

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1224
OFFERED BY MR. OXLEY OF OHIO**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Business Checking
3 Freedom Act of 2005”.

**4 SEC. 2. INTEREST-BEARING TRANSACTION ACCOUNTS AU-
5 THORIZED FOR ALL BUSINESSES.**

6 (a) DAILY TRANSFERS ALLOWED INTO DEMAND DE-
7 POSIT ACCOUNTS.—Section 2 of Public Law 93–100 (12
8 U.S.C. 1832) is amended—

9 (1) by redesignating subsections (b) and (c) as
10 subsections (c) and (d), respectively;

11 (2) by inserting after subsection (a) the fol-
12 lowing:

13 “(b) TRANSFERS.—Notwithstanding any other provi-
14 sion of law, any depository institution, other than a non-
15 qualified industrial loan company, may permit the owner
16 of any deposit or account which is a deposit or account
17 on which interest or dividends are paid and is not a de-
18 posit or account described in subsection (a)(2) to make



1 up to 24 transfers per month (or such greater number
2 as the Board of Governors of the Federal Reserve System
3 may determine by rule or order), for any purpose, to an-
4 other account of the owner in the same institution. An
5 account offered pursuant to this subsection shall be con-
6 sidered a transaction account for purposes of section 19
7 of the Federal Reserve Act unless the Board of Governors
8 of the Federal Reserve System determines otherwise.”;
9 and

10 (3) by adding at the end of subsection (a) the
11 following new paragraph:

12 “(3) NONQUALIFIED INDUSTRIAL LOAN COMPA-
13 NIES.—

14 “(A) DEFINITION.—For purposes of this
15 section, the term ‘nonqualified industrial loan
16 company’ means any industrial loan company,
17 industrial bank, or other institution described in
18 section 2(c)(2)(H) of the Bank Holding Com-
19 pany Act of 1956 that is determined by an ap-
20 propriate State bank supervisor (as defined in
21 section 3 of the Federal Deposit Insurance Act)
22 to be controlled, directly or indirectly, by a com-
23 mercial firm.

24 “(B) COMMERCIAL FIRM DEFINED.—For
25 purposes of this paragraph, the term ‘commer-



1 cial firm' means any entity at least 15 percent
2 of the annual gross revenues of which on a con-
3 solidated basis, including all affiliates of the en-
4 tity, were derived from engaging, on an on-
5 going basis, in activities that are not financial
6 in nature or incidental to a financial activity
7 during at least 3 of the prior 4 calendar quar-
8 ters.

9 “(C) GRANDFATHERED INSTITUTIONS.—
10 The term ‘nonqualified industrial loan company’
11 does not include any industrial loan company,
12 industrial bank, or other institution described in
13 section 2(c)(2)(H) of the Bank Holding Com-
14 pany Act of 1956—

15 “(i) which became an insured deposi-
16 tory institution before October 1, 2003, or
17 pursuant to an application for deposit in-
18 surance which was approved by the Fed-
19 eral Deposit Insurance Corporation before
20 such date; and

21 “(ii) with respect to which there is no
22 change in control, directly or indirectly, of
23 the company, bank, or institution after
24 September 30, 2003, that requires an ap-
25 plication under section 7(j) or 18(c) of the



1 Federal Deposit Insurance Act, section 3
2 of the Bank Holding Company Act of
3 1956, or section 10 of the Home Owners'
4 Loan Act.”.

5 (b) INTEREST ON BUSINESS NOW ACCOUNTS.—

6 (1) IN GENERAL.—Section 2(a) of Public Law
7 93–100 (12 U.S.C. 1832(a)) is amended—

8 (A) by striking paragraph (2) and insert-
9 ing the following new paragraph:

10 “(2) PAYMENT OF INTEREST ON CERTAIN NOW
11 ACCOUNTS.—An industrial loan company, industrial
12 bank, or other institution described in section
13 2(c)(2)(H) of the Bank Holding Company Act of
14 1956 may not pay interest on any deposit or account
15 of a corporation from which funds may be with-
16 drawn by negotiable instrument for payment to third
17 parties, unless the appropriate State bank supervisor
18 (as defined in section 3 of the Federal Deposit In-
19 surance Act) of such company, bank, or institution
20 determines that such company, bank, or institution
21 is not a nonqualified industrial loan company.”; and

22 (B) by adding at the end the following new
23 paragraph:

24 “(4) RULE OF CONSTRUCTION RELATING TO
25 DEMAND DEPOSITS.—No provision of this section



1 may be construed as conferring the authority to
2 offer demand deposit accounts to any institution
3 that is prohibited by law from offering demand de-
4 posit accounts.”.

5 (2) TECHNICAL AND CONFORMING AMEND-
6 MENT.—Section 2(b) of Public Law 93–100 (12
7 U.S.C. 1832(b)) (as added by subsection (a)(2) of
8 this section) is amended by striking “and is not a
9 deposit or account described in subsection (a)(2)”

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall take effect at the end of the
12 2-year period beginning on the date of the enact-
13 ment of this Act.

14 **SEC. 3. INTEREST-BEARING TRANSACTION ACCOUNTS AU-**
15 **THORIZED.**

16 (a) REPEAL OF PROHIBITION ON PAYMENT OF IN-
17 TEREST ON DEMAND DEPOSITS.—

18 (1) FEDERAL RESERVE ACT.—Section 19(i) of
19 the Federal Reserve Act (12 U.S.C. 371a) is amend-
20 ed to read as follows:

21 “(i) [Repealed]”.

22 (2) HOME OWNERS’ LOAN ACT.—The first sen-
23 tence of section 5(b)(1)(B) of the Home Owners’
24 Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by
25 striking “savings association may not—” and all



1 that follows through “(ii) permit any” and inserting
2 “savings association may not permit any”.

3 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
4 tion 18(g) of the Federal Deposit Insurance Act (12
5 U.S.C. 1828(g)) is amended to read as follows:

6 “(g) [Repealed]”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall take effect at the end of the 2-year
9 period beginning on the date of the enactment of this Act.

10 **SEC. 4. PAYMENT OF INTEREST ON RESERVES AT FEDERAL**
11 **RESERVE BANKS.**

12 (a) IN GENERAL.—Section 19(b) of the Federal Re-
13 serve Act (12 U.S.C. 461(b)) is amended by adding at
14 the end the following new paragraph:

15 “(12) EARNINGS ON RESERVES.—

16 “(A) IN GENERAL.—Balances maintained
17 at a Federal reserve bank by or on behalf of a
18 depository institution may receive earnings to
19 be paid by the Federal reserve bank at least
20 once each calendar quarter at a rate or rates
21 not to exceed the general level of short-term in-
22 terest rates.

23 “(B) REGULATIONS RELATING TO PAY-
24 MENTS AND DISTRIBUTION.—The Board may
25 prescribe regulations concerning—



1 “(i) the payment of earnings in ac-
2 cordance with this paragraph;

3 “(ii) the distribution of such earnings
4 to the depository institutions which main-
5 tain balances at such banks or on whose
6 behalf such balances are maintained; and

7 “(iii) the responsibilities of depository
8 institutions, Federal home loan banks, and
9 the National Credit Union Administration
10 Central Liquidity Facility with respect to
11 the crediting and distribution of earnings
12 attributable to balances maintained, in ac-
13 cordance with subsection (c)(1)(A), in a
14 Federal reserve bank by any such entity on
15 behalf of depository institutions.

16 “(C) DEPOSITORY INSTITUTIONS DE-
17 FINED.—For purposes of this paragraph, the
18 term ‘depository institution’, in addition to the
19 institutions described in paragraph (1)(A), in-
20 cludes any trust company, corporation orga-
21 nized under section 25A or having an agree-
22 ment with the Board under section 25, or any
23 branch or agency of a foreign bank (as defined
24 in section 1(b) of the International Banking Act
25 of 1978).”.



1 (b) AUTHORIZATION FOR PASS THROUGH RESERVES
2 FOR MEMBER BANKS.—Section 19(c)(1)(B) of the Fed-
3 eral Reserve Act (12 U.S.C. 461(c)(1)(B)) is amended by
4 striking “which is not a member bank”.

5 (c) CONSUMER BANKING COSTS ASSESSMENT.—

6 (1) IN GENERAL.—The Federal Reserve Act
7 (12 U.S.C. 221 et seq.) is amended—

8 (A) by redesignating sections 30 and 31 as
9 sections 31 and 32, respectively; and

10 (B) by inserting after section 29 the fol-
11 lowing new section:

12 **“SEC. 30. SURVEY OF BANK FEES AND SERVICES.**

13 “(a) ANNUAL SURVEY REQUIRED.—The Board of
14 Governors of the Federal Reserve System shall obtain an-
15 nually a sample, which is representative by type and size
16 of the institution (including small institutions) and geo-
17 graphic location, of the following retail banking services
18 and products provided by insured depository institutions
19 and insured credit unions (along with related fees and
20 minimum balances):

21 “(1) Checking and other transaction accounts.

22 “(2) Negotiable order of withdrawal and sav-
23 ings accounts.

24 “(3) Automated teller machine transactions.

25 “(4) Other electronic transactions.



1 “(b) MINIMUM SURVEY REQUIREMENT.—The annual
2 survey described in subsection (a) shall meet the following
3 minimum requirements:

4 “(1) CHECKING AND OTHER TRANSACTION AC-
5 COUNTS.—Data on checking and transaction ac-
6 counts shall include, at a minimum, the following:

7 “(A) Monthly and annual fees and min-
8 imum balances to avoid such fees.

9 “(B) Minimum opening balances.

10 “(C) Check processing fees.

11 “(D) Check printing fees.

12 “(E) Balance inquiry fees.

13 “(F) Fees imposed for using a teller or
14 other institution employee.

15 “(G) Stop payment order fees.

16 “(H) Nonsufficient fund fees.

17 “(I) Overdraft fees.

18 “(J) Deposit items returned fees.

19 “(K) Availability of no-cost or low-cost ac-
20 counts for consumers who maintain low bal-
21 ances.

22 “(2) NEGOTIABLE ORDER OF WITHDRAWAL AC-
23 COUNTS AND SAVINGS ACCOUNTS.—Data on nego-
24 tiable order of withdrawal accounts and savings ac-
25 counts shall include, at a minimum, the following:



1 “(A) Monthly and annual fees and min-
2 imum balances to avoid such fees.

3 “(B) Minimum opening balances.

4 “(C) Rate at which interest is paid to con-
5 sumers.

6 “(D) Check processing fees for negotiable
7 order of withdrawal accounts.

8 “(E) Fees imposed for using a teller or
9 other institution employee.

10 “(F) Availability of no-cost or low-cost ac-
11 counts for consumers who maintain low bal-
12 ances.

13 “(3) AUTOMATED TELLER TRANSACTIONS.—

14 Data on automated teller machine transactions shall
15 include, at a minimum, the following:

16 “(A) Monthly and annual fees.

17 “(B) Card fees.

18 “(C) Fees charged to customers for with-
19 drawals, deposits, and balance inquiries through
20 institution-owned machines.

21 “(D) Fees charged to customers for with-
22 drawals, deposits, and balance inquiries through
23 machines owned by others.



1 “(E) Fees charged to noncustomers for
2 withdrawals, deposits, and balance inquiries
3 through institution-owned machines.

4 “(F) Point-of-sale transaction fees.

5 “(4) OTHER ELECTRONIC TRANSACTIONS.—
6 Data on other electronic transactions shall include,
7 at a minimum, the following:

8 “(A) Wire transfer fees.

9 “(B) Fees related to payments made over
10 the Internet or through other electronic means.

11 “(5) OTHER FEES AND CHARGES.—Data on
12 any other fees and charges that the Board of Gov-
13 ernors of the Federal Reserve System determines to
14 be appropriate to meet the purposes of this section.

15 “(6) FEDERAL RESERVE BOARD AUTHORITY.—
16 The Board of Governors of the Federal Reserve Sys-
17 tem may cease the collection of information with re-
18 gard to any particular fee or charge specified in this
19 subsection if the Board makes a determination that,
20 on the basis of changing practices in the financial
21 services industry, the collection of such information
22 is no longer necessary to accomplish the purposes of
23 this section.

24 “(c) ANNUAL REPORT TO CONGRESS REQUIRED.—



1 “(1) PREPARATION.—The Board of Governors
2 of the Federal Reserve System shall prepare a report
3 of the results of each survey conducted pursuant to
4 subsections (a) and (b) of this section and section
5 136(b)(1) of the Consumer Credit Protection Act.

6 “(2) CONTENTS OF THE REPORT.—In addition
7 to the data required to be collected pursuant to sub-
8 sections (a) and (b), each report prepared pursuant
9 to paragraph (1) shall include a description of any
10 discernible trend, in the Nation as a whole, in a rep-
11 resentative sample of the 50 States (selected with
12 due regard for regional differences), and in each
13 consolidated metropolitan statistical area (as defined
14 by the Director of the Office of Management and
15 Budget), in the cost and availability of the retail
16 banking services, including those described in sub-
17 sections (a) and (b) (including related fees and min-
18 imum balances), that delineates differences between
19 institutions on the basis of the type of institution
20 and the size of the institution, between large and
21 small institutions of the same type, and any engage-
22 ment of the institution in multistate activity.

23 “(3) SUBMISSION TO CONGRESS.—The Board
24 of Governors of the Federal Reserve System shall
25 submit an annual report to the Congress not later



1 than June 1, 2006, and not later than June 1 of
2 each subsequent year.

3 “(d) DEFINITIONS.—For purposes of this section, the
4 term ‘insured depository institution’ has the meaning
5 given such term in section 3 of the Federal Deposit Insur-
6 ance Act, and the term ‘insured credit union’ has the
7 meaning given such term in section 101 of the Federal
8 Credit Union Act.”.

9 (2) CONFORMING AMENDMENT.—

10 (A) IN GENERAL.—Paragraph (1) of sec-
11 tion 136(b) of the Truth in Lending Act (15
12 U.S.C. 1646(b)(1)) is amended to read as fol-
13 lows:

14 “(1) COLLECTION REQUIRED.—The Board shall
15 collect, on a semiannual basis, from a broad sample
16 of financial institutions which offer credit card serv-
17 ices, credit card price and availability information
18 including—

19 “(A) the information required to be dis-
20 closed under section 127(c) of this chapter;

21 “(B) the average total amount of finance
22 charges paid by consumers; and

23 “(C) the following credit card rates and
24 fees:

25 “(i) Application fees.



1 “(ii) Annual percentage rates for cash
2 advances and balance transfers.

3 “(iii) Maximum annual percentage
4 rate that may be charged when an account
5 is in default.

6 “(iv) Fees for the use of convenience
7 checks.

8 “(v) Fees for balance transfers.

9 “(vi) Fees for foreign currency con-
10 versions.”.

11 (B) EFFECTIVE DATE.—The amendment
12 made by subparagraph (A) shall take effect on
13 January 1, 2006.

14 (3) REPEAL OF OTHER REPORT PROVISIONS.—
15 Section 1002 of Financial Institutions Reform, Re-
16 covery, and Enforcement Act of 1989 and section
17 108 of the Riegle-Neal Interstate Banking and
18 Branching Efficiency Act of 1994 are hereby re-
19 pealed.

20 (d) TECHNICAL AND CONFORMING AMENDMENTS.—
21 Section 19 of the Federal Reserve Act (12 U.S.C. 461)
22 is amended—

23 (1) in subsection (b)(4) (12 U.S.C. 461(b)(4)),
24 by striking subparagraph (C) and redesignating sub-



1 paragraphs (D) and (E) as subparagraphs (C) and
2 (D), respectively; and

3 (2) in subsection (c)(1)(A) (12 U.S.C.
4 461(c)(1)(A)), by striking “subsection (b)(4)(C)”
5 and inserting “subsection (b)”.

6 **SEC. 5. INCREASED FEDERAL RESERVE BOARD FLEXI-**
7 **BILITY IN SETTING RESERVE REQUIRE-**
8 **MENTS.**

9 Section 19(b)(2)(A) of the Federal Reserve Act (12
10 U.S.C. 461(b)(2)(A)) is amended—

11 (1) in clause (i), by striking “the ratio of 3 per
12 centum” and inserting “a ratio not greater than 3
13 percent (and which may be zero)”; and

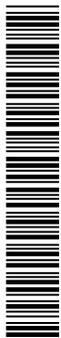
14 (2) in clause (ii), by striking “and not less than
15 8 per centum,” and inserting “(and which may be
16 zero),”.

17 **SEC. 6. TRANSFER OF FEDERAL RESERVE SURPLUSES.**

18 (a) IN GENERAL.—Section 7(b) of the Federal Re-
19 serve Act (12 U.S.C. 289(b)) is amended by adding at
20 the end the following new paragraph:

21 “(4) ADDITIONAL TRANSFERS TO COVER IN-
22 TEREST PAYMENTS FOR FISCAL YEARS 2005
23 THROUGH 2009.—

24 “(A) IN GENERAL.—In addition to the
25 amounts required to be transferred from the



1 surplus funds of the Federal reserve banks pur-
2 suant to subsection (a)(3), the Federal reserve
3 banks shall transfer from such surplus funds to
4 the Board of Governors of the Federal Reserve
5 System for transfer to the Secretary of the
6 Treasury for deposit in the general fund of the
7 Treasury, such sums as are necessary to equal
8 the net cost of section 19(b)(12) in each of the
9 fiscal years 2005 through 2009.

10 “(B) ALLOCATION BY FEDERAL RESERVE
11 BOARD.—Of the total amount required to be
12 paid by the Federal reserve banks under sub-
13 paragraph (A) for fiscal years 2005 through
14 2009, the Board of Governors of the Federal
15 Reserve System shall determine the amount
16 each such bank shall pay in such fiscal year.

17 “(C) REPLENISHMENT OF SURPLUS FUND
18 PROHIBITED.—During fiscal years 2005
19 through 2009, no Federal reserve bank may re-
20 plenish such bank’s surplus fund by the amount
21 of any transfer by such bank under subpara-
22 graph (A).”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 Section 7(a) of the Federal Reserve Act (12 U.S.C.



1 289(a)) is amended by adding at the end the following
2 new paragraph:

3 “(3) PAYMENT TO TREASURY.—During fiscal
4 years 2005 through 2009, any amount in the sur-
5 plus fund of any Federal reserve bank in excess of
6 the amount equal to 3 percent of the paid-in capital
7 and surplus of the member banks of such bank shall
8 be transferred to the Secretary of the Treasury for
9 deposit in the general fund of the Treasury.”.

10 **SEC. 7. RULES OF CONSTRUCTION.**

11 In the case of an escrow account maintained at a de-
12 pository institution in connection with a real estate
13 transaction—

14 (1) the absorption, by the depository institution,
15 of expenses incidental to providing a normal banking
16 service with respect to such escrow account;

17 (2) the forbearance, by the depository institu-
18 tion, from charging a fee for providing any such
19 banking function; and

20 (3) any benefit which may accrue to the holder
21 or the beneficiary of such escrow account as a result
22 of an action of the depository institution described
23 in subparagraph (1) or (2) or similar in nature to
24 such action, including any benefits which have been
25 so determined by the appropriate Federal regulator,



1 shall not be treated as the payment or receipt of interest
2 for purposes of this Act and any provision of Public Law
3 93-100, the Federal Reserve Act, the Home Owners' Loan
4 Act, or the Federal Deposit Insurance Act relating to the
5 payment of interest on accounts or deposits at depository
6 institutions. No provision of this Act shall be construed
7 so as to require a depository institution that maintains
8 an escrow account in connection with a real estate trans-
9 action to pay interest on such escrow account or to pro-
10 hibit such institution from paying interest on such escrow
11 account. No provision of this Act shall be construed as
12 preempting the provisions of law of any State dealing with
13 the payment of interest on escrow accounts maintained in
14 connection with real estate transactions.

