

110TH CONGRESS
2D SESSION

S. 3632

To combat predatory lending practices and to provide access to capital to those living in low-income and traditionally underserved communities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To combat predatory lending practices and to provide access to capital to those living in low-income and traditionally underserved communities, 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 “Fostering American
5 Independence from Regressive and Abusive Credit Trans-
6 actions Act of 2008” or the “FAIR Act”.

1 **SEC. 2. MAXIMUM INTEREST RATES; PROHIBITION ON PAY-**
2 **DAY LENDING.**

3 Chapter 2 of the Truth in Lending Act (15 U.S.C.
4 1631 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 140. MAXIMUM RATE OF INTEREST; PROHIBITION ON**
7 **PAYDAY LENDING.**

8 “(a) INTEREST LIMIT.—No covered creditor may
9 make an extension of credit to a consumer with respect
10 to which the annual percentage rate, as defined in sub-
11 section (b), exceeds 36 percent, or such lower limit as is
12 provided under otherwise applicable State or Federal law,
13 including section 207 of the Servicemembers Civil Relief
14 Act (50 U.S.C. App. 527).

15 “(b) PAYDAY LOAN PROHIBITION.—Notwithstanding
16 any other provision of law, no covered creditor may—

17 “(1) cash or advance money for a post-dated
18 check in exchange for a fee or other payment of in-
19 terest, other than as otherwise authorized for the
20 payment of a preexisting debt; or

21 “(2) hold a check, require electronic access to
22 an account at a financial institution, or hold title to
23 personal property (except in connection with the
24 purchase or rental of such personal property) as col-
25 lateral for a loan or other extension of credit.

1 “(c) DEFINITION OF ANNUAL PERCENTAGE CREDIT
2 RATE AND COVERED CREDITOR.—For purposes of this
3 section—

4 “(1) the ‘annual percentage rate’ includes all
5 charges payable directly or indirectly incident to, an-
6 cillary to, or as a condition of the extension of cred-
7 it, including—

8 “(A) any payment compensating a creditor
9 or prospective creditor for an extension of credit
10 or making available a line of credit, or any de-
11 fault or breach by a borrower of a condition
12 upon which credit was extended, including fees
13 connected with credit extension or availability,
14 such as numerical periodic rates, late fees, cred-
15 itor-imposed not sufficient funds fees charged
16 when a borrower tenders payment on a debt
17 with a check drawn on insufficient funds, over
18 limit fees, annual fees, cash advance fees, and
19 membership fees;

20 “(B) all fees which constitute a finance
21 charge, as defined by rules of the Board in ac-
22 cordance with this title;

23 “(C) credit insurance premiums, whether
24 optional or required; and

1 “(D) all charges and costs for ancillary
2 products sold in connection with or incidental to
3 the credit transaction; and

4 “(2) the term ‘covered creditor’ means a cred-
5 itor other than an insured depository institution (as
6 defined in section 3 of the Federal Deposit Insur-
7 ance Act (12 U.S.C. 1813)) or an insured credit
8 union (as defined in section 101 of the Federal
9 Credit Union Act (12 U.S.C. 1752)).

10 “(d) MANDATORY DISCLOSURES.—In addition to any
11 other disclosures required by this title, a covered creditor
12 shall, with respect to an extension of consumer credit, pro-
13 vide to the consumer in writing, at or before the issuance
14 of such credit—

15 “(1) a statement of the annual percentage rate
16 applicable to the extension of credit; and

17 “(2) a clear description of the payment obliga-
18 tions of the consumer.

19 “(e) RELATION TO STATE LAW.—Nothing in this
20 section may be construed to preempt any provision of
21 State law that provides greater protection to consumers
22 than is provided in this section.

23 “(f) CIVIL LIABILITY AND ENFORCEMENT.—In addi-
24 tion to remedies available to the consumer under section
25 130(a), any consumer credit transaction made in violation

1 of this section shall be null and void, and not enforceable
2 by any party in any court or alternative dispute resolution
3 forum, and the creditor or any subsequent holder shall
4 promptly return to the consumer any principal, interest,
5 charges, and fees, and any security interest associated
6 with such transaction. Notwithstanding any statute of lim-
7 itations or repose, a violation of this section may be raised
8 as a matter of defense by recoupment or set off to an ac-
9 tion to collect such debt or repossess related security at
10 any time.

11 “(g) VIOLATIONS.—Any person that violates this sec-
12 tion, or seeks to enforce an agreement made in violation
13 of this section, shall be subject to, for each such violation,
14 1 year in prison and a fine in an amount equal to the
15 greater of—

16 “(1) 3 times the amount of the total accrued
17 debt associated with the subject transaction; or

18 “(2) \$50,000.

19 “(h) STATE ATTORNEYS GENERAL.—An action to
20 enforce this section may be brought by the appropriate
21 State attorney general in any United States district court
22 or any other court of competent jurisdiction, not later than
23 3 years after the date of the violation, and may obtain
24 injunctive relief.”.

1 **SEC. 3. SMALL-DOLLAR LOAN PROGRAM.**

2 (a) ESTABLISHMENT.—The Federal Deposit Insur-
3 ance Corporation (in this Act referred to as the “Corpora-
4 tion”) shall establish, by rule, a program to encourage in-
5 sured depository institutions to incorporate small con-
6 sumer loans into their regular banking services.

7 (b) PROGRAM COMPONENTS.—The loan program es-
8 tablished under this section shall—

9 (1) be voluntary in nature;

10 (2) allow for loan amounts of \$1,000 or less;

11 (3) provide for—

12 (A) amortization periods of not longer than
13 36 months, in the case of closed end credit
14 plans; and

15 (B) minimum regular payments that are
16 designed to reduce outstanding principal
17 amounts, in the case of loans under an open
18 end credit plan;

19 (4) prohibit the imposition of—

20 (A) prepayment penalties; and

21 (B) origination or maintenance fees that
22 exceed the true cost of the loan to the financial
23 institution; and

24 (5) provide for an automatic savings compo-
25 nent.

1 (c) COMMUNITY REINVESTMENT ACT TREAT-
2 MENT.—Participation in the loan program established
3 under this Act shall be a factor in the determination by
4 the appropriate Federal financial supervisory agency of
5 whether an insured depository institution is meeting the
6 credit needs of its community for purposes of the Commu-
7 nity Reinvestment Act of 1977.

8 (d) DEFINITIONS.—As used in this section—

9 (1) the term “appropriate Federal financial su-
10 supervisory agency” has the same meaning as in sec-
11 tion 803 of the Community Reinvestment Act of
12 1977 (12 U.S.C. 2902);

13 (2) the term “closed end credit plan” means an
14 extension of credit for a fixed period of time, other
15 than an extension of credit that is secured by a
16 dwelling or other real property;

17 (3) the term “insured depository institution”
18 has the same meaning as in section 3 of the Federal
19 Deposit Insurance Act (12 U.S.C. 1813); and

20 (4) the term “open end credit plan” has the
21 same meaning as in section 103 of the Truth in
22 Lending Act (15 U.S.C. 1602).

23 (e) REGULATORY ACTIONS.—The Corporation shall
24 issue such regulations as may be necessary to carry out

1 this section, including with respect to the definition of
2 terms (other than as provided in subsection (d)).

3 **SEC. 4. STUDY AND REPORT ON BEST PRACTICES.**

4 (a) STUDY.—The Federal Deposit Insurance Cor-
5 poration and the National Credit Union Administration
6 shall each conduct a study of best practices to provide in-
7 centives for mainstream financial institutions to provide
8 small dollar amount loans to consumers, including innova-
9 tive State and local programs, private sector, and not-for-
10 profit initiatives.

11 (b) REPORT TO CONGRESS.—Not later than 180 days
12 after the date of enactment of this Act, the Federal De-
13 posit Insurance Corporation and the National Credit
14 Union Administration shall each submit a report to Con-
15 gress on the results of the study conducted under sub-
16 section (a).

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