

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4277
OFFERED BY MRS. CAROLYN B. MALONEY OF
NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Overdraft Protection
3 Act of 2022”.

4 SEC. 2. FINDINGS AND PURPOSE.

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

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

10 (2) With the growth in specially designed soft-
11 ware programs and in consumer use of debit cards,
12 overdraft coverage for a fee has become more preva-
13 lent.

14 (3) Many financial institutions market a range
15 of overdraft options but aggressively encourage con-
16 sumers to consent to the most expensive option,

1 where a high flat fee is collected for every individual
2 overdraft transaction.

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

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

13 (6) African Americans and Latinos are dis-
14 proportionately harmed by overdraft coverage fees
15 and more likely to pay multiple overdraft coverage
16 fees annually.

17 (b) PURPOSE.—It is the purpose of this Act to pro-
18 tect consumers by limiting abusive overdraft coverage fees
19 and practices, and by providing meaningful disclosures
20 and consumer choice in connection with overdraft coverage
21 fees.

1 **SEC. 3. FAIR MARKETING AND PROVISION OF OVERDRAFT**
2 **COVERAGE PROGRAMS.**

3 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
4 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
5 at the end the following new section:

6 **“§ 140B. Overdraft coverage program disclosures and**
7 **consumer protection**

8 “(a) DEFINITIONS.—For purposes of this section:

9 “(1) ACCOUNT.—The term ‘account’ has the
10 meaning given that term under section 903 of the
11 Electronic Fund Transfer Act (15 U.S.C. 1693a).

12 “(2) CHECK.—The term ‘check’ has the mean-
13 ing given that term under section 3 of the Check
14 Clearing for the 21st Century Act (12 U.S.C. 5002),
15 other than a travelers check.

16 “(3) FINANCIAL INSTITUTION.—The term ‘fi-
17 nancial institution’ has the meaning given that term
18 under section 903 of the Electronic Fund Transfer
19 Act (15 U.S.C. 1693a).

20 “(4) NONSUFFICIENT FUND FEE.—The term
21 ‘nonsufficient fund fee’ means a fee or charge as-
22 sessed in connection with an overdraft for which a
23 financial institution declines payment.

24 “(5) OVERDRAFT.—The term ‘overdraft’
25 means, in a withdrawal by check or other debit from
26 a consumer account in which there are insufficient

1 or unavailable funds in the account to cover such
2 check or debit, the amount of such withdrawal that
3 exceeds the available funds in the account.

4 “(6) OVERDRAFT COVERAGE.—The term ‘over-
5 draft coverage’ means the payment of a check pre-
6 sented or other debit posted against a consumer ac-
7 count by the financial institution in which such ac-
8 count is held, even though there are insufficient or
9 unavailable funds in the account to cover such
10 checks or other debits.

11 “(7) OVERDRAFT COVERAGE FEE.—The term
12 ‘overdraft coverage fee’ means any fee or charge as-
13 sessed in connection with overdraft coverage, or in
14 connection with any negative account balance that
15 results from overdraft coverage, unless such fee or
16 charge is imposed in connection with—

17 “(A) an extension of credit through an
18 overdraft line of credit program where such fee
19 or charge was considered a finance charge
20 under this title as in effect immediately prior to
21 the enactment of this section; or

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

24 “(8) OVERDRAFT COVERAGE PROGRAM.—The
25 term ‘overdraft coverage program’ means a service

1 under which a financial institution assesses an over-
2 draft coverage fee for overdraft coverage.

3 “(b) PROHIBITIONS.—No financial institution may
4 engage in acts or practices in connection with the mar-
5 keting of or the provision of overdraft coverage that are
6 unfair, deceptive, or designed to evade the provisions of
7 this section.

8 “(c) MARKETING DISCLOSURES.—Each financial in-
9 stitution that provides or offers to provide overdraft cov-
10 erage with respect to accounts held at that financial insti-
11 tution shall clearly and conspicuously disclose in all mar-
12 keting materials for such overdraft coverage—

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

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

17 “(A) a consumer’s transaction may be de-
18 clined if there are insufficient funds in the re-
19 lated account; and

20 “(B) with respect to a transaction at an
21 automated teller machine or a debit card trans-
22 action, the consumer will not be charged a non-
23 sufficient fund fee if such transaction is de-
24 clined.

1 “(d) CONSUMER CONSENT OPT-IN.—A financial in-
2 stitution may charge overdraft coverage fees with respect
3 to the use of an automatic teller machine or point of sale
4 transaction only if the consumer has consented in writing,
5 in electronic form, or in such other form as is permitted
6 under regulations of the Bureau.

7 “(e) CONSUMER DISCLOSURES.—Each financial in-
8 stitution shall clearly disclose to each consumer covered
9 by an overdraft coverage program of that financial institu-
10 tion—

11 “(1) that—

12 “(A) the consumer may be charged for not
13 more than one overdraft coverage fee in any
14 single calendar month and not more than 6
15 overdraft coverage fees (or such higher number
16 set by the Director of the Bureau pursuant to
17 subsection (j)(2)(B)) in any single calendar
18 year, per account; and

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

24 “(2) information about any alternative over-
25 draft products that are available (such as linked ac-

1 counts, lines of credit, and alerts), including a clear
2 explanation of how the terms and fees for such alter-
3 native services and products differ; and

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

6 “(f) PERIODIC STATEMENTS.—Each financial insti-
7 tution that offers an overdraft coverage program shall, in
8 each periodic statement for any account that has an over-
9 draft coverage program feature, clearly disclose to the con-
10 sumer the dollar amount of all overdraft coverage fees and
11 nonsufficient fund fees charged to the consumer for the
12 relevant period and year to date.

13 “(g) EXCLUSION FROM ACCOUNT BALANCE INFOR-
14 MATION.—No financial institution may include the
15 amount available under the overdraft coverage program of
16 a consumer as part of the account balance of that con-
17 sumer and the account balance shall be more prominently
18 displayed than any amount available under the overdraft
19 coverage program.

20 “(h) PROMPT NOTIFICATION.—Each financial insti-
21 tution shall promptly notify a consumer, through a reason-
22 able means selected by the consumer, when overdraft cov-
23 erage has been accessed with respect to the account of
24 the consumer, not later than on the day on which such
25 access occurs, including—

1 “(1) the date of the transaction;

2 “(2) the type of transaction;

3 “(3) the overdraft amount;

4 “(4) the overdraft coverage fee;

5 “(5) the amount necessary to return the ac-
6 count to a positive balance; and

7 “(6) whether the participation of the consumer
8 in an overdraft coverage program will be terminated
9 if the account is not returned to a positive balance
10 within a given time period.

11 “(i) TERMINATED OR SUSPENDED COVERAGE.—

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

17 “(j) OVERDRAFT COVERAGE FEE LIMITS.—

18 “(1) NOTICE AND OPPORTUNITY TO CANCEL.—

19 Each financial institution shall—

20 “(A) warn any consumer covered by an
21 overdraft coverage program who engages in a
22 transaction through an automated teller ma-
23 chine or a branch teller if completing the trans-
24 action would trigger overdraft coverage fees, in-
25 cluding the amount of the fees; and

1 “(B) provide to the consumer the oppor-
2 tunity to cancel the transaction before it is
3 completed.

4 “(2) FREQUENCY.—A financial institution may
5 charge, per account, not more than—

6 “(A) one overdraft coverage fee in any sin-
7 gle calendar month; and

8 “(B) 6 overdraft coverage fees in any sin-
9 gle calendar year, or such larger number of
10 overdraft coverage fees as the Director of the
11 Bureau determines appropriate.

12 “(3) REASONABLE AND PROPORTIONAL OVER-
13 DRAFT COVERAGE FEES.—

14 “(A) IN GENERAL.—The amount of any
15 overdraft coverage fee that a financial institu-
16 tion may assess for paying a transaction (in-
17 cluding a check or other debit) shall be reason-
18 able and proportional to—

19 “(i) the amount of the overdraft; and

20 “(ii) the cost to the financial institu-
21 tion in providing the overdraft coverage for
22 that transaction.

23 “(B) SAFE HARBOR RULE AUTHORIZED.—

24 The Bureau, in consultation with the Board of
25 Governors of the Federal Reserve System, the

1 Comptroller of the Currency, the Board of Di-
2 rectors of the Federal Deposit Insurance Cor-
3 poration, and the National Credit Union Ad-
4 ministration Board, may issue rules to provide
5 an amount for any overdraft coverage fee that
6 is presumed to be reasonable and proportional
7 to the amount of the overdraft and the cost to
8 the financial institution in providing the over-
9 draft coverage for the transaction.

10 “(4) POSTING ORDER.—Each financial institu-
11 tion shall post transactions with respect to accounts
12 in such a manner that minimizes overdraft coverage
13 fees and nonsufficient fund fees.

14 “(k) DEBIT HOLDS.—No financial institution may
15 charge an overdraft coverage fee on any category of trans-
16 action, if the overdraft results solely from a debit hold
17 amount placed on an account that exceeds the actual dol-
18 lar amount of the transaction.

19 “(l) NONDISCRIMINATION FOR NOT OPTING IN.—In
20 implementing the requirements of this section, each finan-
21 cial institution shall provide to consumers who have not
22 consented to participate in an overdraft coverage program,
23 accounts having the same terms, conditions, or other fea-
24 tures as those that are provided to consumers who have

1 consented to participate in such overdraft coverage pro-
2 gram, except for features of such overdraft coverage.

3 “(m) NONSUFFICIENT FUND FEE LIMITS.—

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

7 “(A) any transaction at an automated tell-
8 er machine; or

9 “(B) any debit card transaction.

10 “(2) REASONABLE AND PROPORTIONAL OVER-
11 DRAFT COVERAGE FEES.—The amount of any non-
12 sufficient fund fee shall be reasonable and propor-
13 tional to the cost to the financial institution directly
14 associated with returning the transaction.

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

1 “(n) REPORTS TO CONSUMER REPORTING AGEN-
2 CIES.—No financial institution may report negative infor-
3 mation regarding the use of overdraft coverage by a con-
4 sumer to any consumer reporting agency (as that term
5 is defined in section 603 of the Fair Credit Reporting Act
6 (15 U.S.C. 1681a)) when the overdraft amounts and over-
7 draft coverage fees are repaid under the terms of an over-
8 draft coverage program.

9 “(o) RULE OF CONSTRUCTION.—No provision of this
10 section may be construed as prohibiting a financial institu-
11 tion from retaining the discretion to pay, without assess-
12 ing an overdraft coverage fee, an overdraft incurred by
13 a consumer.”.

14 (b) CONFORMING AMENDMENTS FOR THE TREAT-
15 MENT OF OVERDRAFT COVERAGE FEES.—

16 (1) TRUTH IN LENDING ACT.—Section 106(a)
17 of the Truth in Lending Act (15 U.S.C. 1605(a)) is
18 amended by adding at the end the following:

19 “(7) Overdraft coverage fee, as defined in sec-
20 tion 140B(a) of the Truth in Lending Act.”.

21 (2) FEDERAL CREDIT UNION ACT.—Section
22 107(5)(A)(vi) of the Federal Credit Union Act (12
23 U.S.C. 1757(5)(A)(vi)) is amended by inserting “,
24 other than an overdraft coverage fee, as defined in

1 section 140B(a) of the Truth in Lending Act” after
2 “inclusive of all finance charges”.

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

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

7 **SEC. 4. REGULATORY AUTHORITY OF THE BUREAU.**

8 (a) IN GENERAL.—Not later than 18 months after
9 the date of the enactment of this Act, the Director of the
10 Bureau of Consumer Financial Protection shall issue such
11 final rules and publish such model forms as necessary to
12 carry out section 140B of the Truth in Lending Act, as
13 added by this Act.

14 (b) CONSIDERATION OF LOW-INCOME CONSUMERS.—
15 In issuing rules described under subsection (a), and any
16 related guidance, including with respect to the method of
17 calculating of annual percentage rates, the Director of the
18 Bureau of Consumer Financial Protection shall consider
19 the financial and economic impact of such rules or guid-
20 ance on low-income consumers.

21 (c) IMPACT STUDY ON SMALLER FINANCIAL INSTI-
22 TUTIONS; RULEMAKING.—The Director of the Bureau of
23 Consumer Financial Protection shall—

24 (1) carry out a study on the impact of this Act
25 and amendments made by this Act on financial insti-

1 tutions with less than \$1,000,000,000 in assets and
2 the communities they serve;

3 (2) not later than the end of the 3-year period
4 beginning on the effective date described under sec-
5 tion 5(a), issue a report to the Committee on Finan-
6 cial Services of the House of Representatives and
7 the Committee on Banking, Housing, and Urban Af-
8 fairs of the Senate containing all findings and deter-
9 minations made in carrying out such study; and

10 (3) to the extent the Director determines it ap-
11 propriate, in light of the results of such study, revise
12 the rules issued under subsection (a) with respect to
13 such financial institutions.

14 **SEC. 5. EFFECTIVE DATE.**

15 (a) **IN GENERAL.**—This Act and the amendments
16 made by this Act shall take effect 24 months after the
17 date of the enactment of this Act, whether or not the rules
18 of the Bureau of Consumer Financial Protection under
19 this Act or such amendments are prescribed in final form.

20 (b) **MORATORIUM ON FEE INCREASES.**—

21 (1) **IN GENERAL.**—During the 24-month period
22 beginning on the date of the enactment of this Act,
23 no financial institution may increase—

24 (A) the overdraft coverage fees assessed on
25 accounts for paying a transaction (including a

1 check or other debit) in connection with an
2 overdraft or for nonsufficient funds; or

3 (B) the nonsufficient fund fees assessed by
4 the financial institution.

5 (2) DEFINITIONS.—As used in this section, the
6 terms “account”, “financial institution”, “over-
7 draft”, “overdraft coverage fee”, and “nonsufficient
8 fund fee” have the same meanings as in section
9 140B(a) of the Truth in Lending Act, as added by
10 this Act.

11 (c) APPLICATION TO SMALL FINANCIAL INSTITU-
12 TIONS.—

13 (1) EFFECTIVE DATE.—Notwithstanding sub-
14 section (a), this Act and the amendments made by
15 this Act shall take effect with respect to small finan-
16 cial institutions 4 years after the date of the enact-
17 ment of this Act.

18 (2) SMALL FINANCIAL INSTITUTION DE-
19 FINED.—In this subsection, the term “small finan-
20 cial institution” means a financial institution with
21 consolidated assets of less than \$300,000,000.

