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 SENATE OF THE UNITED STATES

OCTOBER 19, 2009

Mr. DODD (for himself, Mr. SCHUMER, Mr. REED, Mr. BROWN, Mr. LEVIN, Mr. MERKLEY, Mr. MENENDEZ, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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 Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Fairness and Accountability in Receiving Overdraft Coverage Act of 2009” or the “FAIR Overdraft Coverage Act”.
SEC. 2. FINDINGS AND PURPOSE.

Section 102 of the Truth in Lending Act (15 U.S.C. 1601) is amended by adding at the end the following:

“(c) FAIRNESS AND ACCOUNTABILITY IN OVERDRAFT COVERAGE.—

“(1) FINDINGS.—The Congress also finds that—

“(A) overdraft coverage is a form of short-term credit that depository institutions provide for consumer transaction accounts. Historically, depository institutions covered overdrafts for a fee on an ad hoc basis;

“(B) with the growth in specially designed software programs and in consumer use of debit cards, overdraft coverage for a fee has become more prevalent;

“(C) most depository institutions do not notify consumers when adding this feature to their transaction accounts, and some do not permit consumers to eliminate this feature from such accounts;

“(D) most depository institutions collect a high flat fee, including for small dollar transactions, each time the institution covers an overdraft, in some cases impose multiple overdraft coverage fees within a single day, and
many charge additional fees for each day during which the account remains overdrawn; and

“(E) such abusive and misleading practices in connection with overdraft coverage fees have deprived consumers of meaningful choices about their accounts and placed significant financial burdens on low- and moderate-income consumers.

“(2) Purpose.—It is the purpose of this title to protect consumers by limiting abusive and misleading 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 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following:

“(cc) Definitions Relating to Overdraft Coverage.—

“(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) Depository Institution.—The term ‘depository institution’ has the same meaning as in
clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

“(3) NONSUFFICIENT FUND FEE.—The term ‘nonsufficient fund fee’ means a fee or charge assessed in connection with an overdraft for which a depository institution declines payment.

“(4) OVERDRAFT.—The term ‘overdraft’ means the amount of a withdrawal by check or other debit from a transaction account in which there are insufficient or unavailable funds in the account to cover such check or debit.

“(5) OVERDRAFT COVERAGE.—The term ‘overdraft coverage’ means the payment of a check presented or other debit posted against a transaction account by the depository 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, excluding fees or charges relating to overdraft lines of credit or transfers from an account linked to another transaction
account or line of credit. 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 depository institution assesses an overdraft coverage fee for overdraft coverage.

“(8) TRANSACTION ACCOUNT.—The term ‘transaction account’ has the same meaning as in section 19(b)(1)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(C)).”.

(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 103(ce) of the Truth in Lending Act (12 U.S.C. 1602(ce))” after “inclusive of all finance charges”.

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

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:
SEC. 140B. OVERDRAFT COVERAGE PROGRAM DISCLOSURES AND CONSUMER PROTECTION.

“(a) Prohibitions.—No depository 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 depository institution that provides or offers to provide overdraft coverage with respect to transaction accounts held at that depository institution shall clearly and conspicuously disclose in all marketing materials for such overdraft coverage any overdraft coverage fees.

“(c) Consumer Consent Opt-In.—A depository institution may charge overdraft coverage fees with respect to withdrawals from automated teller machines or debit card transfers only if the consumer has consented in writing, in electronic form, or in such other form as is permitted under regulations of the Board.

“(d) Consumer Disclosures.—Each depository institution shall clearly disclose to each consumer covered by an overdraft protection program of that depository 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 transaction account; and

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

“(2) information about any alternative over-
draft products that are available, including a clear
explanation of how the terms and fees for such alter-
native services and products differ; and

“(3) such other information as the Board may
require, by rule.

“(e) PERIODIC STATEMENTS.—Each depository insti-
tution that offers an overdraft coverage program shall, in
each periodic statement for any transaction account that
has an overdraft coverage program feature, clearly disclose
to the consumer the dollar amount of all overdraft cov-
erage fees charged to the consumer for the relevant period
and year to date.

“(f) EXCLUSION FROM ACCOUNT BALANCE INFOR-
mation.—No depository institution may include the
amount available under the overdraft coverage program of
a consumer as part of the transaction account balance of that consumer.

“(g) Prompt Notification.—Each depository institution shall promptly notify consumers, through a reasonable 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 depository 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) NOTICE AND OPPORTUNITY TO CANCEL.—Each depository institution shall—

“(1) warn any consumer covered by an over-
draft coverage program who engages in a trans-
action 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

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

“(j) OVERDRAFT COVERAGE Fee LIMITS.—

“(1) 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.

“(2) Reasonable and proportional over-
draft coverage fees.—

“(A) In general.—The amount of any overdraft coverage fee that a depository institu-
tion may assess for paying a transaction (in-
cluding a check or other debit) shall be reason-
able and proportional to the cost of processing the transaction.
“(B) Safe Harbor Rule Authorized.—The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, 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 actual cost of processing the transaction.

“(3) Posting Order.—In order to minimize overdraft coverage fees charged to consumers, each depository institution shall post transactions with respect to transaction accounts in such a manner that the consumer does not incur avoidable overdraft coverage fees.

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

“(l) Nondiscrimination for Not Opting In.—In implementing the requirements of this section, each depository institution shall provide to consumers who have not consented to participate in an overdraft coverage program,
transaction 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.

“(m) NON-SUFFICIENT FUND FEE LIMITS.—No depository institution may charge any non-sufficient fund fee with respect to—

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

“(2) any debit card transaction.

“(n) REPORTS TO CONSUMER REPORTING AGENCIES.—No depository institution may report negative information regarding the use of overdraft coverage by a consumer 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 overdraft coverage fees are paid under the terms of an overdraft coverage program.

“(o) RULE OF CONSTRUCTION.—No provision of this section may be construed as prohibiting a depository institution from retaining the discretion to pay, without assessing an overdraft coverage fee or charge, an overdraft incurred by a consumer.”.
SEC. 5. REGULATORY AUTHORITY OF THE BOARD.

(a) IN GENERAL.—Not later than 9 months after the
date of enactment of this Act (except as provided in sub-
section (b)), the Board of Governors of the Federal Re-
serve System (in this Act referred to as the “Board”), in
consultation with the Comptroller of the Currency, the
Board of Directors of the Federal Deposit Insurance Cor-
poration, the Director of the Office of Thrift Supervision,
and the National Credit Union Administration Board,
shall issue such final rules and publish such model forms
as necessary to carry out section 140B of the Truth in
Lending Act, as added by this Act.

(b) BOARD AUTHORITY REGARDING ADDITIONAL
WARNINGS.—The Board may, by rule, after taking into
account the findings of the Comptroller General of the
United States under section 6, require warnings at loca-
tions such as point-of-sale transfer terminals or other loca-
tions, that are similar to those required under section
140B(i) of the Truth in Lending Act, as added by this
Act, where feasible, and if the cost of providing such warn-
ings does not outweigh the benefit to consumers.

SEC. 6. STUDY AND REPORT BY THE GAO.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of
the United States shall conduct a study regarding
whether it is feasible for a depository institution—
(A) to provide a warning to a consumer at a point-of-sale transfer terminal that completing a transfer may trigger overdraft coverage fees; and

(B) to provide the consumer with the opportunity to cancel the point-of-sale transfer before the transaction is completed.

(2) CONSIDERATIONS.—In conducting the study under this subsection, the Comptroller General shall evaluate—

(A) the benefits to consumers of a point-of-sale transfer overdraft warning and opportunity to cancel;

(B) the availability of technology to provide such a warning and opportunity; and

(C) the cost of providing such warning and opportunity.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (a).

(c) DEFINITIONS.—As used in this section, the terms “overdraft coverage program”, “overdraft coverage fee”, and “depository institution” have the same meanings as
in section 103(cc) of the Truth in Lending Act, as added by this Act.

SEC. 7. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall become effective 1 year after the date of enactment of this Act, whether or not the rules of the Board under this Act or such amendments are issued in final form.

(b) MORATORIUM ON FEE INCREASES.—

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

(2) DEFINITIONS.—As used in this section, the terms “depository institution”, “overdraft”, “overdraft coverage fee”, “transaction account” and “nonsufficient fund fee” have the same meanings as in section 103(cc) of the Truth in Lending Act, as added by this Act.