

111TH CONGRESS  
1ST SESSION

# H. R. 2563

To amend the Truth in Lending Act to establish additional protections for consumers with regard to payday loans, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Mr. SHULER (for himself, Mr. MINNICK, Mr. HELLER, and Mr. MCHENRY) 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 additional protections for consumers with regard to payday loans, 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 “Payday Lending Re-  
5 form Act of 2009”.

6 **SEC. 2. PAYDAY LENDING REFORM.**

7 Chapter 2 of the Truth in Lending Act (15 U.S.C.  
8 1631 et seq.) is amended by inserting after section 129A  
9 the following new section:

1 **“SEC. 129B. MANDATORY DISCLOSURES FOR EXTENDED RE-**  
2 **PAYMENT PLANS AND OTHER PROTECTIONS**  
3 **FOR CONSUMERS.**

4 “(a) DEFINITIONS.—For purposes of this section, the  
5 following definitions shall apply:

6 “(1) CONSUMER ACCOUNT.—The term ‘con-  
7 sumer account’ or ‘account’ shall have the meaning  
8 set forth in section 903 of the Electronic Funds  
9 Transfer Act (15 U.S.C. 1693a).

10 “(2) EXTENDED REPAYMENT PLAN; REPAY-  
11 MENT PLAN.—The term ‘extended repayment plan’  
12 or ‘repayment plan’ means an installment plan  
13 under which a consumer who is unable to repay a  
14 payday loan on the loan due date and who complies  
15 with applicable requirements established under this  
16 section may repay the creditor the outstanding bal-  
17 ance of the loan in at least 4 substantially equal  
18 payments, on or after a date on which the consumer  
19 receives regular income, without being charged any  
20 additional interest and fees.

21 “(3) INTEREST AND FEES.—The term ‘interest  
22 and fees’—

23 “(A) means all charges payable directly or  
24 indirectly by the consumer and imposed directly  
25 or indirectly by the creditor as an incident to or

1 as a condition of the extension of a payday  
2 loan; and

3 “(B) does not include—

4 “(i) any reasonable charge for a de-  
5 fault, delinquency, or similar occurrence;

6 “(ii) any charge imposed when, if for  
7 any reason, funds are not made available  
8 to pay an item or authorization delivered  
9 to the creditor when presented for pay-  
10 ment, to the extent that the charge does  
11 not exceed the greater of \$35 or the  
12 amount charged to the creditor by the  
13 creditor’s financial institution and the  
14 charge is only imposed once per each item  
15 or authorization regardless of whether the  
16 item or authorization is presented for pay-  
17 ment more than once;

18 “(iii) a document preparation fee of  
19 up to \$10; and

20 “(iv) a loan administrative fee, except  
21 when a loan is being refinanced, of up to  
22 5 percent of the original loan principal  
23 amount.

24 “(4) PAYDAY LOAN; LOAN.—The term ‘payday  
25 loan’ or ‘loan’, for purposes of this section, means a

1 closed end credit transaction, unsecured by any in-  
2 terest in the consumer's personal property and ex-  
3 cluding any credit card transaction under an open-  
4 end consumer credit plan, with a term of at least 7  
5 and not more than 91 days in which the amount fi-  
6 nanced does not exceed \$2,000, pursuant to which  
7 the consumer receives funds from and incurs interest  
8 or a fee payable to a creditor, and contempora-  
9 neously with the receipt of funds, provides a pay-  
10 ment instrument to the creditor who agrees with the  
11 consumer not to deposit or present the payment in-  
12 strument for at least 7 days.

13 “(5) PAYMENT INSTRUMENT.—The term ‘pay-  
14 ment instrument’ means a check, automated clear-  
15 inghouse debit, or remotely created check, or similar  
16 payment instrument directing the withdrawal of  
17 funds from a consumer account.

18 “(6) REFINANCING; REFINANCE.—The term  
19 ‘refinancing’ or ‘refinance’ means to refinance,  
20 renew, rollover, amend, or extend a loan beyond its  
21 original term, by payment of a fee.

22 “(b) PROTECTIONS FOR CONSUMERS.—

23 “(1) MANDATORY DISCLOSURES FOR PAYDAY  
24 LOANS.—No creditor may make a payday loan to a  
25 consumer unless the creditor has first provided the

1 consumer with a copy of a written loan agreement,  
2 which shall be signed by the consumer and shall in-  
3 clude the following information:

4 “(A) A clear and conspicuous description  
5 of the terms of the loan, in at least 18-point  
6 bold face type, including the consumer’s pay-  
7 ment obligations under the loan and the total  
8 cost of all fees and other charges in connection  
9 with origination of the loan, stated as a dollar  
10 amount and as either a percentage of the origi-  
11 nal loan principal amount or in the form of the  
12 corresponding ratio of dollars per hundred dol-  
13 lars.

14 “(B) The name, address, and telephone  
15 number of the creditor making the loan.

16 “(C) The following statements, in at least  
17 18-point bold face type:

18 “‘WARNING: This loan is not intended to  
19 meet long-term financial needs. This loan  
20 should be used only to meet short-term cash  
21 needs. The cost of this loan may be higher than  
22 loans offered by other lending institutions.

23 “‘CREDIT COUNSELING AVAIL-  
24 ABILITY: You should consider contacting an  
25 independent, non-profit credit counseling agen-

1           cy approved by the National Foundation for  
2           Credit Counseling (NFCC) or by a state or fed-  
3           eral government agency. You may obtain infor-  
4           mation on how to contact an approved coun-  
5           selor near you by calling NFCC at 1-800-388-  
6           2227.

7                   “‘NO CRIMINAL PROSECUTION OR  
8           SECURITY INTEREST: No criminal prosecu-  
9           tion may be commenced against you as a result  
10          of your non-payment of this loan, and the cred-  
11          itor may not take or attempt to take an interest  
12          in any of your personal property to secure this  
13          loan.

14                   “‘NO-COST EXTENDED REPAYMENT  
15          PLAN:

16                   “‘If you are unable to repay your loan  
17          when due, you may elect once every 12 months  
18          to repay your loan to the creditor by using an  
19          extended repayment plan that will allow you to  
20          repay your loan in at least 4 substantially equal  
21          installments as described further below without  
22          being charged any additional interest and fees,  
23          to the extent that you repay the loan as agreed  
24          under the repayment plan.

1           ““To obtain an extended repayment plan,  
2           you must advise the creditor prior to close of  
3           business on the last business day before the  
4           original due date of the loan that you wish to  
5           enter into an extended repayment plan by re-  
6           turning to the office where you obtained the  
7           loan or by using whatever other method you  
8           used to obtain the loan, such as by Internet,  
9           telephone or fax, and you must promptly sign  
10          an amendment to your loan agreement reflect-  
11          ing the new payment schedule.

12          ““The 12-month period during which you  
13          may elect to use an extended repayment plan is  
14          measured from the date that you fully pay off  
15          all amounts due under 1 extended repayment  
16          plan until the date that you enter into another  
17          extended repayment plan.

18          ““The creditor must allow you to repay  
19          your loan balance in at least 4 substantially  
20          equal installment payments. These installments  
21          must be due on or after a date on which you  
22          receive regular income except that there shall  
23          be at least 13 days between installments, and  
24          the first installment under the plan shall not be  
25          due before your next pay date that is at least

1           13 days after you have signed the repayment  
2           plan amendment.

3           “‘If you enter into an extended repayment  
4           plan and then default by failing to meet your  
5           payment obligations, the creditor may charge  
6           you a reasonable payment plan fee and may ac-  
7           celerate payment of the balance remaining.

8           “‘You may prepay the amount due under  
9           the extended repayment plan at any time with-  
10          out charge or penalty.’.

11          “(D) Any other disclosures required by  
12          Federal law.

13          “(2) ADDITIONAL PUBLIC DISCLOSURES.—No  
14          creditor shall make a payday loan to any consumer  
15          unless the following notices are posted conspicuously  
16          and in not less than 1-inch bold print in the credi-  
17          tor’s public lending area in each physical location,  
18          or, if the loan is made using the Internet, fax or  
19          other means, posted conspicuously on the creditor’s  
20          public Internet site relating to any such payday loan:

21          “‘Warning: This loan is not intended to meet  
22          long-term financial needs. This loan should be used  
23          only to meet short-term cash needs. The cost of your  
24          loan may be higher than loans offered by other lend-  
25          ing institutions.



1           “‘Credit Counseling Availability: You should  
2       consider contacting an independent, non-profit credit  
3       counseling agency approved by the National Founda-  
4       tion for Credit Counseling (NFCC) or by a state or  
5       federal government agency. You may obtain infor-  
6       mation on how to contact an approved counselor  
7       near you by calling the NFCC at 1-800-388-2227.

8           “‘No Criminal Prosecution Or Security Inter-  
9       est: No criminal prosecution may be commenced  
10      against you as a result of your non-payment of this  
11      loan, and we may not take or attempt to take an in-  
12      terest in any of your personal property to secure this  
13      loan.

14          “‘Interest-Free Extended Repayment Plan: If  
15      you are unable to repay your loan as agreed, we are  
16      required by federal law to allow you to enter into an  
17      extended repayment plan, at least once every 12  
18      months, that will allow you to repay the loan in at  
19      least 4 substantially equal installments without  
20      being charged any additional interest or fees as long  
21      as you notify us of your desire to enter into such a  
22      plan prior to close of business on the last business  
23      day before the original due date of the loan.’.

24          “(3) MANDATORY EXTENDED REPAYMENT  
25      PLAN.—No creditor may make a payday loan to any

1 consumer unless the creditor offers the consumer an  
2 extended repayment plan that meets the following  
3 requirements:

4 “(A) The extended repayment plan is of-  
5 fered at least once in any 12-month period, if  
6 the consumer advises the creditor prior to the  
7 close of business on the last business day before  
8 the original due date of the loan that the con-  
9 sumer is unable to repay the loan as agreed and  
10 wants to enter into an extended repayment  
11 plan.

12 “(B) To qualify for such an extended re-  
13 payment plan, the consumer may be required to  
14 return to the office where the consumer ob-  
15 tained the loan or use whatever method (e.g.,  
16 Internet, telephone or facsimile) the consumer  
17 used to obtain the loan, and the consumer shall  
18 promptly sign an amendment to the loan agree-  
19 ment reflecting the new repayment schedule.  
20 For creditors operating over the Internet, the  
21 creditor also must obtain authorization to origi-  
22 nate recurring debits to the consumer’s account  
23 in accordance with the new repayment schedule  
24 and in compliance with the authorization re-  
25 quirements for preauthorized transfers set forth

1 under the Electronic Funds Transfer Act and  
2 Regulation E of the Board.

3 “(C) The creditor shall allow the consumer  
4 to repay the consumer’s loan balance in at least  
5 4 substantially equal installments generally due  
6 coinciding with the consumer’s periodic pay  
7 dates, but there shall be at least 13 days be-  
8 tween installments, and the first installment  
9 under the plan shall not be due before the con-  
10 sumer’s next pay date that is at least 13 days  
11 after the repayment plan amendment is signed  
12 by the consumer.

13 “(D) The creditor may extend the length  
14 of time between installments.

15 “(E) The creditor may, with each payment  
16 under the plan by a consumer, provide for the  
17 return of the consumer’s prior held payment in-  
18 strument and require a new payment instru-  
19 ment for the remaining balance under the plan.  
20 Alternatively, the creditor may require the con-  
21 sumer at the time the consumer enters into the  
22 extended payment plan to provide multiple pay-  
23 ment instruments, 1 for each of the scheduled  
24 payments in the amount of those payments. For  
25 purposes of this subparagraph the term ‘pay-

ment instrument’ does not include an automated clearinghouse debit.

“(F) The consumer may prepay the amount due under the extended repayment plan at any time without charge or penalty.

“(G) The consumer may not be charged additional interest and fees; however, if the consumer fails to meet such payment obligations, the creditor may charge a repayment plan fee and may accelerate repayment of the balance remaining.

“(4) ADDITIONAL PROTECTIONS FOR CONSUMERS.—It shall be unlawful for a creditor to—

“(A) require a consumer to pay more than the following authorized charges, each of which a creditor may charge and collect in connection with a payday loan:

“(i) interest and fees of 20 cents for every dollar of the original loan principal amount;

“(ii) a loan administrative fee of 5 percent of the original loan principal amount; and

“(iii) a document preparation fee of \$10;

1           “(B) in connection with a refinancing, re-  
2           quire a consumer to pay more than interest and  
3           fees of 20 cents for every dollar of the refi-  
4           nanced amount, or to require a consumer to  
5           pay any loan administrative fee or document  
6           preparation fee;

7           “(C) threaten or seek to have the con-  
8           sumer prosecuted criminally to collect the loan;

9           “(D) take or attempt to take an interest in  
10          any of the consumer’s personal property to se-  
11          cure the loan;

12          “(E) file or initiate a legal proceeding of  
13          any kind, including a lawsuit or arbitration,  
14          against a consumer to collect on a loan that is  
15          the subject of an extended repayment plan, or  
16          construe the loan to be in default unless the  
17          consumer has failed to repay the loan as agreed  
18          under the terms of the repayment plan;

19          “(F) take any power of attorney;

20          “(G) include in the loan documents—

21                  “(i) a confession of judgment clause;

22                  “(ii) a waiver of the right to a jury  
23          trial, if applicable, in any action brought  
24          by or against a consumer, unless the waiv-  
25          er is included in an arbitration clause al-

1           lowed by subparagraph (iii) of this para-  
2           graph; and

3           “(iii) a mandatory arbitration clause  
4           that is oppressive, unfair, unconscionable,  
5           or substantially in derogation of the rights  
6           of consumers;

7           “(H) make a payday loan to a consumer  
8           who has an outstanding loan obligation to the  
9           creditor under an extended repayment plan, or  
10          for at least 13 days until after the outstanding  
11          loan obligation to the creditor under any such  
12          repayment plan is paid in full;

13          “(I) make a payday loan with a term of  
14          less than 7 days;

15          “(J) knowingly accept payment in whole or  
16          in part for any obligation under an extended re-  
17          payment plan based on funds obtained from an-  
18          other payday loan;

19          “(K) enter into any agreement with a con-  
20          sumer pursuant to which the consumer seeks or  
21          purports to waive the consumer’s rights under  
22          this section or any claim or defense arising out  
23          of the loan contract;

24          “(L) charge or attempt to collect attor-  
25          ney’s fees, court costs, or arbitration costs in-

1           curred in connection with the collection of a  
2           payday loan, in excess of 20 percent of the loan  
3           balance;

4           “(M) refinance a payday loan more than 4  
5           consecutive times;

6           “(N) make more than 1 payday loan at the  
7           same time to a consumer;

8           “(O) fail to give the consumer, after each  
9           payment by the consumer, a signed, dated, re-  
10          ceipt showing the amount paid and the balance  
11          due on the loan; and

12          “(P) sell any insurance of any kind in con-  
13          nection with the making or collecting of a pay-  
14          day loan.

15          “(c) RESCISSION.—A consumer may cancel future  
16          payment obligations on a payday loan, without cost or fi-  
17          nance charges, by informing the creditor in writing that  
18          the consumer wants to rescind the loan and by returning  
19          the cash amount of the principal of the loan to the creditor  
20          no later than the end of the business day following the  
21          day on which the payday loan agreement was executed.

22          “(d) PENALTIES; DEFENSE; CIVIL LIABILITY.—

23                 “(1) CIVIL MONEY PENALTY.—Notwithstanding  
24          the provisions of section 130(a), any person that vio-  
25          lates this section, or seeks to enforce an agreement

1       made in violation of this section, shall be subject to,  
2       for each such violation, a civil money penalty not to  
3       exceed \$5,000.

4           “(2) PENALTIES NOT EXCLUSIVE OF OTHER  
5       PENALTIES.—The remedies and rights provided  
6       under this section are in addition to and do not pre-  
7       clude any remedy otherwise available under applica-  
8       ble law to the person claiming relief under any such  
9       provision of law, other than section 130(a).

10          “(3) AVAILABILITY AS DEFENSE.—Notwith-  
11       standing any statute of limitations or repose, a viola-  
12       tion of this section may be raised as a matter of de-  
13       fense by recoupment or setoff to an action to collect  
14       any payday loan.

15          “(4) CIVIL LIABILITY.—In determining the  
16       amount of the award in any class action, no min-  
17       imum recovery as to each member of the class shall  
18       be applicable, and the total recovery in any class ac-  
19       tion or series of class actions arising out of the same  
20       failure to comply with the requirements of this sec-  
21       tion by the same creditor shall not be more than the  
22       lesser of \$500,000 or 1 percent of the net worth of  
23       the creditor.

24          “(e) INFLATION ADJUSTMENTS.—The dollar  
25       amounts specified in subsections (a), (b), and (c) shall be



1 adjusted annually on January 1 by the annual percentage  
 2 change in the Consumer Price Index, as reported on June  
 3 of the year preceding such adjustment, but in no event  
 4 may such dollars amounts be adjusted below the amounts  
 5 stated in such subsections, as enacted.

6 “(f) REGULATIONS.—The Board of Governors of the  
 7 Federal Reserve System shall prescribe regulations to the  
 8 extent necessary to implement this section.

9 “(g) EFFECT ON STATE LAWS.—No provision of this  
 10 section may be construed as preventing a State from regu-  
 11 lating a payday loan, except that any State regulation  
 12 shall not significantly interfere with the ability of a payday  
 13 lender to offer a payday loan that meets the consumer pro-  
 14 tection standards in this section.”.

15 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.**

16 (a) DISCLOSURES.—Section 128(a)(4) of the Truth  
 17 in Lending Act (15 U.S.C. 1638(a)(4)) is amended—

18 (1) by striking “or” after “does not exceed \$5,”

19 and

20 (2) by inserting “ , or if the loan is subject to  
 21 section 129B and the finance charge is expressed as  
 22 required by section 129B” after “does not exceed  
 23 \$7.50”.

24 (b) CLERICAL AMENDMENT.—The table of sections  
 25 for chapter 2 of the Truth in Lending Act is amended

1 by inserting after the item relating to section 129 the fol-  
2 lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages  
“129B. Mandatory disclosures for extended repayment plans and other protec-  
tions for consumers”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this Act shall take effect 1 year from the date of the enact-  
5 ment of this Act and shall apply to all payday loans origi-  
6 nated on or after such date.

○