

111TH CONGRESS
1ST SESSION

H. R. 1214

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and other protections for consumers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2009

Mr. GUTIERREZ (for himself, Mr. TOWNS, Mr. MEEKS of New York, Mr. CLAY, and Mr. SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and other protections for consumers, 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 “Payday Loan Reform
5 Act of 2009”.

1 **SEC. 2. PAYDAY LOAN DISCLOSURES AND CONSUMER PRO-**
2 **TECTIONS.**

3 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
4 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
5 after section 129A the following new section:

6 **“SEC. 129B. MANDATORY DISCLOSURES; EXTENDED REPAY-**
7 **MENT PLAN; AND OTHER PROTECTIONS FOR**
8 **CONSUMERS.**

9 “(a) MANDATORY DISCLOSURES FOR PAYDAY
10 LOANS.—No creditor may make a payday loan to a con-
11 sumer unless—

12 “(1) the creditor has first provided the con-
13 sumer with a copy of a written loan agreement,
14 which shall be signed by the creditor and by the con-
15 sumer and shall include the following information in
16 English and in the language in which the loan was
17 negotiated:

18 “(A) A clear and conspicuous description
19 of the terms of the loan, including the total cost
20 of all fees and other charges in connection with
21 the loan stated both as a dollar amount and as
22 an annual percentage rate, and the consumer’s
23 payment obligations under the loan;

24 “(B) The name, address and telephone
25 number of the creditor making the loan, and
26 the name of title of the individual employee of

1 the creditor who signs the loan agreement on
2 behalf of the creditor;

3 “(C) The following statements, in at least
4 14-point bold face type:

5 “(i) ‘WARNING: This loan is not in-
6 tended to meet long-term financial needs.
7 This loan should be used only to meet
8 short-term cash needs. The cost of this
9 loan may be higher than loans offered by
10 other lending institutions.’

11 “(ii) ‘CREDIT COUNSELING
12 AVAILABILITY: You should consider
13 contacting an independent, non-profit cred-
14 it counseling agency approved by the Na-
15 tional Foundation for Credit Counseling
16 (NFCC) or by a State or Federal govern-
17 ment agency. You may obtain information
18 on how to contact an approved counselor
19 near you by calling NFCC at 1-800-388-
20 2227.’

21 “(iii) ‘NO CRIMINAL PROSECU-
22 TION OR SECURITY INTEREST: You
23 cannot be prosecuted in criminal court to
24 collect this loan, and the creditor may not
25 take or attempt to take an interest in any

1 of your personal property to secure his
2 loan.’

3 “(iv) ‘INTEREST-FREE EX-
4 TENDED REPAYMENT PLAN:’

5 “(I) ‘If you are unable to repay
6 your loan when due, you may elect
7 once every 6 months to repay your
8 loan to the creditor by using an ex-
9 tended repayment plan that will allow
10 you to repay your loan in at least 6
11 substantially equal installments as de-
12 scribed further below with no addi-
13 tional finance charges, interest fees,
14 or other charges of any kind, to the
15 extent that you repay the loan as
16 agreed under the repayment plan.’

17 “(II) ‘To obtain an extended re-
18 payment plan, you shall advise the
19 creditor no later than 7 calendar days
20 after the loan due date that you wish
21 to enter into an extended repayment
22 plan by returning to the office where
23 you obtained the loan or by using
24 whatever other method you used to
25 obtain the loan, such as by Internet,

1 telephone or fax, and you must
2 promptly sign an amendment to your
3 loan agreement reflecting the new
4 payment schedule.’

5 “(III) ‘The 6-month period dur-
6 ing which you may elect to use an ex-
7 tended repayment plans is measured
8 from the date that you fully pay off
9 all amounts due under 1 extended re-
10 payment plan until the date that you
11 enter into another extended repay-
12 ment plan.’

13 “(IV) ‘The creditor must allow
14 you to repay your loan balance in at
15 least six substantially equal install-
16 ment payments. These installments
17 must be due on or after a date on
18 which you receive regular income ex-
19 cept that there shall be at least 13
20 days between installments, and the
21 first installment under the plan shall
22 not be due before your next pay date
23 that is at least 13 days after the re-
24 payment plan amendment is signed by
25 both you and the creditor.’

1 “(V) ‘If you enter into an ex-
2 tended repayment plan and then de-
3 fault by failing to meet your payment
4 obligations, the creditor may charge
5 you a payment plan fee not to exceed
6 \$25.00 and may accelerate payment
7 of the balance remaining if allowed by
8 applicable law.’

9 “(VI) ‘You may prepay the
10 amount due under the extended re-
11 payment plan at any time without
12 charge or penalty.’

13 “(VII) ‘This Federal extended re-
14 payment plan requirement supersedes
15 any repayment plan requirements
16 under any State law’.

17 “(D) Any other disclosures required by
18 Federal law.

19 “(b) ADDITIONAL PUBLIC DISCLOSURES.—No cred-
20 itor shall make a payday loan to any consumer unless the
21 following notices are posted conspicuously in English and
22 Spanish and in not less than 1-inch bold print in the credi-
23 tor’s public lending area in each physical location, or, if
24 the loan is made using the Internet, fax or other means,

1 posted conspicuously on the creditor's public internet site
2 relating to any such payday loan:

3 “(1) ‘WARNING: This loan is not intended to
4 meet long-term financial needs. This loan should be
5 used only to meet short-term cash needs. The cost
6 of your loan may be higher than loans offered by
7 other lending institutions.’

8 “(2) ‘CREDIT COUNSELING AVAIL-
9 ABILITY: You should consider contacting an inde-
10 pendent, non-profit credit counseling agency ap-
11 proved by the National Foundation for Credit Coun-
12 seling (NFCC) or by a State or Federal government
13 agency. You may obtain information on how to con-
14 tact an approved counselor near you by calling the
15 NFCC at 1-800-388-2227’.

16 “(3) ‘NO CRIMINAL PROSECUTION OR
17 SECURITY INTEREST: You cannot be prosecuted
18 in criminal court to collect this loan, and we may
19 not take or attempt to take an interest in any of
20 your personal property to secure this loan.’

21 “(4) ‘INTEREST-FREE EXTENDED RE-
22 PAYMENT PLAN: If you are unable to repay your
23 loan as agreed, we are required by Federal law to
24 allow you to enter into an extended repayment plan,
25 at least once every 6 months, that will allow you to

1 repay the loan in at least 6 equal installments with-
2 out being charged any additional finance charges, in-
3 terest fees or other charges of any kinds as long as
4 you notify us of your desire to enter into such a plan
5 no later than seven calendar days after the loan due
6 date. This Federal repayment plan requirement su-
7 persedes any repayment plan requirements under
8 any State law.’.

9 “(c) MANDATORY EXTENDED REPAYMENT PLAN.—

10 “(1) IN GENERAL.—No creditor may make a
11 payday loan to any consumer unless the creditor of-
12 fers the consumer an extended repayment plan that
13 meets the following requirements:

14 “(A) The extended repayment plan is of-
15 fered at least once in any 6-month period, if the
16 consumer advises the creditor no later than 7
17 calendar days after the loan due date that the
18 consumer is unable to repay the loan as agreed
19 and wants to enter into an extended repayment
20 plan.

21 “(B) To qualify for such an extended re-
22 payment plan, the consumer may be required to
23 return to the office where the consumer ob-
24 tained the loan or use whatever method (e.g.,
25 Internet, telephone, fax) the consumer used to

1 obtain the loan, and the consumer shall prompt-
2 ly sign an amendment to the loan agreement re-
3 flecting the new repayment schedule.

4 “(C) Under the extended repayment plan,
5 the creditor allows the consumer to repay the
6 consumer’s loan balance in at least 6 equal in-
7 stallments due coinciding on the consumer’s
8 periodic pay dates, to the extent that there shall
9 be at least 13 days between installments, and
10 the first installment under the plan is not be
11 due before the consumer’s next pay date that is
12 at least 13 days after the repayment plan
13 amendment is signed by both the consumer and
14 the creditor.

15 “(D) The creditor may extend the length
16 of time between installments.

17 “(E) The consumer may prepay the
18 amount due under the extended repayment plan
19 at any time without charge or penalty.

20 “(F) The consumer may not be charged
21 additional finance charges, interest fees, or
22 other charges of any kind; however, if the con-
23 sumer enters an extended repayment plan and
24 then defaults by failing to meet the consumer’s
25 payment obligations, the creditor may charge a

1 repayment plan fee not to exceed \$25.00 and
2 may accelerate payment of the balance remain-
3 ing if allowed by applicable law.

4 “(2) CONFLICT OF LAWS PROVISION.—The re-
5 quirements of this subsection regarding extended re-
6 payment plans shall supersede any repayment plan
7 requirements under any State law.

8 “(d) ADDITIONAL PROTECTIONS FOR CONSUMERS.—
9 It shall be unlawful for a payday lender to—

10 “(1) require a consumer to pay interest and
11 fees that, combined, total more than 15 cents for
12 every dollar loaned in connection with a payday loan;

13 “(2) threaten or seek to have the consumer
14 prosecuted in criminal court to collect the loan;

15 “(3) take or attempt to take an interest in any
16 of the consumer’s personal property to secure the
17 loan;

18 “(4) file or initiate a legal proceeding of any
19 kind, including a lawsuit or arbitration, against a
20 consumer to collect on a loan that is the subject of
21 an extended repayment plan, or construe the loan to
22 be in default unless the consumer has failed to repay
23 the loan as agreed under the terms of the repayment
24 plan;

25 “(5) take any power of attorney;

1 “(6) include in the loan documents—

2 “(A) a confession of judgment clause;

3 “(B) a waiver of the right to a jury trial,
4 if applicable, in any action brought by or
5 against a consumer, unless the waiver is in-
6 cluded in an arbitration clause allowed by sub-
7 paragraph (C) of this paragraph; and

8 “(C) a mandatory arbitration clause that is
9 oppressive, unfair, unconscionable, or substan-
10 tially in derogation of the rights of consumers;

11 “(7) make a payday loan to a consumer who
12 has an outstanding loan obligation to the creditor
13 under an extended repayment plan, or for at least
14 13 days until after the outstanding loan obligation
15 to the creditor under any such repayment plan is
16 paid in full;

17 “(8) knowingly accept payment in whole or in
18 part for any obligation under an extended repayment
19 plan based on funds obtained from another payday
20 loan;

21 “(9) enter into any agreement with a consumer
22 pursuant to which the consumer seeks or purports to
23 waive the consumer’s rights under this section or
24 any claim or defense arising out of the loan contract;

1 “(10) charge or attempt to collect, attorney’s
2 fees, court costs, or arbitration costs incurred in
3 connection with the collection of a payday loan;

4 “(11) rollover a payday loan;

5 “(12) make more than 1 payday loan at the
6 same time to a consumer;

7 “(13) fail to give the consumer, after each pay-
8 ment by the consumer, a signed, dated, receipt
9 showing the amount paid and the balance due on the
10 loan; and

11 “(14) sell any insurance of any kind in connec-
12 tion with the making or collecting of a payday loan.

13 “(e) RESCISSION.—A consumer may cancel future
14 payment obligations on a payday loan, without cost or fi-
15 nance charges by informing the creditor in writing, no
16 later than the end of the 2nd business day following the
17 day on which the payday loan agreement was executed,
18 that the consumer wants to rescind the loan and by re-
19 turning the cash amount of the principal of the loan to
20 the creditor.

21 “(f) DEFINITIONS.—For purposes of this section, the
22 following definitions shall apply:

23 “(1) CHECK.—The term ‘check’ means a nego-
24 tiable instrument as defined in Article 3 of the Uni-

1 form Commercial Code, which is drawn on a finan-
2 cial institution.

3 “(2) CREDITOR.—Notwithstanding the defini-
4 tion of the term ‘creditor’ in section 103, the term
5 ‘creditor’—

6 “(A) means a person who makes or offers
7 payday loans; and

8 “(B) includes—

9 “(i) any affiliate of a creditor that of-
10 fers or makes a payday loan, buys a whole
11 or partial interest in a payday loan, ar-
12 ranges a payday loan for a third party, or
13 acts as an agent for a third party in mak-
14 ing a payday loan, regardless of whether
15 approval, acceptance, or ratification by the
16 third party is necessary to create a legal
17 obligation for the third party; and

18 “(ii) any other person or entity that is
19 engaged in a transaction that is in sub-
20 stance a disguised payday loan or a subter-
21 fuge for the purpose of avoiding the re-
22 quirements of this section.

23 “(3) PAYDAY LOAN; LOAN.—The term ‘payday
24 loan’ or ‘loan’ means a closed-end credit transaction,
25 unsecured by any interest in the consumer’s personal

1 property and excluding any credit card transaction
2 under an open end consumer credit plan, with a
3 term of 91 or fewer days in which the amount fi-
4 nanced does not exceed \$2,000 with a finance charge
5 exceeding an annual percentage rate of 36 percent,
6 and the consumer—

7 “(A) receives funds from and incurs inter-
8 est or a fee payable to a creditor, and contem-
9 poraneously with the receipt of funds, provides
10 a check or other payment instrument to the
11 creditor who agrees with the consumer not to
12 deposit or present the check or payment instru-
13 ment for more than 1 day; or

14 “(B) receives funds from and incurs inter-
15 est or a fee payable to a creditor, and contem-
16 poraneously with the receipt of funds, author-
17 izes the creditor to initiate a debit or debits to
18 the consumer’s deposit account (by electronic
19 fund transfer or remotely created check) after
20 1 or more days.

21 “(4) ROLLOVER.—The term ‘rollover’ means
22 the extension of an outstanding loan by the payment
23 of only a fee.

24 “(5) EXTENDED REPAYMENT PLAN.—The term
25 ‘extended repayment plan’ means an installment

1 plan under which a consumer who is unable to repay
2 a payday loan on the loan date due and who com-
3 plies with applicable requirements established under
4 this section may repay the creditor the outstanding
5 balance of the loan in at least 6 substantially equal
6 payments, on or after a date on which the consumer
7 receives regular income, without being charged any
8 additional finance charges, interest fees or other
9 charges of any kind.

10 “(6) The term ‘repayment plan requirements
11 under any State law’ means any installment plan re-
12 quired by any State that allows the consumer to
13 repay a payday loan over an extended period in sev-
14 eral installments instead of on the due date specified
15 in the original loan agreement.

16 “(g) CIVIL LIABILITY; REMEDIES; APPLICABILITY.—

17 “(1) CIVIL MONEY PENALTY.—Notwithstanding
18 the provisions of section 130(a), any person that vio-
19 lates this section, or seeks to enforce an agreement
20 made in violation of this section, shall be subject to,
21 for each such violation, a civil money penalty not to
22 exceed \$10,000.00.

23 “(2) PENALTIES NOT EXCLUSIVE OF OTHER
24 PENALTIES.—The remedies and rights provided
25 under this section are in addition to and do not pre-

1 clude any remedy otherwise available under law to
 2 the person claiming relief under any other provision
 3 of law, other than section 130(a).

4 “(3) AVAILABILITY AS DEFENSE.—Notwith-
 5 standing any statute of limitations or repose, a viola-
 6 tion of this section may be raised as a matter of de-
 7 fense by recoupment or set off to an action to collect
 8 any payday loan.

9 “(4) SCOPE OF APPLICATION.—The provisions
 10 of the section apply to any person or entity that
 11 seeks to evade its applicability by any device, subter-
 12 fuge, or pretense whatsoever.

13 “(h) STATE ATTORNEYS GENERAL ENFORCE-
 14 MENT.—The appropriate State attorney general may
 15 bring an action to enforce this section and to obtain in-
 16 junctive relief in any United States district court or any
 17 other court of competent jurisdiction, not later than 3
 18 years after the date of the violation.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
 20 for chapter 2 of the Truth in Lending Act is amended
 21 by inserting after section 129 the follow new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.

“129B. Mandatory disclosures; extended repayment plan; and other protections
 for consumers.”.

22 (c) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
 24 this Act shall take effect at the end of the 180-day

1 period beginning on the date of the enactment of
2 this Act and shall apply to all loans initiated on or
3 after such date.

4 (2) REGULATIONS.—The Board of Governors of
5 the Federal Reserve System may prescribe regula-
6 tions before the end of the 180-day period referred
7 to in paragraph (1) to the extent necessary to imple-
8 ment the amendments made by this Act to the ex-
9 tent such regulations become effective as of the end
10 of such period.

○