

117TH CONGRESS
1ST SESSION

H. R. 4277

To amend the Truth in Lending Act to establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at financial institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2021

Mrs. CAROLYN B. MALONEY of New York (for herself, Mr. CARSON, Mr. CICILLINE, Mr. COHEN, Mr. DANNY K. DAVIS of Illinois, Mr. FOSTER, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GRIJALVA, Mrs. HAYES, Mr. KHANNA, Mr. LAWSON of Florida, Mr. LYNCH, Mr. MCGOVERN, Ms. MOORE of Wisconsin, Ms. NEWMAN, Ms. NORTON, Mr. PAYNE, Mr. RASKIN, Miss RICE of New York, Mr. RUSH, Mr. SAN NICOLAS, Ms. SCHAKOWSKY, Mr. SHERMAN, Mr. SIRES, Mr. SUOZZI, Mr. TAKANO, Ms. TLAIB, Mr. TORRES of New York, Mr. TRONE, and Ms. VELÁZQUEZ) 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 financial 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 2021”.

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

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

6 (1) Overdraft coverage is a form of short-term
7 credit that financial institutions market for con-
8 sumer accounts. Historically, financial institutions
9 covered overdrafts for a fee on an ad hoc basis.

10 (2) With the growth in specially designed soft-
11 ware programs and in consumer use of debit cards,
12 overdraft coverage for a fee has become more preva-
13 lent.

14 (3) Many financial institutions market a range
15 of overdraft options but aggressively encourage con-
16 sumers to consent to the most expensive option,
17 where a high flat fee is collected for every individual
18 overdraft transaction.

19 (4) Many financial institutions collect a high
20 flat fee, including for small dollar transactions, each
21 time the institution covers an overdraft, impose mul-
22 tiple overdraft coverage fees within a single day, and
23 charge additional fees for each day during which the
24 account remains overdrawn.

25 (5) Such abusive practices in connection with
26 overdraft coverage fees have deprived consumers of

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

3 (6) African Americans and Latinos are dis-
4 proportionately harmed by overdraft coverage fees
5 and more likely to pay multiple overdraft coverage
6 fees annually.

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

12 **SEC. 3. DEFINITIONS.**

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

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

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

22 “(2) FINANCIAL INSTITUTION.—The term ‘fi-
23 nancial institution’ has the same meaning as in the
24 Electronic Fund Transfer Act (15 U.S.C. 1693a(9)).

1 “(3) NONSUFFICIENT FUND FEE.—The term
2 ‘nonsufficient fund fee’ means a fee or charge as-
3 sessed in connection with an overdraft for which a
4 financial institution declines payment.

5 “(4) OVERDRAFT.—The term ‘overdraft’
6 means, in a withdrawal by check or other debit from
7 a consumer account in which there are insufficient
8 or unavailable funds in the account to cover such
9 check or debit, the amount of such withdrawal that
10 exceeds the available funds in the account.

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

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

24 “(A) an extension of credit through an
25 overdraft line of credit program where such fee

1 or charge was considered a finance charge
2 under this title as in effect immediately prior to
3 the enactment of the Overdraft Protection Act
4 of 2021; or

5 “(B) any transfer from an account linked
6 to another account.

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

12 “(7) OVERDRAFT COVERAGE PROGRAM.—The
13 term ‘overdraft coverage program’ means a service
14 under which a financial institution assesses an over-
15 draft coverage fee for overdraft coverage.

16 “(8) ACCOUNT.—The term ‘account’ has the
17 same meaning as in the Electronic Fund Transfer
18 Act (15 U.S.C. 1693a(2)).”.

19 (b) CONFORMING AMENDMENT.—Section
20 107(5)(A)(vi) of the Federal Credit Union Act (12 U.S.C.
21 1757(5)(A)(vi)) is amended by inserting “, other than an
22 overdraft coverage fee, as defined in section 140B(o) of
23 the Truth in Lending Act” after “inclusive of all finance
24 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 financial 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 financial in-
14 stitution that provides or offers to provide overdraft cov-
15 erage with respect to accounts held at that financial insti-
16 tution shall clearly and conspicuously disclose in all mar-
17 keting 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 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 financial 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 financial in-
8 stitution shall clearly disclose to each consumer covered
9 by an overdraft coverage program of that financial institu-
10 tion—

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 account; and

17 “(B) the financial 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 financial insti-
11 tution that offers an overdraft coverage program shall, in
12 each periodic statement for any account that has an over-
13 draft coverage program feature, clearly disclose to the con-
14 sumer the dollar amount of all overdraft coverage fees and
15 nonsufficient fund fees charged to the consumer for the
16 relevant period and year to date.

17 “(f) EXCLUSION FROM ACCOUNT BALANCE INFOR-
18 MATION.—No financial institution may include the
19 amount available under the overdraft coverage program of
20 a consumer as part of the account balance of that con-
21 sumer and the account balance shall be more prominently
22 displayed than any amount available under the overdraft
23 coverage program.

24 “(g) PROMPT NOTIFICATION.—Each financial insti-
25 tution shall promptly notify consumers, through a reason-

1 able means selected by the consumer, when overdraft cov-
2 erage has been accessed with respect to the account of
3 the consumer, not later than on the day on which such
4 access occurs, including—

5 “(1) the date of the transaction;

6 “(2) the type of transaction;

7 “(3) the overdraft amount;

8 “(4) the overdraft coverage fee;

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

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

15 “(h) TERMINATED OR SUSPENDED COVERAGE.—

16 Each financial institution shall provide prompt notice to
17 the consumer, using a reasonable means selected by the
18 consumer, if the institution terminates or suspends access
19 to an overdraft coverage program with respect to an ac-
20 count of the consumer, including a clear rationale for the
21 action.

22 “(i) OVERDRAFT COVERAGE FEE LIMITS.—

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

24 Each financial institution shall—

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

7 “(B) provide to the consumer the oppor-
8 tunity to cancel the transaction before it is
9 completed.

10 “(2) FREQUENCY.—A financial institution may
11 charge not more than one overdraft coverage fee in
12 any single calendar month, and not more than 6
13 overdraft coverage fees in any single calendar year,
14 per account.

15 “(3) REASONABLE AND PROPORTIONAL OVER-
16 DRAFT COVERAGE FEES.—

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

22 “(i) the amount of the overdraft; and

23 “(ii) the cost to the financial institu-
24 tion in providing the overdraft coverage for
25 that transaction.

1 “(B) SAFE HARBOR RULE AUTHORIZED.—
2 The Bureau, in consultation with the Board of
3 Governors of the Federal Reserve System, the
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 to the amount of the overdraft and the cost to
11 the financial institution in providing the over-
12 draft coverage for the transaction.

13 “(4) POSTING ORDER.—Each financial institu-
14 tion shall post transactions with respect to accounts
15 in such a manner that minimizes overdraft coverage
16 fees and nonsufficient fund fees.

17 “(j) DEBIT HOLDS.—No financial 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 account that exceeds the actual dollar
21 amount of the transaction.

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

1 accounts having the same terms, conditions, or other fea-
2 tures as those that are provided to consumers who have
3 consented to participate in such overdraft coverage pro-
4 gram, except for features of such overdraft coverage.

5 “(1) NONSUFFICIENT FUND FEE LIMITS.—

6 “(1) IN GENERAL.—No financial institution
7 may charge any nonsufficient fund fee with respect
8 to—

9 “(A) any transaction at an automated tell-
10 er machine; or

11 “(B) any debit card transaction.

12 “(2) REASONABLE AND PROPORTIONAL OVER-
13 DRAFT COVERAGE FEES.—The amount of any non-
14 sufficient fund fee shall be reasonable and propor-
15 tional to the cost to the financial institution directly
16 associated with returning the transaction.

17 “(3) SAFE HARBOR RULE AUTHORIZED.—The
18 Bureau, in consultation with the Board of Governors
19 of the Federal Reserve System, the Comptroller of
20 the Currency, the Board of Directors of the Federal
21 Deposit Insurance Corporation, and the National
22 Credit Union Administration Board, may issue rules
23 to provide an amount for any non-sufficient fund fee
24 that is presumed to be reasonable and proportional

1 to the costs to the financial institution of returning
2 the transaction.

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

11 “(n) RULE OF CONSTRUCTION.—No provision of this
12 section may be construed as prohibiting a financial institu-
13 tion from retaining the discretion to pay, without assess-
14 ing an overdraft coverage fee or charge, an overdraft in-
15 curred by a consumer.”.

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

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

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

21 Not later than 24 months after the date of the enact-
22 ment of this Act, the Bureau of Consumer Financial Pro-
23 tection (hereafter in this Act referred to as the “Bureau”)
24 shall issue such final rules and publish such model forms

1 as necessary to carry out section 140B of the Truth in
2 Lending Act, as added by this Act.

3 **SEC. 6. EFFECTIVE DATE.**

4 (a) IN GENERAL.—This Act and the amendments
5 made by this Act shall take effect 1 year after the date
6 of the enactment of this Act, whether or not the rules of
7 the Bureau under this Act or such amendments are pre-
8 scribed in final form.

9 (b) MORATORIUM ON FEE INCREASES.—

10 (1) IN GENERAL.—During the 1-year period be-
11 ginning on the date of the enactment of this Act, no
12 financial institution may increase the overdraft cov-
13 erage fees or charges assessed on accounts for pay-
14 ing a transaction (including a check or other debit)
15 in connection with an overdraft or for nonsufficient
16 funds.

17 (2) DEFINITIONS.—As used in this section, the
18 terms “financial institution”, “overdraft”, “over-
19 draft coverage fee”, “account”, and “nonsufficient
20 fund fee” have the same meanings as in section
21 140B(o) of the Truth in Lending Act, as added by
22 this Act.

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