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. GARCÍA of Texas, Mr. GRJALVA, 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. SHIES, 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

This Act may be cited as the “Overdraft Protection Act of 2021”.

SEC. 2. FINDINGS AND PURPOSE.

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

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

(2) With the growth in specially designed software programs and in consumer use of debit cards, overdraft coverage for a fee has become more prevalent.

(3) Many financial institutions market a range of overdraft options but aggressively encourage consumers to consent to the most expensive option, where a high flat fee is collected for every individual overdraft transaction.

(4) Many financial institutions collect a high flat fee, including for small dollar transactions, each time the institution covers an overdraft, impose multiple overdraft coverage fees within a single day, and charge additional fees for each day during which the account remains overdrawn.

(5) Such abusive practices in connection with overdraft coverage fees have deprived consumers of
meaningful options and placed significant financial burdens on low- and moderate-income consumers.

(6) African Americans and Latinos are disproportionately harmed by overdraft coverage fees and more likely to pay multiple overdraft coverage fees annually.

(b) PURPOSE.—It is the purpose of this Act to protect consumers by limiting abusive overdraft coverage fees and practices, and by providing meaningful disclosures and consumer choice in connection with overdraft coverage fees.

SEC. 3. DEFINITIONS.

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

“(o) DEFINITIONS RELATING TO OVERDRAFT COVERAGE.—For purposes of this section:

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

“(2) FINANCIAL INSTITUTION.—The term ‘financial institution’ has the same meaning as in the Electronic Fund Transfer Act (15 U.S.C. 1693a(9)).
“(3) **Nonsufficient fund fee.**—The term ‘nonsufficient fund fee’ means a fee or charge assessed in connection with an overdraft for which a financial institution declines payment.

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

“(5) **Overdraft coverage.**—The term ‘overdraft coverage’ means the payment of a check presented or other debit posted against a consumer account by the financial institution in which such account is held, even though there are insufficient or unavailable funds in the account to cover such checks or other debits.

“(6) **Overdraft coverage fee.**—The term ‘overdraft coverage fee’ means any fee or charge assessed in connection with overdraft coverage, or in connection with any negative account balance that results from overdraft coverage, unless such fee or charge is imposed in connection with—

“(A) an extension of credit through an overdraft line of credit program where such fee
or charge was considered a finance charge under this title as in effect immediately prior to the enactment of the Overdraft Protection Act of 2021; or

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

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

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

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

(b) CONFORMING AMENDMENT.—Section 107(5)(A)(vi) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(vi)) is amended by inserting “, other than an overdraft coverage fee, as defined in section 140B(o) of the Truth in Lending Act” after “inclusive of all finance charges”.

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SEC. 4. FAIR MARKETING AND PROVISION OF OVERDRAFT COVERAGE PROGRAMS.

(a) In General.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

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

“(a) Prohibitions.—No financial institution may engage in acts or practices in connection with the marketing of or the provision of overdraft coverage that are unfair, deceptive, or designed to evade the provisions of this section.

“(b) Marketing Disclosures.—Each financial institution that provides or offers to provide overdraft coverage with respect to accounts held at that financial institution shall clearly and conspicuously disclose in all marketing materials for such overdraft coverage—

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

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

“(A) a consumer’s transaction may be declined if there are insufficient funds in the related account; and

“(B) the consumer will not be charged a fee if such transaction is declined.
“(c) Consumer Consent Opt-In.—A financial institution may charge overdraft coverage fees with respect to the use of an automatic teller machine or point of sale transaction only if the consumer has consented in writing, in electronic form, or in such other form as is permitted under regulations of the Bureau.

“(d) Consumer Disclosures.—Each financial institution shall clearly disclose to each consumer covered by an overdraft coverage program of that financial institution—

“(1) that—

“(A) the consumer may be charged for 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 account; and

“(B) the financial institution retains the discretion to pay (without assessing an overdraft coverage fee) or reject overdrafts incurred by the consumer beyond the numbers described in subparagraph (A);

“(2) the overdraft coverage fee as an annual percentage rate, so as to permit consumers to meaningfully compare the overdraft coverage to alter-
native forms of overdraft options and other sources of credit;

“(3) information about any alternative overdraft products that are available (such as linked accounts, lines of credit, and alerts), including a clear explanation of how the terms and fees for such alternative services and products differ; and

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

“(e) Periodic Statements.—Each financial institution that offers an overdraft coverage program shall, in each periodic statement for any account that has an overdraft coverage program feature, clearly disclose to the consumer the dollar amount of all overdraft coverage fees and nonsufficient fund fees charged to the consumer for the relevant period and year to date.

“(f) Exclusion From Account Balance Information.—No financial institution may include the amount available under the overdraft coverage program of a consumer as part of the account balance of that consumer and the account balance shall be more prominently displayed than any amount available under the overdraft coverage program.

“(g) Prompt Notification.—Each financial institution shall promptly notify consumers, through a reason-
able means selected by the consumer, when overdraft coverage has been accessed with respect to the account of the consumer, not later than on the day on which such access occurs, including—

“(1) the date of the transaction;
“(2) the type of transaction;
“(3) the overdraft amount;
“(4) the overdraft coverage fee;
“(5) the amount necessary to return the account to a positive balance; and
“(6) whether the participation of a consumer in an overdraft coverage program will be terminated if the account is not returned to a positive balance within a given time period.

“(h) TERMINATED OR SUSPENDED COVERAGE.—

Each financial institution shall provide prompt notice to the consumer, using a reasonable means selected by the consumer, if the institution terminates or suspends access to an overdraft coverage program with respect to an account of the consumer, including a clear rationale for the action.

“(i) OVERDRAFT COVERAGE FEE LIMITS.—

“(1) NOTICE AND OPPORTUNITY TO CANCEL.—

Each financial institution shall—
“(A) warn any consumer covered by an overdraft coverage program who engages in a transaction through an automated teller machine 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 financial 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 account.

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

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

“(i) the amount of the overdraft; and

“(ii) the cost to the financial institution in providing the overdraft coverage for that transaction.
“(B) Safe harbor rule authorized.—

The Bureau, in consultation with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board, may issue rules to provide an amount for any overdraft coverage fee that is presumed to be reasonable and proportional to the amount of the overdraft and the cost to the financial institution in providing the overdraft coverage for the transaction.

“(4) Posting order.—Each financial institution shall post transactions with respect to accounts in such a manner that minimizes overdraft coverage fees and nonsufficient fund fees.

“(j) Debit holds.—No financial institution may charge an overdraft coverage fee on any category of transaction, if the overdraft results solely from a debit hold amount placed on an account that exceeds the actual dollar amount of the transaction.

“(k) Nondiscrimination for not opting in.—In implementing the requirements of this section, each financial institution shall provide to consumers who have not consented to participate in an overdraft coverage program,
accounts having the same terms, conditions, or other features as those that are provided to consumers who have consented to participate in such overdraft coverage program, except for features of such overdraft coverage.

“(l) NONSUFFICIENT FUND Fee LIMITS.—

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

“(A) any transaction at an automated teller machine; or

“(B) any debit card transaction.

“(2) REASONABLE AND PROPORTIONAL OVERDRAFT COVERAGE FEES.—The amount of any nonsufficient fund fee shall be reasonable and proportional to the cost to the financial institution directly associated with returning the financial institution directly.

“(3) SAFE Harbor RULE AUTHORIZED.—The Bureau, in consultation with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board, may issue rules to provide an amount for any nonsufficient fund fee that is presumed to be reasonable and proportional.
to the costs to the financial institution of returning
the transaction.

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

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

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

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

SEC. 5. REGULATORY AUTHORITY OF THE BUREAU.

Not later than 24 months after the date of the enact-
ment of this Act, the Bureau of Consumer Financial Pro-
tection (hereafter in this Act referred to as the “Bureau”)
as necessary to carry out section 140B of the Truth in Lending Act, as added by this Act.

SEC. 6. EFFECTIVE DATE.

(a) In General.—This Act and the amendments made by this Act shall take effect 1 year after the date of the enactment of this Act, whether or not the rules of the Bureau under this Act or such amendments are prescribed in final form.

(b) Moratorium on Fee Increases.—

(1) In General.—During the 1-year period beginning on the date of the enactment of this Act, no financial institution may increase the overdraft coverage fees or charges assessed on accounts for paying a transaction (including a check or other debit) in connection with an overdraft or for nonsufficient funds.

(2) Definitions.—As used in this section, the terms “financial institution”, “overdraft”, “overdraft coverage fee”, “account”, and “nonsufficient fund fee” have the same meanings as in section 140B(o) of the Truth in Lending Act, as added by this Act.