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 HOUSE OF REPRESENTATIVES
OCTOBER 22, 2009
Mrs. Maloney (for herself, Mr. Frank of Massachusetts, Ms. Waters, Mr. Maffei, Mr. Miller of North Carolina, Mr. Hinojosa, Ms. Moore of Wisconsin, Mr. Hodes, Mr. Capuano, Mr. Ackerman, Mr. Kanjorski, Mr. Ellison, Mr. Gutiérrez, Ms. Speier, Ms. Eshoo, and Mr. Jones) 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 depository 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,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Overdraft Protection

5 Act of 2009”.


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 new subsection:

“(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 over-
draft coverage fees within a single day, and
many charge additional fees for each day dur-
ing 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 con-
sumers.

“(2) PURPOSE.—It is the purpose of this title
to protect consumers by limiting abusive and mis-
leading 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 new subsection:

“(cc) DEFINITIONS RELATING TO OVERDRAFT COV-
ERAGE.—

“(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, 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 2009; or

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

“(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(ec) of the
Truth in Lending Act (12 U.S.C. 1602(ec))” 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 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 overdraft coverage fee) or reject overdrafts incurred by the consumer beyond the numbers described in subparagraph (A);

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

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

“(e) PERIODIC STATEMENTS.—Each depository institution 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 Information.—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 insti-
tution shall promptly notify consumers, through a reason-
able means selected by the consumer, when overdraft cov-
erage 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 ac-
count 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 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

“(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 overdraft coverage fees.—

“(A) In general.—The amount of any overdraft coverage fee that a depository institution may assess for paying a transaction (including a check or other debit) shall be reasonable 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) Nonsufficient Fund Fee Limits.—No depository institution may charge any nonsufficient 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 the enactment of this Act (except as provided in subsection (b)), the Board of Governors of the Federal Reserve System (hereafter 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 Corporation, 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 locations 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 warnings 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 take effect 1 year after the date of the enactment of this Act, whether or not the rules of the Board 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 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 nonsufficient 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.