17 Truth in Lending Act (15 U.S.C. 1602) is amended by
18 adding at the end the following new subsection:

19 “(cc) DEFINITIONS RELATING TO OVERDRAFT COV-
20 ERAGE.—

21 “(1) CHECK.—The term ‘check’ has the same
22 meaning as in section 3(6) of the Check Clearing for
23 the 21st Century Act (12 U.S.C. 5001 et seq.),
24 other than a travelers check.

1 “(2) DEPOSITORY INSTITUTION.—The term ‘de-
2 pository institution’ has the same meaning as in
3 clauses (i) through (vi) of section 19(b)(1)(A) of the
4 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

5 “(3) NONSUFFICIENT FUND FEE.—The term
6 ‘nonsufficient fund fee’ means a fee or charge as-
7 sessed in connection with an overdraft for which a
8 depository institution declines payment.

9 “(4) OVERDRAFT.—The term ‘overdraft’ means
10 the amount of a withdrawal by check or other debit
11 from a transaction account in which there are insuf-
12 ficient or unavailable funds in the account to cover
13 such check or debit.

14 “(5) OVERDRAFT COVERAGE.—The term ‘over-
15 draft coverage’ means the payment of a check pre-
16 sented or other debit posted against a transaction
17 account by the depository institution in which such
18 account is held, even though there are insufficient or
19 unavailable funds in the account to cover such
20 checks or other debits.

21 “(6) OVERDRAFT COVERAGE FEE.—The term
22 ‘overdraft coverage fee’ means any fee or charge as-
23 sessed in connection with overdraft coverage, or in
24 connection with any negative account balance that

1 results from overdraft coverage, unless such fee or
2 charge is imposed in connection with—

3 “(A) an extension of credit through an
4 overdraft line of credit program where such fee
5 or charge was considered a finance charge
6 under this title as in effect immediately prior to
7 the enactment of the Overdraft Protection Act
8 of 2009; or

9 “(B) any transfer from an account linked
10 to another transaction account.

11 Such fee shall be considered a ‘finance charge’ for
12 purposes of section 106(a), but shall not be included
13 in the calculation of the rate of interest for purposes
14 of section 107(5)(A)(vi) of the Federal Credit Union
15 Act (12 U.S.C. 1757(5)(A)(vi))

16 “(7) OVERDRAFT COVERAGE PROGRAM.—The
17 term ‘overdraft coverage program’ means a service
18 under which a depository institution assesses an
19 overdraft coverage fee for overdraft coverage.

20 “(8) TRANSACTION ACCOUNT.—The term
21 ‘transaction account’ has the same meaning as in
22 section 19(b)(1)(C) of the Federal Reserve Act (12
23 U.S.C. 461(b)(1)(C)).”.

24 (b) CONFORMING AMENDMENT.—Section
25 107(5)(A)(vi) of the Federal Credit Union Act (12 U.S.C.

1 1757(5)(A)(vi)) is amended by inserting “, other than an
2 overdraft coverage fee, as defined in section 103(cc) of the
3 Truth in Lending Act (12 U.S.C. 1602(cc))” after “inclu-
4 sive of all finance charges”.

5 **SEC. 4. FAIR MARKETING AND PROVISION OF OVERDRAFT**
6 **COVERAGE PROGRAMS.**

7 Chapter 2 of the Truth in Lending Act (15 U.S.C.
8 1631 et seq.) is amended by adding at the end the fol-
9 lowing new section:

10 **“SEC. 140B. OVERDRAFT COVERAGE PROGRAM DISCLO-**
11 **SURES AND CONSUMER PROTECTION.**

12 “(a) PROHIBITIONS.—No depository institution may
13 engage in acts or practices in connection with the mar-
14 keting of or the provision of overdraft coverage that are
15 unfair, deceptive, or designed to evade the provisions of
16 this section.

17 “(b) MARKETING DISCLOSURES.—Each depository
18 institution that provides or offers to provide overdraft cov-
19 erage with respect to transaction accounts held at that de-
20 pository institution shall clearly and conspicuously disclose
21 in all marketing materials for such overdraft coverage any
22 overdraft coverage fees.

23 “(c) CONSUMER CONSENT OPT-IN.—A depository in-
24 stitution may charge overdraft coverage fees only if the
25 consumer has consented in writing, in electronic form, or

1 in such other form as is permitted under regulations of
2 the Board.

3 “(d) CONSUMER DISCLOSURES.—Each depository in-
4 stitution shall clearly disclose to each consumer covered
5 by an overdraft protection program of that depository in-
6 stitution—

7 “(1) that—

8 “(A) the consumer may be charged for not
9 more than one overdraft coverage fee in any
10 single calendar month and not more than 6
11 overdraft coverage fees in any single calendar
12 year, per transaction account; and

13 “(B) the depository institution retains the
14 discretion to pay (without assessing an over-
15 draft coverage fee) or reject overdrafts incurred
16 by the consumer beyond the numbers described
17 in subparagraph (A);

18 “(2) information about any alternative over-
19 draft products that are available, including a clear
20 explanation of how the terms and fees for such alter-
21 native services and products differ; and

22 “(3) such other information as the Board may
23 require, by rule.

24 “(e) PERIODIC STATEMENTS.—Each depository insti-
25 tution that offers an overdraft coverage program shall, in

1 each periodic statement for any transaction account that
2 has an overdraft coverage program feature, clearly disclose
3 to the consumer the dollar amount of all overdraft cov-
4 erage fees charged to the consumer for the relevant period
5 and year to date.

6 “(f) EXCLUSION FROM ACCOUNT BALANCE INFOR-
7 MATION.—No depository institution may include the
8 amount available under the overdraft coverage program of
9 a consumer as part of the transaction account balance of
10 that consumer.

11 “(g) PROMPT NOTIFICATION.—Each depository insti-
12 tution shall promptly notify consumers, through a reason-
13 able means selected by the consumer, when overdraft cov-
14 erage has been accessed with respect to the account of
15 the consumer, not later than on the day on which such
16 access occurs, including—

17 “(1) the date of the transaction;

18 “(2) the type of transaction;

19 “(3) the overdraft amount;

20 “(4) the overdraft coverage fee;

21 “(5) the amount necessary to return the ac-
22 count to a positive balance; and

23 “(6) whether the participation of a consumer in
24 an overdraft coverage program will be terminated if

1 the account is not returned to a positive balance
2 within a given time period.

3 “(h) TERMINATED OR SUSPENDED COVERAGE.—

4 Each depository institution shall provide prompt notice to
5 the consumer, using a reasonable means selected by the
6 consumer, if the institution terminates or suspends access
7 to an overdraft coverage program with respect to an ac-
8 count of the consumer, including a clear rationale for the
9 action.

10 “(i) NOTICE AND OPPORTUNITY TO CANCEL.—Each
11 depository institution shall—

12 “(1) warn any consumer covered by an over-
13 draft coverage program who engages in a trans-
14 action through an automated teller machine or a
15 branch teller if completing the transaction would
16 trigger overdraft coverage fees, including the amount
17 of the fees; and

18 “(2) provide to the consumer the opportunity to
19 cancel the transaction before it is completed.

20 “(j) OVERDRAFT COVERAGE FEE LIMITS.—

21 “(1) FREQUENCY.—A depository institution
22 may charge not more than one overdraft coverage
23 fee in any single calendar month, and not more than
24 6 overdraft coverage fees in any single calendar
25 year, per transaction account.

1 “(2) REASONABLE AND PROPORTIONAL OVER-
2 DRAFT COVERAGE FEES.—

3 “(A) IN GENERAL.—The amount of any
4 overdraft coverage fee that a depository institu-
5 tion may assess for paying a transaction (in-
6 cluding a check or other debit) shall be reason-
7 able and proportional to the cost of processing
8 the transaction.

9 “(B) SAFE HARBOR RULE AUTHORIZED.—
10 The Board, in consultation with the Comp-
11 troller of the Currency, the Board of Directors
12 of the Federal Deposit Insurance Corporation,
13 the Director of the Office of Thrift Supervision,
14 and the National Credit Union Administration
15 Board, may issue rules to provide an amount
16 for any overdraft coverage fee that is presumed
17 to be reasonable and proportional to the actual
18 cost of processing the transaction.

19 “(3) POSTING ORDER.—In order to minimize
20 overdraft coverage fees charged to consumers, each
21 depository institution shall post transactions with re-
22 spect to transaction accounts in such a manner that
23 the consumer does not incur avoidable overdraft cov-
24 erage fees.

1 “(k) DEBIT HOLDS.—No depository institution may
2 charge an overdraft coverage fee on any category of trans-
3 action, if the overdraft results solely from a debit hold
4 amount placed on a transaction account that exceeds the
5 actual dollar amount of the transaction.

6 “(l) NONDISCRIMINATION FOR NOT OPTING IN.—In
7 implementing the requirements of this section, each depos-
8 itory institution shall provide to consumers who have not
9 consented to participate in an overdraft coverage program,
10 transaction accounts having the same terms, conditions,
11 or other features as those that are provided to consumers
12 who have consented to participate in such overdraft cov-
13 erage program, except for features of such overdraft cov-
14 erage.

15 “(m) NONSUFFICIENT FUND FEE LIMITS.—No de-
16 pository institution may charge any nonsufficient fund fee
17 with respect to—

18 “(1) any transaction at an automated teller ma-
19 chine; or

20 “(2) any debit card transaction.

21 “(n) REPORTS TO CONSUMER REPORTING AGEN-
22 CIES.—No depository institution may report negative in-
23 formation regarding the use of overdraft coverage by a
24 consumer to any consumer reporting agency (as that term
25 is defined in section 603 of the Fair Credit Reporting Act

1 (15 U.S.C. 1681a)) when the overdraft amounts and over-
2 draft coverage fees are paid under the terms of an over-
3 draft coverage program.

4 “(o) **RULE OF CONSTRUCTION.**—No provision of this
5 section may be construed as prohibiting a depository insti-
6 tution from retaining the discretion to pay, without assess-
7 ing an overdraft coverage fee or charge, an overdraft in-
8 curred by a consumer.”.

9 **SEC. 5. REGULATORY AUTHORITY OF THE BOARD.**

10 (a) **IN GENERAL.**—Not later than 9 months after the
11 date of the enactment of this Act (except as provided in
12 subsection (b)), the Board of Governors of the Federal Re-
13 serve System (hereafter in this Act referred to as the
14 “Board”), in consultation with the Comptroller of the Cur-
15 rency, the Board of Directors of the Federal Deposit In-
16 surance Corporation, the Director of the Office of Thrift
17 Supervision, and the National Credit Union Administra-
18 tion Board, shall issue such final rules and publish such
19 model forms as necessary to carry out section 140B of
20 the Truth in Lending Act, as added by this Act.

21 (b) **BOARD AUTHORITY REGARDING ADDITIONAL**
22 **WARNINGS.**—The Board may, by rule, after taking into
23 account the findings of the Comptroller General of the
24 United States under section 6, require warnings at loca-
25 tions such as point-of-sale transfer terminals or other loca-

1 tions, that are similar to those required under section
2 140B(i) of the Truth in Lending Act, as added by this
3 Act, where feasible, and if the cost of providing such warn-
4 ings does not outweigh the benefit to consumers.

5 **SEC. 6. STUDY AND REPORT BY THE GAO.**

6 (a) STUDY.—

7 (1) IN GENERAL.—The Comptroller General of
8 the United States shall conduct a study regarding
9 whether it is feasible for a depository institution—

10 (A) to provide a warning to a consumer at
11 a point-of-sale transfer terminal that com-
12 pleting a transfer may trigger overdraft cov-
13 erage fees; and

14 (B) to provide the consumer with the op-
15 portunity to cancel the point-of-sale transfer be-
16 fore the transaction is completed.

17 (2) CONSIDERATIONS.—In conducting the study
18 under this subsection, the Comptroller General shall
19 evaluate—

20 (A) the benefits to consumers of a point-
21 of-sale transfer overdraft warning and oppor-
22 tunity to cancel;

23 (B) the availability of technology to pro-
24 vide such a warning and opportunity; and

1 (C) the cost of providing such warning and
2 opportunity.

3 (b) REPORT TO CONGRESS.—Not later than 1 year
4 after the date of enactment of this Act, the Comptroller
5 General shall submit a report to Congress on the results
6 of the study conducted under subsection (a).

7 (c) DEFINITIONS.—As used in this section, the terms
8 “overdraft coverage program”, “overdraft coverage fee”,
9 and “depository institution” have the same meanings as
10 in section 103(cc) of the Truth in Lending Act, as added
11 by this Act.

12 **SEC. 7. EFFECTIVE DATE.**

13 (a) IN GENERAL.—This Act and the amendments
14 made by this Act shall take effect 1 year after the date
15 of the enactment of this Act, whether or not the rules of
16 the Board under this Act or such amendments are pre-
17 scribed in final form.

18 (b) MORATORIUM ON FEE INCREASES.—

19 (1) IN GENERAL.—During the 1-year period be-
20 ginning on the date of the enactment of this Act, no
21 depository institution may increase the overdraft
22 coverage fees or charges assessed on transaction ac-
23 counts for paying a transaction (including a check or
24 other debit) in connection with an overdraft or for
25 nonsufficient funds.

1 (2) DEFINITIONS.—As used in this section, the
2 terms “depository institution”, “overdraft”, “over-
3 draft coverage fee”, “transaction account” and
4 “nonsufficient fund fee” have the same meanings as
5 in section 103(cc) of the Truth in Lending Act, as
6 added by this Act.

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