

112TH CONGRESS
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H. R. 5691

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

MAY 9, 2012

Mrs. MALONEY (for herself, Mr. FRANK of Massachusetts, Mr. CAPUANO, Mr. ELLISON, Mr. GUTIERREZ, Mr. MORAN, Mr. JACKSON of Illinois, Ms. RICHARDSON, Mr. VAN HOLLEN, Mr. SERRANO, Mr. CICILLINE, Mr. DINGELL, Mr. MILLER of North Carolina, Mr. RANGEL, Ms. CHU, Ms. SCHAKOWSKY, Mr. GRIJALVA, Mr. BLUMENAUER, Mr. CARSON of Indiana, Ms. HAHN, Ms. KAPTUR, Mr. NADLER, Mr. CONYERS, Mr. THOMPSON of Mississippi, Ms. BROWN of Florida, Mr. CUMMINGS, Ms. ESHOO, Mr. GONZALEZ, Ms. NORTON, Ms. LEE of California, Ms. DELAURO, Ms. WILSON of Florida, Ms. LORETTA SANCHEZ of California, Ms. WOOLSEY, Mrs. LOWEY, Mr. TOWNS, Ms. WATERS, Mr. TONKO, Mr. RUSH, Mr. ACKERMAN, Mr. HINCHEY, Mr. STARK, Mr. HOLT, Mr. PALLONE, Ms. TSONGAS, Mr. BECERRA, and Ms. BASS of California) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Overdraft Protection
3 Act of 2012”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 Section 102 of the Truth in Lending Act (15 U.S.C.
6 1601) is amended by adding at the end the following new
7 subsection:

8 “(c) FAIRNESS AND ACCOUNTABILITY IN OVER-
9 DRAFT COVERAGE.—

10 “(1) FINDINGS.—The Congress also finds
11 that—

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

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

21 “(C) many depository institutions offer a
22 range of overdraft options but aggressively en-
23 courage consumers to consent to the most ex-
24 pensive option, where a high flat fee is collected
25 for every individual overdraft transaction;

1 “(D) most depository institutions collect a
2 high flat fee, including for small dollar trans-
3 actions, each time the institution covers an
4 overdraft, in some cases impose multiple over-
5 draft coverage fees within a single day, and
6 many charge additional fees for each day dur-
7 ing which the account remains overdrawn; and

8 “(E) such abusive practices in connection
9 with overdraft coverage fees have deprived con-
10 sumers of meaningful choices about their ac-
11 counts and placed significant financial burdens
12 on low- and moderate-income consumers.

13 “(2) PURPOSE.—It is the purpose of this title
14 to protect consumers by limiting abusive overdraft
15 coverage fees and practices, and by providing mean-
16 ingful disclosures and consumer choice in connection
17 with overdraft coverage fees.”.

18 **SEC. 3. DEFINITIONS.**

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

22 “(ee) DEFINITIONS RELATING TO OVERDRAFT COV-
23 ERAGE.—

24 “(1) CHECK.—The term ‘check’ has the same
25 meaning as in section 3(6) of the Check Clearing for

1 the 21st Century Act (12 U.S.C. 5001 et seq.),
2 other than a travelers check.

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

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

11 “(4) OVERDRAFT.—The term ‘overdraft’
12 means, in a withdrawal by check or other debit from
13 a transaction account in which there are insufficient
14 or unavailable funds in the account to cover such
15 check or debit, the amount of such withdrawal that
16 exceeds the available funds in the account.

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

24 “(6) OVERDRAFT COVERAGE FEE.—The term
25 ‘overdraft coverage fee’ means any fee or charge as-

1 sessed in connection with overdraft coverage, or in
2 connection with any negative account balance that
3 results from overdraft coverage, unless such fee or
4 charge is imposed in connection with—

5 “(A) an extension of credit through an
6 overdraft line of credit program where such fee
7 or charge was considered a finance charge
8 under this title as in effect immediately prior to
9 the enactment of the Overdraft Protection Act
10 of 2012; or

11 “(B) any transfer from an account linked
12 to another transaction account.

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

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

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

1 (b) CONFORMING AMENDMENT.—Section
 2 107(5)(A)(vi) of the Federal Credit Union Act (12 U.S.C.
 3 1757(5)(A)(vi)) is amended by inserting “, other than an
 4 overdraft coverage fee, as defined in section 103(ee) of the
 5 Truth in Lending Act (12 U.S.C. 1602(ee))” after “inclu-
 6 sive of all finance charges”.

7 **SEC. 4. FAIR MARKETING AND PROVISION OF OVERDRAFT**
 8 **COVERAGE PROGRAMS.**

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

12 **“§ 140B. Overdraft coverage program disclosures and**
 13 **consumer protection**

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

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

24 “(1) any overdraft coverage fees with respect to
 25 such overdraft coverage; and

1 “(2) that by not opting-in to such overdraft
2 coverage—

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

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

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

14 “(d) CONSUMER DISCLOSURES.—Each depository in-
15 stitution shall clearly disclose to each consumer covered
16 by an overdraft protection program of that depository in-
17 stitution—

18 “(1) that—

19 “(A) the consumer may be charged for not
20 more than one overdraft coverage fee in any
21 single calendar month and not more than 6
22 overdraft coverage fees in any single calendar
23 year, per transaction account; and

24 “(B) the depository institution retains the
25 discretion to pay (without assessing an over-

1 draft coverage fee) or reject overdrafts incurred
2 by the consumer beyond the numbers described
3 in subparagraph (A);

4 “(2) the overdraft coverage fee as an annual
5 percentage rate, so as to permit consumers to mean-
6 ingfully compare the overdraft coverage to alter-
7 native forms of overdraft options and other sources
8 of credit;

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

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

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

23 “(f) EXCLUSION FROM ACCOUNT BALANCE INFOR-
24 MATION.—No depository institution may include the
25 amount available under the overdraft coverage program of

1 a consumer as part of the transaction account balance of
2 that consumer.

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

9 “(1) the date of the transaction;

10 “(2) the type of transaction;

11 “(3) the overdraft amount;

12 “(4) the overdraft coverage fee;

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

15 “(6) whether the participation of a consumer in
16 an overdraft coverage program will be terminated if
17 the account is not returned to a positive balance
18 within a given time period.

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

1 “(i) OVERDRAFT COVERAGE FEE LIMITS.—

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

3 Each depository institution shall—

4 “(A) warn any consumer covered by an
5 overdraft coverage program who engages in a
6 transaction through an automated teller ma-
7 chine or a branch teller if completing the trans-
8 action would trigger overdraft coverage fees, in-
9 cluding the amount of the fees; and

10 “(B) provide to the consumer the oppor-
11 tunity to cancel the transaction before it is
12 completed.

13 “(2) FREQUENCY.—A depository institution
14 may charge not more than one overdraft coverage
15 fee in any single calendar month, and not more than
16 6 overdraft coverage fees in any single calendar
17 year, per transaction account.

18 “(3) REASONABLE AND PROPORTIONAL OVER-
19 DRAFT COVERAGE FEES.—

20 “(A) IN GENERAL.—The amount of any
21 overdraft coverage fee that a depository institu-
22 tion may assess for paying a transaction (in-
23 cluding a check or other debit) shall be reason-
24 able and proportional to the amount of the
25 overdraft.

1 “(B) SAFE HARBOR RULE AUTHORIZED.—

2 The Bureau, in consultation with the Board of
3 Governors of the Federal Reserve System,
4 Comptroller of the Currency, the Board of Di-
5 rectors of the Federal Deposit Insurance Cor-
6 poration, and the National Credit Union Ad-
7 ministration Board, may issue rules to provide
8 an amount for any overdraft coverage fee that
9 is presumed to be reasonable and proportional
10 the amount of the overdraft.

11 “(4) POSTING ORDER.—In order to minimize
12 overdraft coverage fees charged to consumers, each
13 depository institution shall post transactions with re-
14 spect to transaction accounts in such a manner that
15 the consumer does not incur avoidable overdraft cov-
16 erage fees.

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

22 “(k) NONDISCRIMINATION FOR NOT OPTING IN.—In
23 implementing the requirements of this section, each depos-
24 itory institution shall provide to consumers who have not
25 consented to participate in an overdraft coverage program,

1 transaction accounts having the same terms, conditions,
2 or other features as those that are provided to consumers
3 who have consented to participate in such overdraft cov-
4 erage program, except for features of such overdraft cov-
5 erage.

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

9 “(1) any transaction at an automated teller ma-
10 chine; or

11 “(2) any debit card transaction.

12 “(m) REPORTS TO CONSUMER REPORTING AGEN-
13 CIES.—No depository institution may report negative in-
14 formation regarding the use of overdraft coverage by a
15 consumer to any consumer reporting agency (as that term
16 is defined in section 603 of the Fair Credit Reporting Act
17 (15 U.S.C. 1681a)) when the overdraft amounts and over-
18 draft coverage fees are repaid under the terms of an over-
19 draft coverage program.

20 “(n) PREPAID CARD STUDY AND RULEMAKING.—

21 “(1) STUDY.—

22 “(A) IN GENERAL.—The Bureau shall
23 carry out a study on whether consumers are
24 being subjected to abusive practices with re-
25 spect to prepaid card overdraft coverage.

1 “(B) REPORT.—Not later than 1 year
2 after the date of the enactment of this section,
3 the Bureau shall issue a report to the Congress
4 on all findings and determinations made in car-
5 rying out the study required under subpara-
6 graph (A).

7 “(2) RULEMAKING.—If the Bureau, in carrying
8 out the study required under paragraph (1)(A), de-
9 termines that consumers are being subjected to abu-
10 sive practices with respect to prepaid card overdraft
11 coverage, the Bureau may, to the extent the Bureau
12 determines appropriate, apply the provisions of this
13 section to prepaid card overdraft coverage to the
14 same extent such provisions apply to overdraft cov-
15 erage offered by depository institutions.

16 “(3) DEFINITIONS.—For purpose of this sec-
17 tion:

18 “(A) PREPAID CARD.—The term ‘prepaid
19 card’ has the meaning given the term general-
20 use prepaid card under section 915(a)(2)(A) of
21 the Electronic Fund Transfer Act.

22 “(B) PREPAID CARD OVERDRAFT COV-
23 ERAGE.—The term ‘prepaid card overdraft cov-
24 erage’ means the payment of a charge posted
25 against a prepaid card—

1 “(i) where the prepaid card has insuf-
2 ficient or unavailable funds with which to
3 cover such payment; and

4 “(ii) where a fee or other charge is as-
5 sessed against the consumer in connection
6 with such payment.

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

12 (b) **TECHNICAL AMENDMENT.**—The table of contents
13 for chapter II of the Truth in Lending Act is amended
14 by inserting after the item relating to section 140A the
15 following new item:

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

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

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

23 **SEC. 6. EFFECTIVE DATE.**

24 (a) **IN GENERAL.**—This Act and the amendments
25 made by this Act shall take effect 1 year after the date

1 of the enactment of this Act, whether or not the rules of
2 the Bureau under this Act or such amendments are pre-
3 scribed in final form.

4 (b) PREPAID CARD STUDY TO BEGIN ON ENACT-
5 MENT.—Notwithstanding subsection (a), section
6 140B(n)(1) of the Truth in Lending Act (as added by sec-
7 tion 4(a)) shall take effect upon enactment of this Act.

8 (c) MORATORIUM ON FEE INCREASES.—

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

16 (2) DEFINITIONS.—As used in this section, the
17 terms “depository institution”, “overdraft”, “over-
18 draft coverage fee”, “transaction account” and
19 “nonsufficient fund fee” have the same meanings as
20 in section 103(ee) of the Truth in Lending Act, as
21 added by this Act.

○