

115TH CONGRESS  
1ST SESSION

# H. R. 3606

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2017

Mrs. CAROLYN B. MALONEY of New York (for herself and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Financial Services

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## 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 2017”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—The Congress finds the following:

1           (1) Overdraft coverage is a form of short-term  
2           credit that depository institutions provide for con-  
3           sumer transaction accounts. Historically, depository  
4           institutions covered overdrafts for a fee on an ad hoc  
5           basis.

6           (2) With the growth in specially designed soft-  
7           ware programs and in consumer use of debit cards,  
8           overdraft coverage for a fee has become more preva-  
9           lent.

10          (3) Many depository institutions offer a range  
11          of overdraft options but aggressively encourage con-  
12          sumers to consent to the most expensive option,  
13          where a high flat fee is collected for every individual  
14          overdraft transaction.

15          (4) Most depository institutions collect a high  
16          flat fee, including for small dollar transactions, each  
17          time the institution covers an overdraft, in some  
18          cases impose multiple overdraft coverage fees within  
19          a single day, and many charge additional fees for  
20          each day during which the account remains over-  
21          drawn.

22          (5) Such abusive practices in connection with  
23          overdraft coverage fees have deprived consumers of  
24          meaningful choices about their accounts and placed

1 significant financial burdens on low- and moderate-  
2 income consumers.

3 (b) PURPOSE.—It is the purpose of this Act to pro-  
4 tect consumers by limiting abusive overdraft coverage fees  
5 and practices, and by providing meaningful disclosures  
6 and consumer choice in connection with overdraft coverage  
7 fees.

8 **SEC. 3. DEFINITIONS.**

9 (a) ADDITIONAL DEFINITIONS.—Section 140B of the  
10 Truth in Lending Act, as added by section 4, is amended  
11 by adding at the end the following new subsection:

12 “(o) DEFINITIONS RELATING TO OVERDRAFT COV-  
13 ERAGE.—For purposes of this section:

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

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

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

1           “(4) OVERDRAFT.—The term ‘overdraft’  
2 means, in a withdrawal by check or other debit from  
3 a consumer transaction account in which there are  
4 insufficient or unavailable funds in the account to  
5 cover such check or debit, the amount of such with-  
6 drawal that exceeds the available funds in the ac-  
7 count.

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

15           “(6) OVERDRAFT COVERAGE FEE.—The term  
16 ‘overdraft coverage fee’ means any fee or charge as-  
17 sessed in connection with overdraft coverage, or in  
18 connection with any negative account balance that  
19 results from overdraft coverage, unless such fee or  
20 charge is imposed in connection with—

21           “(A) an extension of credit through an  
22 overdraft line of credit program where such fee  
23 or charge was considered a finance charge  
24 under this title as in effect immediately prior to

1 the enactment of the Overdraft Protection Act  
2 of 2017; or

3 “(B) any transfer from an account linked  
4 to another transaction account.

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

10 “(7) OVERDRAFT COVERAGE PROGRAM.—The  
11 term ‘overdraft coverage program’ means a service  
12 under which a depository institution assesses an  
13 overdraft coverage fee for overdraft coverage.

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

18 (b) CONFORMING AMENDMENT.—Section  
19 107(5)(A)(vi) of the Federal Credit Union Act (12 U.S.C.  
20 1757(5)(A)(vi)) is amended by inserting “, other than an  
21 overdraft coverage fee, as defined in section 140B(o) of  
22 the Truth in Lending Act” after “inclusive of all finance  
23 charges”.

1 **SEC. 4. FAIR MARKETING AND PROVISION OF OVERDRAFT**  
2 **COVERAGE PROGRAMS.**

3 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
4 ing Act (15 U.S.C. 1631 et seq.) is amended by adding  
5 at the end the following new section:

6 **“§ 140B. Overdraft coverage program disclosures and**  
7 **consumer protection**

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

13 “(b) MARKETING DISCLOSURES.—Each depository  
14 institution that provides or offers to provide overdraft cov-  
15 erage with respect to transaction accounts held at that de-  
16 pository institution shall clearly and conspicuously disclose  
17 in all marketing materials for such overdraft coverage—

18 “(1) any overdraft coverage fees with respect to  
19 such overdraft coverage; and

20 “(2) that by not opting in to such overdraft  
21 coverage—

22 “(A) a consumer’s transaction may be de-  
23 clined if there are insufficient funds in the re-  
24 lated transaction account; and

25 “(B) the consumer will not be charged a  
26 fee if such transaction is declined.

1       “(c) CONSUMER CONSENT OPT-IN.—A depository in-  
2       stitution may charge overdraft coverage fees with respect  
3       to the use of an automatic teller machine or point of sale  
4       transaction only if the consumer has consented in writing,  
5       in electronic form, or in such other form as is permitted  
6       under regulations of the Bureau.

7       “(d) CONSUMER DISCLOSURES.—Each depository in-  
8       stitution shall clearly disclose to each consumer covered  
9       by an overdraft protection program of that depository in-  
10      stitution—

11             “(1) that—

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

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

22             “(2) the overdraft coverage fee as an annual  
23             percentage rate, so as to permit consumers to mean-  
24             ingfully compare the overdraft coverage to alter-

1 native forms of overdraft options and other sources  
2 of credit;

3 “(3) information about any alternative over-  
4 draft products that are available (such as linked ac-  
5 counts, lines of credit, and alerts), including a clear  
6 explanation of how the terms and fees for such alter-  
7 native services and products differ; and

8 “(4) such other information as the Bureau may  
9 require, by rule.

10 “(e) PERIODIC STATEMENTS.—Each depository insti-  
11 tution that offers an overdraft coverage program shall, in  
12 each periodic statement for any transaction account that  
13 has an overdraft coverage program feature, clearly disclose  
14 to the consumer the dollar amount of all overdraft cov-  
15 erage fees and nonsufficient fund fees charged to the con-  
16 sumer for the relevant period and year to date.

17 “(f) EXCLUSION FROM ACCOUNT BALANCE INFOR-  
18 MATION.—No depository institution may include the  
19 amount available under the overdraft coverage program of  
20 a consumer as part of the transaction account balance of  
21 that consumer.

22 “(g) PROMPT NOTIFICATION.—Each depository insti-  
23 tution shall promptly notify consumers, through a reason-  
24 able means selected by the consumer, when overdraft cov-  
25 erage has been accessed with respect to the account of

1 the consumer, not later than on the day on which such  
2 access occurs, including—

3 “(1) the date of the transaction;

4 “(2) the type of transaction;

5 “(3) the overdraft amount;

6 “(4) the overdraft coverage fee;

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

9 “(6) whether the participation of a consumer in  
10 an overdraft coverage program will be terminated if  
11 the account is not returned to a positive balance  
12 within a given time period.

13 “(h) TERMINATED OR SUSPENDED COVERAGE.—  
14 Each depository institution shall provide prompt notice to  
15 the consumer, using a reasonable means selected by the  
16 consumer, if the institution terminates or suspends access  
17 to an overdraft coverage program with respect to an ac-  
18 count of the consumer, including a clear rationale for the  
19 action.

20 “(i) OVERDRAFT COVERAGE FEE LIMITS.—

21 “(1) NOTICE AND OPPORTUNITY TO CANCEL.—

22 Each depository institution shall—

23 “(A) warn any consumer covered by an  
24 overdraft coverage program who engages in a  
25 transaction through an automated teller ma-

1 chine or a branch teller if completing the trans-  
2 action would trigger overdraft coverage fees, in-  
3 cluding the amount of the fees; and

4 “(B) provide to the consumer the oppor-  
5 tunity to cancel the transaction before it is  
6 completed.

7 “(2) FREQUENCY.—A depository institution  
8 may charge not more than one overdraft coverage  
9 fee in any single calendar month, and not more than  
10 6 overdraft coverage fees in any single calendar  
11 year, per transaction account.

12 “(3) REASONABLE AND PROPORTIONAL OVER-  
13 DRAFT COVERAGE FEES.—

14 “(A) IN GENERAL.—The amount of any  
15 overdraft coverage fee that a depository institu-  
16 tion may assess for paying a transaction (in-  
17 cluding a check or other debit) shall be reason-  
18 able and proportional to the amount of the  
19 overdraft.

20 “(B) SAFE HARBOR RULE AUTHORIZED.—  
21 The Bureau, in consultation with the Board of  
22 Governors of the Federal Reserve System,  
23 Comptroller of the Currency, the Board of Di-  
24 rectors of the Federal Deposit Insurance Cor-  
25 poration, and the National Credit Union Ad-

1           ministration Board, may issue rules to provide  
2           an amount for any overdraft coverage fee that  
3           is presumed to be reasonable and proportional  
4           to the amount of the overdraft.

5           “(4) POSTING ORDER.—In order to minimize  
6           overdraft coverage fees charged to consumers, each  
7           depository institution shall post transactions with re-  
8           spect to transaction accounts in such a manner that  
9           the consumer does not incur avoidable overdraft cov-  
10          erage fees.

11          “(j) DEBIT HOLDS.—No depository institution may  
12          charge an overdraft coverage fee on any category of trans-  
13          action, if the overdraft results solely from a debit hold  
14          amount placed on a transaction account that exceeds the  
15          actual dollar amount of the transaction.

16          “(k) NONDISCRIMINATION FOR NOT OPTING IN.—In  
17          implementing the requirements of this section, each depos-  
18          itory institution shall provide to consumers who have not  
19          consented to participate in an overdraft coverage program,  
20          transaction accounts having the same terms, conditions,  
21          or other features as those that are provided to consumers  
22          who have consented to participate in such overdraft cov-  
23          erage program, except for features of such overdraft cov-  
24          erage.

1           “(l) NONSUFFICIENT FUND FEE LIMITS.—No depos-  
2 itory institution may charge any nonsufficient fund fee  
3 with respect to—

4                   “(1) any transaction at an automated teller ma-  
5 chine; or

6                   “(2) any debit card transaction.

7           “(m) REPORTS TO CONSUMER REPORTING AGEN-  
8 CIES.—No depository institution may report negative in-  
9 formation regarding the use of overdraft coverage by a  
10 consumer to any consumer reporting agency (as that term  
11 is defined in section 603 of the Fair Credit Reporting Act  
12 (15 U.S.C. 1681a)) when the overdraft amounts and over-  
13 draft coverage fees are repaid under the terms of an over-  
14 draft coverage program.

15           “(n) RULE OF CONSTRUCTION.—No provision of this  
16 section may be construed as prohibiting a depository insti-  
17 tution from retaining the discretion to pay, without assess-  
18 ing an overdraft coverage fee or charge, an overdraft in-  
19 curred by a consumer.”.

20           (b) TECHNICAL AMENDMENT.—The table of contents  
21 for chapter II of the Truth in Lending Act is amended  
22 by inserting after the item relating to section 140A the  
23 following new item:

“140B. Overdraft coverage program disclosures and consumer protection.”.

1 **SEC. 5. REGULATORY AUTHORITY OF THE BUREAU.**

2 Not later than 24 months after the date of the enact-  
3 ment of this Act, the Bureau of Consumer Financial Pro-  
4 tection (hereafter in this Act referred to as the “Bureau”)  
5 shall issue such final rules and publish such model forms  
6 as necessary to carry out section 140B of the Truth in  
7 Lending Act, as added by this Act.

8 **SEC. 6. EFFECTIVE DATE.**

9 (a) IN GENERAL.—This Act and the amendments  
10 made by this Act shall take effect 1 year after the date  
11 of the enactment of this Act, whether or not the rules of  
12 the Bureau under this Act or such amendments are pre-  
13 scribed in final form.

14 (b) MORATORIUM ON FEE INCREASES.—

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

22 (2) DEFINITIONS.—As used in this section, the  
23 terms “depository institution”, “overdraft”, “over-  
24 draft coverage fee”, “transaction account” and  
25 “nonsufficient fund fee” have the same meanings as

1 in section 140B(o) of the Truth in Lending Act, as  
2 added by this Act.

○