

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.

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

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-

chine or a branch teller if completing the transaction would trigger overdraft coverage fees, including the amount of the fees; and

“(B) provide to the consumer the opportunity to cancel the transaction before it is completed.

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

“(3) REASONABLE AND PROPORTIONAL OVERDRAFT COVERAGE FEES.—

“(A) IN GENERAL.—The amount of any overdraft coverage fee that a depository institution may assess for paying a transaction (including a check or other debit) shall be reasonable and proportional to the amount of the overdraft.

“(B) SAFE HARBOR RULE AUTHORIZED.—
The Bureau, in consultation with the Board of Governors of the Federal Reserve System, Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, 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.

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