

111TH CONGRESS
1ST SESSION

H. R. 1456

To extend the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to require customer consent before a depository institution may initiate overdraft protection services and fees, to enhance the information made available to consumers relating to overdraft protection services and fees, to prohibit systematic manipulation in the posting of checks and other debits to a depository account for the purpose of generating overdraft protection fees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2009

Mrs. MALONEY (for herself, Mr. ACKERMAN, Mr. MILLER of North Carolina, Mr. ELLISON, Ms. SPEIER, Mr. TIERNEY, and Ms. ESHOO) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To extend the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to require customer consent before a depository institution may initiate overdraft protection services and fees, to enhance the information made available to consumers relating to overdraft protection services and fees, to prohibit systematic manipulation in the posting of checks and other debits to a depository account for the purpose of generating overdraft protection fees, 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 “Consumer Overdraft
5 Protection Fair Practices Act”.

6 **SEC. 2. RESTRICTIONS ON OVERDRAFT PROTECTION PRO-**
7 **GRAMS OR SERVICES.**

8 (a) TRUTH IN LENDING ACT AMENDMENTS.—

9 (1) DEFINITION.—Section 103 of the Truth in
10 Lending Act (15 U.S.C. 1602) is amended by add-
11 ing at the end the following new subsection:

12 “(cc) TERMS RELATING TO SHORT-TERM EXTEN-
13 SIONS OF CREDIT UNDER OVERDRAFT PROTECTION PRO-
14 GRAMS.—

15 “(1) OVERDRAFT PROTECTION FEE.—The term
16 ‘overdraft protection fee’ means any fee or charge
17 imposed in connection with any account on which
18 checks or other debits are paid by the institution in
19 which such account is held even though there are in-
20 sufficient funds in the account to cover such checks
21 or other debits, unless such fee or charge—

22 “(A) is imposed on an incidental basis as
23 a customer accommodation and no more than 3
24 such overdraft fees are imposed during any cal-
25 endar year;

1 “(B) is imposed in connection with an ex-
2 tension of credit through an overdraft line of
3 credit program where such fee or charge was
4 considered a finance charge under this title, as
5 in effect immediately prior to the enactment of
6 the Consumer Overdraft Protection Fair Prac-
7 tices Act; or

8 “(C) has been disclosed in connection with
9 a program under which the overdraft is covered
10 by funds transferred from another deposit,
11 share, or other asset account.

12 “(2) OTHER TERMS.—

13 “(A) CHECK.—The term ‘check’ has the
14 same meaning as in section 3(6) of the Check
15 Clearing for the 21st Century Act.

16 “(B) OTHER DEBITS.—The term ‘other
17 debits’ includes withdrawals from an account by
18 the consumer through an automated teller ma-
19 chine and electronic fund transfers from an ac-
20 count that are initiated or authorized by the
21 consumer.

22 “(C) ELECTRONIC FUND TRANSFER.—The
23 term ‘electronic fund transfer’ has the same
24 meaning as in section 903.

1 “(D) ACCOUNT.—The term ‘account’
2 means any account intended for use by and
3 generally used by a consumer primarily for per-
4 sonal, family, or household purposes into which
5 the consumer deposits funds.

6 “(E) TRANSACTION ACCOUNT.—The term
7 ‘transaction account’ has the same meaning as
8 in section 19(b)(1)(C) of the Federal Reserve
9 Act.”.

10 (2) RESTRICTIONS ON OVERDRAFT PROTECTION
11 PROGRAMS OR SERVICES.—

12 (A) IN GENERAL.—Chapter 2 of the Truth
13 in Lending Act (15 U.S.C. 1631 et seq.) is
14 amended by adding at the end the following
15 new section:

16 **“§ 140A. Restrictions on overdraft protection pro-**
17 **grams or services**

18 “(a) IN GENERAL.—In the case of any transaction
19 account of a consumer at any institution, no overdraft pro-
20 tection fee may be imposed on such account for any exten-
21 sion of funds by the institution to cover any check or other
22 debit for which there are insufficient funds in the con-
23 sumer’s account to pay such check or other debit, unless—

24 “(1) the consumer has provided specific written
25 consent to any program or service that provides for

1 charging of such fees in connection with any such
2 extension of funds;

3 “(2) such fee is imposed pursuant to the terms
4 of a written agreement with the consumer which dis-
5 closes, in a clear and conspicuous manner—

6 “(A) the amount of any fee imposed in
7 connection with paying an overdraft;

8 “(B) any applicable disclosure required by
9 this title in connection with such extension of
10 credit, including the disclosures required by sec-
11 tion 127;

12 “(C) the categories of transactions for
13 which a fee for payment of an overdraft may be
14 imposed, including whether an overdraft created
15 by withdrawals at automated teller machines or
16 other electronic fund transfers will be covered
17 and a fee imposed;

18 “(D) the time period by which the con-
19 sumer must repay or cover any extension of
20 credit in the form of payment of an overdraft;
21 and

22 “(E) the circumstances under which the
23 institution in which an account is held will not
24 pay an overdraft; and

1 “(F) other information required to be dis-
2 closed by regulation;

3 “(3) such fee is separately and conspicuously
4 disclosed, each time the fee is imposed, in any peri-
5 odic statement provided to the consumer with re-
6 spect to such account and is included in the calcula-
7 tion of the annual percentage rate as required by
8 sections 107 and 127(b)(6).

9 “(b) CLARIFICATION RELATING TO OVERDRAFT
10 FEES.—In the case of any transaction account of a con-
11 sumer at any institution, the prohibition against an over-
12 draft protection fee under subsection (a) shall apply re-
13 gardless of whether the amount of such fee is the same
14 as, or less than, any fee imposed by the institution with
15 respect to such account for a check or other debit that
16 is returned unpaid.

17 “(c) PROHIBITION ON MISREPRESENTATIONS.—If
18 any institution—

19 “(1) will not extend funds under specific cir-
20 cumstances to cover an overdraft in any transaction
21 account of a consumer at the institution; or

22 “(2) reserves the right to extend funds to pay
23 any such overdraft on a discretionary basis,

1 any representation by such institution that the institution
2 will extend credit to cover all overdrafts on such account
3 shall be a violation of this title.”.

4 (B) CLERICAL AMENDMENT.—The table of
5 sections for chapter 2 of the Truth in Lending
6 Act is amended by inserting after the item re-
7 lating to section 140 the following new item:

“140A. Restrictions on overdraft protection programs or services.”.

8 (3) RESTRICTIONS ON ADVERTISING OF OVER-
9 DRAFT PROTECTION PROGRAMS OR SERVICES.—

10 (A) IN GENERAL.—Chapter 3 of the Truth
11 in Lending Act (15 U.S.C. 1661 et seq.) is
12 amended by adding at the end the following
13 new section:

14 **“§ 148. Restrictions on advertising of overdraft pro-**
15 **tection programs or services**

16 “(a) IN GENERAL.—In the case of an institution that
17 maintains transaction accounts for consumers and offers
18 a program or service under which the institution pays any
19 overdraft on the account in exchange for payment of an
20 overdraft protection fee, the institution may not make any
21 of the following representations or statements with respect
22 to such program or service in any advertisement or pro-
23 motion:

24 “(1) Any representation or statement describing
25 a transaction account as free or no cost if the ac-

1 count includes, or is promoted as including, over-
2 draft protection services that involve the payment of
3 overdraft protection fees.

4 “(2) Any representation or statement encour-
5 aging use of the account as a service to meet short-
6 term credit needs or to obtain advances on a con-
7 sumer’s next payment of salary, wages, benefits, or
8 other income.

9 “(3) Any representation or statement that the
10 financial institution will honor all checks or other
11 debits presented against the account, if the institu-
12 tion retains discretion at any time not to honor any
13 check or other debit presented.

14 “(b) REGULATIONS.—The Board shall prescribe reg-
15 ulations implementing the restrictions set forth in sub-
16 section (a) pursuant to the authority of the Board under
17 section 18(f) of the Federal Trade Commission Act, and
18 may, by regulation or order, restrict such additional acts
19 or practices that the Board finds to be unfair or deceptive
20 in connection with the offering, operation, and advertising
21 of overdraft protection programs and services.”.

22 (B) CLERICAL AMENDMENT.—The table of
23 sections for chapter 3 of the Truth in Lending
24 Act is amended by inserting after the item re-
25 lating to section 147 the following new item:

“148. Restrictions on advertising of overdraft protection programs or services.”.

1 (4) CLARIFICATION OF FINANCE CHARGE.—
2 Section 106(a) of the Truth in Lending Act (15
3 U.S.C. 1605(a)) is amended by adding at the end
4 the following new paragraph:

5 “(7) Overdraft protection fee.”.

6 (b) ELECTRONIC FUND TRANSFER ACT AMEND-
7 MENTS.—Section 904 of the Electronic Fund Transfer
8 Act (15 U.S.C. 1693b) is amended by adding at the end
9 the following new subsection:

10 “(e) RESTRICTIONS ON OVERDRAFT PROTECTION
11 SERVICES AND FEES.—

12 “(1) IN GENERAL.—A financial institution that
13 holds a consumer’s account may not impose an over-
14 draft protection fee on the account in connection
15 with any payment of an electronic fund transfer ini-
16 tiated by the consumer at an automated teller ma-
17 chine in spite of a lack of sufficient funds in the
18 consumer’s account to pay such electronic fund
19 transfer, unless—

20 “(A) the consumer has affirmatively re-
21 quested such service pursuant to section
22 140(a)(1), including specific consent to allowing
23 overdrafts at an automated teller machine or by
24 debit card at a point-of-sale terminal;

1 “(B) the financial has provided a notice to
2 the consumer after the transaction is initiated
3 and before the consumer is irrevocably com-
4 mitted to completing the transaction, that the
5 electronic fund transfer the consumer has re-
6 quested will result in an overdraft protection
7 fee, together with the amount of any such fee;

8 “(C) the consumer elects to continue in the
9 manner necessary to effect the requested elec-
10 tronic fund transfer after receiving such notice;
11 and

12 “(D) the overdraft protection fee imposed
13 in connection with such transaction is clearly
14 disclosed in the written documentation of the
15 electronic fund transfer required by section
16 906(a).

17 “(2) PROHIBITION ON FEE IN ABSENCE OF NO-
18 TICE.—If the notice required by paragraph (1)(B) is
19 not feasible, the financial institution may not charge
20 an overdraft protection fee in connection with any
21 payment of an electronic fund transfer initiated by
22 the consumer at an automated teller machine or by
23 debit card at a point-of-sale terminal in spite of a
24 lack of sufficient funds in the consumer’s account to
25 pay such electronic fund transfer.

1 “(3) DISCLOSURE OF ACCOUNT BALANCES.—In
2 the case of any financial institution that offers a
3 program or service under which the institution pays
4 any overdraft on a consumer’s account in exchange
5 for the imposition of an overdraft protection fee in
6 accordance with paragraph (1), the financial institu-
7 tion shall, in response to a balance inquiry initiated
8 by the consumer at an automated teller machine op-
9 erated by the financial institution, disclose only the
10 actual dollar balance in the consumer’s account at
11 the time of the request, which shall not include any
12 additional amount of credit or overdraft protection
13 the financial institution will pay under any agree-
14 ment with the consumer that permits the imposition
15 of the overdraft protection fee.

16 “(4) OVERDRAFT PROTECTION FEE DE-
17 FINED.—For purposes of this subsection, the term
18 ‘overdraft protection fee’ has the same meaning as
19 in section 103(cc)(1).”.

20 (c) EXPEDITED FUNDS AVAILABILITY ACT AMEND-
21 MENTS.—

22 (1) DEFINITION.—Section 602 of the Expedited
23 Funds Availability Act (12 U.S.C. 4001) is amended
24 by adding at the end the following new paragraph:

1 “(26) OVERDRAFT PROTECTION FEE.—The
2 term ‘overdraft protection fee’ has the same meaning
3 as in section 103(cc)(1) of the Truth in Lending
4 Act.”.

5 (2) RESTRICTIONS ON OVERDRAFT PROTECTION
6 FEES.—Section 607 of the Expedited Funds Avail-
7 ability Act (12 U.S.C. 4006) is amended by adding
8 at the end the following new subsection:

9 “(f) RESTRICTIONS ON OVERDRAFT PROTECTION
10 FEES.—A depository institution may not—

11 “(1) impose an overdraft protection fee on an
12 account at such institution for paying any check
13 drawn on the account in spite of a lack of sufficient
14 funds in the account to pay such check or any simi-
15 lar activity unless the accountholder has affirma-
16 tively requested such service pursuant to section
17 140(a)(1) of the Truth in Lending Act; or

18 “(2) engage in a pattern or practice of delaying
19 the posting of any deposit in an account, or manipu-
20 lating the process of posting any check or other
21 debit against an account, if such pattern or practice
22 results in 1 or more overdrafts that trigger payment
23 by the accountholder of an overdraft protection
24 fee.”.

○