April 15, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: April 20, 2021 Full Committee Markup

The full Committee will convene to mark up the following measures, in an order to be determined by the Chairwoman at 10:00am ET on Tuesday, April 20, 2021, and subsequent days if necessary, in a hybrid format in room 2128 of the Rayburn House Office Building as well as on the WebEx platform.

1. Views and Estimates for the Fiscal Year 2022 Budget Resolution

Clause 4(f) of Rule X of the Rules of the House of Representatives and section 301(d) of the Congressional Budget Act of 1974 require each standing committee to submit to the Committee on the Budget their views and estimates on programs within their jurisdiction. These views and estimates are required to include a detailed list of planned legislative initiatives and their financing. The views and estimates are submitted to the Committee on the Budget for its consideration to formulate a budget resolution. Under section 4(f) of Rule X, the views and estimates must be submitted within six weeks of the submission of the President's budget, or at such time as the Committee on Budget may request. Chairman Yarmuth has requested that Committees provide their views and estimates of the Fiscal Year 2022 budget by May 7, 2021. The committee print circulated with this memo constitutes the Committee's proposed views and estimates.

2. Resolution to establish the Task Force on Artificial Intelligence (Waters)

Summary: This resolution will establish the House Committee on Financial Services, Task Force on Artificial Intelligence to build on its work to review the use of artificial intelligence by financial institutions and other market participants from the 116th Congress.

Background: The Task Force on Artificial Intelligence will conduct hearings and investigations relating to artificial intelligence within the Committee's Rule X jurisdiction and may issue reports to the Committee detailing its findings and recommendations. Artificial intelligence, machine learning, and other related emerging technologies continue to re-shape our financial system, especially during COVID-19. As financial institutions and other market participants seek to use these technologies to increase access to credit and other financial services, concerns remain about the possibility of algorithmic bias, digital redlining, and the exacerbation of existing racial and gender discrimination in the financial services. This Task Force will consider these and other related issues. The Chair of the Task Force will be Representative Foster.

3. Resolution to establish the Task Force on Financial Technology (Waters)

Summary: This resolution will establish the House Committee on Financial Services, Task Force on Financial Technology to build on its work to review issues at the intersection of finance and emerging technologies from the 116th Congress.

Background: The Task Force on Financial Technology will conduct hearings and oversight relating to financial technology within the Committee's Rule X jurisdiction and may issue reports to the Committee detailing its findings and recommendations. Financial technology companies, or "fintechs" are a quickly growing segment of the financial services industry, especially during the COVID-19 pandemic, when digital banking has increased. Due to their focus on harnessing new technologies, fintechs have the potential to open up access to products and services to communities who have been neglected by traditional lenders in the financial services space. However, concerns remain that the current legal and regulatory framework may not be fully equipped to regulate fintech activities or protect consumers and investors who use their rapidly changing products. This Task Force will consider these and related issues. The Chair of the Task Force will be Representative Lynch.

4. Amendment in the Nature of a Substitute to H.R. 1087, "Shareholder Political Transparency Act" (Foster)

Summary: This bill would require public companies to submit quarterly reports to both the SEC and investors detailing the amount, date, and nature of the company's expenditures for political activities. If the political expenditure was made in support of (or opposition to) a particular candidate, or was made to a trade association, then the company must disclose the candidate and/or trade association. The bill also requires public companies to disclose in their annual reports any political expenditures over $10,000 in the previous year as well as the nature and amount of any political expenditures the company plans to make in the upcoming year.

Background: When the Supreme Court decided *Citizens United v. the Federal Elections Commission* in 2010, it held that political spending is protected speech and therefore corporations, unions, and other groups are permitted to make political contributions. Yet, under current law, corporations are not required to disclose their political expenditures although it can have significant effects on a company's short- and long-term value. This deprives shareholders of the ability to adequately assess whether the company's political expenditures truly advance the company's interest or to adequately assess the risks political expenditures pose.[1]

In 2011, a group of legal academics filed a petition for the SEC to require corporations to disclose their political spending activities.[2] The petition received 1.4 million comments, the most in SEC history, but has not been considered by the Commission. However, shareholders continue to

[1] Brennan Center for Justice. Letter re Petition to Require Public Companies to Disclose Corporate Political Spending, File No. 4-637. Aug. 19, 2013.
[2] Committee on Disclosure of Corporate Political Spending Petition for Rulemaking. Aug. 3, 2011.

introduce individual proposals that would require companies to report their political spending and adopt relevant oversight procedures. At a February 2021 hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, a representative of the California Public Employees' Retirement System (CalPERS) stated:

> Investors should have the information necessary to decide for themselves how these types of expenditures affect the risk-return profile of investments in such companies. We agree with former Justice Anthony Kennedy's view in *Citizens United v. the Federal Elections Commission* that disclosure of corporations' political activity provides investors the transparency necessary to make informed decisions.[3]

This bill is supported by Public Citizen, Common Cause, Council of Investment Advisors, California Public Employees' Retirement System, Council of Institutional Investors, and Principles for Responsible Investment.

5. Amendment in the Nature of a Substitute to H.R. 1187, "ESG Disclosure Simplification Act" (Vargas)

Summary: The ESG Disclosure Simplification Act would require issuers to disclose certain environmental, social and governance (ESG) metrics to shareholders, the connection between those metrics and the issuer's long term business strategy, and the method by which the issuer determines how ESG metrics impact its long term strategy. The bill would also require the U.S. Securities and Exchange Commission (SEC) to adopt rules requiring issuers to disclose ESG metrics in filings that require audited financial statements. Additionally, the bill would establish a Sustainable Financial Advisory Committee (SFAC) to provide the U.S. Securities and Exchange Commission (SEC) with a report identifying policy changes that could facilitate sustainable investments.

Background: Investors have been demanding more — and better — disclosure of ESG information from public companies.[4] Many investors view ESG information as important not just for evaluating reputational risks, but for evaluating companies' financial performance as well as long-term viability.[5] In a 2015 report, Blackrock Investment explained that "[c]ompanies that score high on ESG measures tend to quickly adapt to changing environmental and social trends, use resources efficiently, have engaged (and, therefore, productive) employees, and face lower risks of regulatory fines or reputational damage."[6] The credit rating agencies also now incorporate ESG factors into their ratings methodologies. For instance, Standard & Poors has taken over 100 rating actions based on environmental and climate concerns.[7] In February 2021, the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets convened a virtual hearing, entitled

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[3] House Committee on Financial Services, Hearings, *Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World*

[4] See e.g., Donnelly Financial, The Future of ESG and Sustainability Reporting: What Issuers Need to Know Right Now, at 3 (November 14, 2018) (finding that 65% of institutional investors "often or always consider environmental and social issues in their investment decisions," and 95% "often or always consider governance issues — for all investments.").

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[6] Blackrock Investment Institute. The Price of Climate Change: Global Warming's Impact on Portfolios. Oct. 31, 2015.

[7] Standard & Poor's. How Does S&P Global Ratings Incorporate Environmental, Social, and Governance Risks Into Its Ratings Analysis. Nov. 21, 2017.

Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World,[8] in which expert witnesses highlighted the importance of ESG metrics and the critical role these metrics play in the investment decision process. For example, with respect to climate change, Veena Ramani, Senior Program Director of Capital Markets Systems at Ceres, testified that:

> Some 9,526 companies disclosed information on climate issues in response to the CDP questionnaire in 2020, compared to over 200 respondents in 2003. Yet, important stakeholders are still not getting the quality information that they need to effectively integrate climate change risks into their investment process. A 2020 survey of nearly 3,000 investment professionals found that 40% of investment professionals factor climate risks into decision-making, but about half said that they currently lack climate-related disclosures that they need.[9]

Supporters for this bill include good governance advocates, including Public Citizen.

6. Amendment in the Nature of a Substitute to H.R. 1277, "Improving Corporate Governance Through Diversity Act" (Meeks)

Summary: This bill would require public companies to annually disclose the voluntarily, self-identified gender, race, ethnicity and veteran status of their board directors.

Background: Over 90 percent of companies that participated in Deloitte's 2017 board diversity survey agreed that increased board diversity will improve their companies' ability to innovate as well as their overall business performance.[10] Given the impact on performance, investors have an interest in the extent to which companies include diverse perspectives and people in their board rooms. Despite the validated links between board diversity and profitability, the majority of corporate America board appointees continue to be white men. The Alliance for Board Diversity reported that among Fortune 500 companies, 80.7% of new board directors in 2017 were white men.[11] As many companies do not disclose board diversity data with their regulators or the public, disclosure of board diversity information is crucial for creating accountability for real diversity results and for informing investors about the risks associated with investing in companies that do not make board diversity a priority.

Last Congress, this bill passed the House of Representatives as H.R. 5084 and was supported by the National Association for the Advancement of Colored People (NAACP), the National Urban League, the Council for Institutional Investors, the U.S. Chamber of Commerce, and the Latino Corporate Directors Association (LCDA). Senator Menendez has introduced a companion bill, S.374.

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8 House Committee on Financial Services, Hearings, *Climate Change and Social Responsibility: Helping Corporate Boards and Investors Make Decisions for a Sustainable World*.
9 *Id; see, also* Harvard Law School Forum on Corporate Governance, House of Representatives Testimony on Climate Change and Social Responsibility.
10 1 Deloitte, Seeing is believing: 2017 board diversity survey (2017).
11 Alliance for Board Diversity, Missing Pieces Report: The 2018 Board Diversity Census for Women and Minorities on Fortune 500 Boards, as prepared by Deloitte (2018).

7. **Amendment in the Nature of a Substitute to H.R. 2123, "Diversity and Inclusion Data Accountability and Transparency Act" (Beatty)**

Summary: This bill would require regulated entities to disclose diversity data, policies and practices to their respective federal financial regulators.

Background: Section 342 of Dodd-Frank established the Offices of Minority and Women Inclusion (OMWIs) at federal financial regulatory agencies.[12] Pursuant to Section 342(b)(2)(C), in June 2015, six financial regulatory agencies published the Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, which focus on a regulated entity's D&I performance and data, including workforce and procurement spending, among other metrics.[13] However, because of an amendment made before the passage of Dodd-Frank, financial regulators interpreted that the collection of diversity assessments from OMWI regulated entities, and any actions based off of those assessments, should be voluntary. As a result, regulated entities have generally declined to participate in the OMWIs' annual diversity assessment requests.[14] As of October 2020, two agencies were only starting to request assessments or had reduced the frequency of their assessments.[15] This bill would provide explicit direction to regulators that diversity data disclosure by their regulated entities should be compulsory.

8. **Amendment in the Nature of a Substitute to H.R. 2516, "Promoting Diversity and Inclusion in Banking Act" (Green)**

Summary: This bill would require Federal banking regulators to include a diversity and inclusion component in the CAMELS rating system to evaluate how federally insured depository institutions are promoting diversity and inclusion. Specifically, institutions would be rated on whether they: have policies to encourage diversity and inclusion in their hiring practices; provide training to their employees on diversity and inclusion; and designate an individual to serve as the Diversity and Inclusion Officer (DIO) who reports to the CEO. Depository institutions with more than $1 billion in total assets would be required to establish a committee for diversity and inclusion that holds quarterly meetings with the CEO and DIO.

Background: Federal banking regulators examine and rate a bank or credit union based on the Uniform Financial Institutions Ratings System (UFIRS), more commonly referred to as the CAMELS rating system. The institution receives a rating from 1 (best) to 5 (worst) across six "CAMELS" components—capital adequacy, asset quality, management, earnings, liquidity, and

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[12] Dodd-Frank Wall Street Reform and Consumer Protection Act 12 U.S.C. § 5452 (2010)
[13] Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Federal Reserve); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (CFPB); and Securities and Exchange Commission (SEC). "Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies," Federal Register (June 10, 2015) https://www.federalregister.gov/documents/2015/06/10/2015-14126/final-interagency-policy-statement-establishing-joint-standards-forassessing-the-diversity-policies.
[14] Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Federal Reserve); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (CFPB); and Securities and Exchange Commission (SEC). "Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies," Federal Register (June 10, 2015) https://www.federalregister.gov/documents/2015/06/10/2015-14126/final-interagency-policy-statement-establishing-joint-standards-forassessing-the-diversity-policies.
[15] Ibid.

sensitivity to market risk—as well as a composite rating. While management is rated generally under the current system, management's approach to diversity and inclusion, such as ensuring its hiring policies encourage diversity and inclusion – is not, even though diverse and inclusive organizations have been found to be more productive and profitable.[16] Relatedly, a lack of diversity poses a safety and soundness risk, as evidenced during the financial crisis when non-diverse institutions made more predatory loans while gender diversity in leadership positions led to "lower levels of non-performing loans" and greater stability during the financial crisis.[17]

Moreover, Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established Offices of Minority and Women Inclusion (OMWI) at various financial regulators, including the Board of Governors of the Federal Reserve System (Fed), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA). OMWI Directors are mandated to assess the diversity policies and practices of their regulated entities. In its 2020 annual report to Congress, the FDIC OMWI found that despite having fewer resources, small community banks were incorporating diversity into their workforce practices, and that "more institutions are recognizing the importance of integrating diversity and inclusion into their corporate culture."[18] Additionally, for those that responded to an NCUA survey, 42% of credit unions have a written diversity and inclusion policy approved by senior leadership; 60% have a senior official focused on diversity and inclusion; and 61% regularly conduct training on equal employment as well as diversity and inclusion.[19] Instead of relying on voluntary industry surveys, this legislation would help ensure depository institutions have policies and practices in place that promote diversity and inclusion.

9. Amendment in the Nature of a Substitute to H.R. 2543, "Federal Reserve Racial and Economic Equity Act" (Waters)

Summary: This bill would require the Federal Reserve to carry out its duties in a manner that supports the elimination of racial and ethnic disparities in employment, income, wealth, and access to affordable credit. The Board would be required to report on disparities in labor force trends as well as on plans and activities of the Board to minimize and eliminate these disparities.

Background: The Federal Reserve System (Fed) plays a crucial role in overseeing the U.S. economy, from its conduct of monetary policy to its regulation of financial institutions and review of pending bank mergers to its oversight of the payments system. In an essay published shortly after the murder of George Floyd, Atlanta Federal Reserve President Raphael Bostic acknowledged that the Fed had a role to play in addressing racial economic inequality.[20] Historically, the Fed has carried out its functions without regard for its effect on racial economic disparities. For instance, economists Jared Bernstein and Janelle Jones found that "Historical estimates of the natural rate [of unemployment] reveal that black unemployment has never fallen

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[16] In May 2019, the Subcommittee on Diversity and Inclusion convened a hearing entitled "Good for the Bottom Line: A Review of the Business Case for Diversity," at which a panel of experts emphasized that inclusive organizations are more productive and profitable.
[17] https://www.imf.org/en/News/Articles/2019/04/13/sp041319-boosting-growth-through-diversity-in-financial-leadership
[18] https://www.fdic.gov/about/diversity/pdf/rtc-3-31-21.pdf. For more FDIC OMWI reports, see https://www.fdic.gov/about/diversity/omwireports.html
[19] https://www.ncua.gov/files/publications/2019-omwi-congressional-report.pdf
[20] Federal Reserve Bank of Atlanta, *A Moral and Economic Imperative to End Racism,* (Jun. 12, 2020).

below those estimates…" even though the overall rate of unemployment has.[21] Particularly in response to the proposal by Bernstein and Jones for the Fed to "target" the Black unemployment rate, financial institutions have begun incorporating data about Black unemployment into their monetary policy forecasts and analysis.[22]

10. Amendment in the Nature of a Substitute to H.R. 2547, the "Comprehensive Debt Collection Improvement Act" (Waters)

Title I - Small Business Lending Fairness Act

Summary: This title would amend the Truth in Lending Act (TILA) to restrict the use of confessions of judgment for small business owners, extending the protections that currently exist in consumer loans. This title is similar to H.R. 3490 in the 116th Congress, the Small Business Lending Fairness Act, introduced by Rep. Velázquez and was passed out of Committee in November 2019.[23]

Background: A "confession of judgment" is defined as "a person's agreeing to the entry of judgment upon the occurrence or non-occurrence of an event, such as making a payment."[24] It is essentially an agreement by which a borrower agrees to an eventual judgment of liability against them, without normal due process protections such as notice, a hearing, and judicial review. For instance, merchant cash advance companies may require borrowers to sign a confession of judgment as a condition of receiving the cash advance. Oftentimes, these cash advances can cost the equivalent of 400 percent or more in annualized interest.[25] Once a borrower misses a payment or some other dispute arises between the borrower and lender, the lender sends the signed confession of judgment to a county clerk, who enters judgment against the borrower.[26] The lender then takes the judgment to the local marshal, who demands the money allegedly owed to the lender from the borrower's bank.[27] The lender then takes the money from the borrower's bank, with interest and fees added.[28] At this point, a borrower's account will usually be frozen, and in some cases, despite a borrower's compliance with daily debt payments.

Some states outlawed these instruments in the middle of the 20th century, and the Federal Trade Commission (FTC) banned them for consumer loans in 1985 as part of a regulation known as the "Credit Practices Rule."[29] However, courts in numerous states, including New York, continue to

[21] Washington Post, , (Jun. 15, 2020).
[22] Bloomberg, *The Fed is Making Wall Street Pay Attention to Black Unemployment,* (Apr. 6, 2021).
[23] H.R. 3490, 116th Cong. (2019); *See also* Financial Services Committee Markup (Nov. 13, 2019).
[24] Confession of judgment, Black's Law Dictionary 361 (Bryan A. Garner ed., 10th ed. 2014).
[25] Zachary R. Mider & Zeke Faux, *New York Weighs Law to Crack Down on Predatory Loans With 400% Rates*, Bloomberg (June 17, 2019).
[26] Zachary R. Mider & Zeke Faux, *Sign Here to Lose Everything - Part 1: "I Hereby Confess Judgment"*, Bloomberg (Nov. 20, 2018).
[27] *Id*.
[28] *Id*.
[29] *Id*. The Credit Practices Rule declares it a violation of Section 5 of the Federal Trade Commission Act "for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that... [c]onstitutes or contains a cognovit or confession of judgment." By its plain terms, however, the Rule only applies "in connection with the extension of credit to consumers in or affecting commerce." The Rule defines "consumer" as "a natural person who seeks or acquires goods, services, or money for personal, family, or household use." Thus, by its terms, the Rule does not protect corporations, limited liability companies, or other business entities from the adverse consequences of confessions of judgment.

recognize them for commercial loans.[30] This has effectively turned New York into a hub of processing confessions of judgment – in the first five months of 2019, merchant cash advance companies obtained more than 5,500 New York court judgments against borrowers, about the same monthly pace as in 2018.[31]

Small business loan borrowers do not enjoy the same protections individual consumers have under federal law. Furthermore, some small business loan terms include a confession of judgment, which can place additional burdens for small businesses struggling under the COVID-19 pandemic. As a result of these agreements, the debt holder may collect on such a contract, plus damages, immediately after the borrower falls behind in their payments. Confessions of judgment often force a borrower to relinquish defenses that could be used in court, allowing the debt holders to receive a court order to force the financial institution of the debtor to withdraw funds, access the debtor's wages, or seize goods or property, all without the debtor's knowledge or consent.[32]

To address these issues, this title amends TILA to restrict the use of confessions of judgment for small business owners, extending the protections that currently exist for parties in consumer loan agreements. This title is similar to H.R. 3490 in the 116th Congress, the Small Business Lending Fairness Act, introduced by Rep. Velázquez and was passed out of Committee in November 2019.[33]

Title II - Fair Debt Collection Practices for Servicemembers Act

Summary: This title would amend the Fair Debt Collection Practices Act (FDCPA) to prohibit debt collectors from threatening a servicemember with reducing their rank, having their security clearance revoked, prosecuting them under the Uniform Code of Military Justice, or otherwise communicating with the commanding officer or any other senior officer in the chain of command above a servicemember regarding an outstanding debt. The title would cover active-duty servicemembers, as well as servicemembers recently separated or discharged in the previous year. This title is similar to H.R. 5003 in the 116th Congress, the Fair Debt Collection Practices for Servicemembers Act, introduced by Rep. Dean.[34]

Background: Approximately two out of every five complaints filed by servicemembers with the Consumer Financial Protection Bureau (CFPB) were about debt collection, and servicemembers were more likely to complain about debt collection than all consumers filing complaints at the CFPB.[35] In some cases, enlisted servicemembers have been targeted by debt collectors who contact commanding officers in their efforts to collect on a debt, leading to negative professional repercussions. Importantly, consumer debt can have a negative impact on the careers of military servicemembers.[36] Abusive collection tactics include: contacting the servicemember's chain of

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[30] *Id*.
[31] *Id*.
[32] House Committee on Small Business, *Crushed by Confessions of Judgement: The Small Business Story*, 116th Cong. (June 26, 2019).
[34] H.R. 5003, 116th Cong. (2019); *See also* Financial Services Committee Markup (Dec. 10, 2019).
[34] H.R. 5003, 116th Cong. (2019); *See also* Financial Services Committee Markup (Dec. 10, 2019).
[35] *See* Subcommittee on Consumer Protection and Financial Institutions Testimony of April Kuehnhoff, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong. (Sept. 26, 2019).
[36] Subcommittee on Consumer Protection and Financial Institutions hearing, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong. (Sept. 26, 2019).

command, threatening punishment under the military's justice system, threatening reductions in rank, and threatening revocation of a security clearance.[37] approximately two out of every five complaints filed by servicemembers with the CFPB were about debt collection, and servicemembers were more likely to complain about debt collection than all consumers filing complaints at the CFPB.[38]

This title is intended to address those concerns by enhancing FDCPA to, among other things, explicitly prohibit debt collectors from communicating in connection with the collection of any debt, with the commanding officer or officer in charge of any covered member, including for the purpose of acquiring location information about the covered member. This title is similar to S. 3334, the Military Lending Improvement Act from the 115th Congress, sponsored by former Sen. Bill Nelson.[39] Further, this title is also similar to H.R. 5003 in the 116th Congress, the Fair Debt Collection Practices for Servicemembers Act, introduced by Rep. Dean.[40]
This title is similar to S. 3334, the Military Lending Improvement Act from the 115th Congress, sponsored by former Sen. Bill Nelson.[41] It is also similar to H.R. 5003 in the 116th Congress, the Fair Debt Collection Practices for Servicemembers Act, introduced by Rep. Dean.[42] Last Congress, this bipartisan bill passed unanimously out of Committee in November 2019 and was passed unanimously by the House of Representatives on suspension in March 2020.[43]

Title III – Private Loan Disability Discharge Act

Summary: This title would amend TILA to include a required discharge of private student loans in the case of permanent disability of the borrower. Cosigners will be discharged of their obligation in the case of the borrower's permanent disability, which is defined as the same standard set by the discharge provision of federal student loans. This title is similar to H.R. 4545 in the 116th Congress, the Private Loan Disability Discharge Act, introduced by Rep. Dean, which passed out of Committee December 2019.[44]

Background: Current law does not require that a private student loan lender discharge the student debt of a borrower or their cosigner in the case of permanent disability of the borrower. TILA does currently require the discharge of a student loan for the borrower and cosigner in the case of death of the borrower. Beyond this requirement, private student lenders are free to make any policy on discharge of debt in their promissory notes.

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[37] NCLC Digital Library, 1.3.1.7 Servicemembers, Veterans and Debt Collection (accessed April 9, 2021).
[41] S.3334, 115th Cong. (2018).

[41] S.3334, 115th Cong. (2018).

[41] S.3334, 115th Cong. (2018).

[41] S.3334, 115th Cong. (2018).

[42] H.R. 5003, 116th Cong. (2019); *See also* Financial Services Committee Markup (Dec. 10, 2019).
[43] Financial Services Committee Markup (Nov. 13, 2019); See also 116th Cong., Vote on H.R. 5003 (Mar. 2, 2020) (355 yeas, 0 nays).
[44] H.R. 4545, 116th Cong. (2019); *See also* Financial Services Committee Markup (Dec. 10, 2019). This bill is H.R. 2498 in the 117th Congress.

During the hearing on the need for robust consumer protection as a result of this unprecedented COVID-19 pandemic this Committee convened in March 2021, one witness testified that the private student loan market now stands at almost $130 billion, and has been growing quickly over the last five years after a decline after the Great Recession, testifying, "[p]rivate student loans are generally risky and inferior from a consumer protection standpoint compared to federal student loans. Private student loan borrowers are unable to access such options as guaranteed income-based repayment and loan forgiveness plans, assistance for getting out of default and discharges for disability or death."[45] Federal student loans, on the other hand, provide greater protections. Any loan that is issued by the federal government can be discharged in the event of permanent total disability of the borrower or in the event of death. Federal student loans generally do not have cosigners, so there are no provisions related to cosigners being discharged.

This title would bring private student loans in line with federal student loans by amending TILA to include a required discharge of private student loans in the case of permanent and total disability of the borrower. Additionally, the title would allow cosigners to be discharged in the case of the borrower's permanent disability, and it would require private lenders who are notified that the federal government has discharged the federal student loans of a borrower to discharge the private student loans of that same borrower. Furthermore, this title would permanently exempt any tax liability accrued from the discharge, which currently only runs until January 1, 2026. Finally, this title would authorize the CFPB to issue rules to implement these changes. This title uses the same definition for total and permanent disability as the standard for discharging federal student loans. This title is similar to H.R. 4545 in the 116th Congress, the Private Loan Disability Discharge Act, introduced by Rep. Dean, which passed out of Committee December 2019.[46]

Title IV – Consumer Protection for Medical Debt Collections Act

Summary: This title would bar entities from collecting medical debt or reporting it to a consumer reporting agency without giving a consumer notice about their rights under Fair Debt Collection Practices Act (FDCPA) and Fair Credit Reporting Act (FCRA) related to that debt, including a minimum one-year delay before adverse information is reported to a consumer reporting agency. This title outright bans the reporting of medical debt arising from medically necessary procedures. This title is similar to H.R. 5330 in the 116th Congress, Consumer Protections for Medical Debt Collections Act, introduced by Rep. Tlaib, which passed out of Committee December 2019.[47]

Background: Debt collectors increasingly contact individuals for their medical bills more than other forms of debt. Fifty-nine percent of consumers received calls and letters related to collections of medical debt.[48] The costs of treating illnesses and other medical conditions can cause consumers to avoid healthcare services and rely on over-the-counter drugs rather than seeing a medical provider.[49] Medical bills can be expensive for households, and the delinquency of payments can

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[45] *See* House Committee on Financial Services, *Slipping Through the Cracks: Policy Options to Help America's Consumer During the Pandemic*, (Mar. 11, 2021).
[47] H.R. 5330, 116th Cong. (2019); *See also* Financial Services Committee Markup (Dec. 10, 2019).
[47] H.R. 5330, 116th Cong. (2019); *See also* Financial Services Committee Markup (Dec. 10, 2019).
[48] Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection*, at p. 21 (Jan. 2017); *See also* Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act*, at p. 14 (Mar. 2021). The Consumer Financial Protection Bureau reports that in 2018, 58 percent of third party collections are of debts related to health care.
[49] National Consumer Law Center, *Medical Debt Collection* (accessed Apr. 10, 2021).

lead to individuals falling into bankruptcy and hurting their credit report. The American Journal of Public Health conducted a survey of 2013-2016 bankruptcy filers and found that 59% of respondents agreed that medical debt played a role in their bankruptcy.[50] With the COVID-19 pandemic impacting over 30 million Americans[51], Congress will need to address the healthcare costs and other health related-consequences of this pandemic.

The CFPB has also found that the medical pricing, billing, and reimbursement process lacks transparency and is prone to consumer confusion, which can result in consumers delaying or withholding payments until they have adequate time to clarify or resolve disputes with their insurance companies or medical service providers about what they actually owe.[52] This title is similar to H.R. 5330 in the 116th Congress, Consumer Protections for Medical Debt Collections Act, introduced by Rep. Tlaib, which passed out of Committee December 2019.[53]

Title V - Ending Debt Collection Harassment Act

Summary: This title would amend FDCPA to prohibit a debt collector from contacting a consumer by email or text message without a consumer's consent to be contacted electronically. It would also prohibit the CFPB from issuing any future rules implementing FDCPA that allows a debt collector to send unlimited email and text messages to a consumer. Furthermore, the bill would require the CFPB to analyze and annually report on the impact of electronic communications utilized by debt collectors, as well include in CFPB's Semi-Annual Report to Congress an analysis of consumer complaints, including a state-by-state breakdown of such complaints, and a list of recent enforcement actions taken against debt collectors. This title is similar to H.R. 5021 in the 116th Congress, Ending Debt Collection Harassment Act introduced by Rep. Pressley, which also passed out of Committee in November 2019.[54]

Background: As discussed at September 2019 and March 2021 Committee hearings on debt collection, nearly one in three Americans with a credit record indicated in a CFPB survey that they were contacted by at least one creditor or collector trying to collect one or more debts during the previous year.[55] In a recent CFPB report on Debt Collection, it is noted that almost 26 percent of Americans have an item in collections listed on their credit reports.[56] This report also notes that the CFPB consumer complaint database received 82,700 consumer complaints regarding debt collection issues in 2020, a 10 percent increase from the previous year.[57] Many lenders or institutions contract with third-party debt collectors, who will work with or pursue consumers to settle the debt. The third-party debt collectors either purchase the debt, or contract with the lender to receive a portion of the paid debt. When a consumer is not able to settle a debt, the owner of the debt may seize collateral associated with the loan, such as a home for mortgage defaults, or a vehicle for auto-loan defaults. For non-collateral loans, a debt owner may garnish a consumer's wages via a court order.

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[50] *Id*.
[51] Centers for Disease Control and Prevention, COVID Data Tracker Weekly Review – Weekly Review (updated Apr. 9, 2021).
[52] Consumer Financial Protection Bureau, *Consumer credit reports: A study of medical and non-medical collections* (Dec 2014).
[54] H.R. 5021, 116th Cong. (2019); See also Financial Services Committee Markup (2019).
[54] H.R. 5021, 116th Cong. (2019); See also Financial Services Committee Markup (2019).
[55] Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection*, at p. 5 (Jan 2017); *See also* Hanna Hassani and Signe-Mary McKernan, *71 Million US adults have debt in collections*, Urban Institute (July, 19 2018).
[56] *Supra*, note 21, at p. 13.
[57] *Id.* at p. 3.

In May 2019, the Consumer Bureau released a notice of proposed rulemaking[58] to establish guidelines on how communication may take place between debt collectors and consumers. This proposal would prohibit debt collectors from providing information to credit score furnishers without informing the debtor first. The proposal also permits up to 7 collection calls a week, per debt. Under this proposal, debt collectors would have to wait at least one week after making phone contact with the debtor consumer. The CFPB's proposal would also allow debt collectors to use other methods of communication to contact consumers, including unlimited email or text messages. Consumer groups have argued that the rule does not go far enough to protect consumers against predatory debt collection practices.[59] This rule was finalized in October 2020, and in 2021 the interim leadership of the Consumer Bureau announced a delay in the effective date of this and a disclosure focused debt collection rule that was finalized in November 2020.[60] This title would prohibit the CFPB from issuing any rule in the future that allows debt collectors to send unlimited emails and text messages to consumers.

Title VI - Stop Debt Collection Abuse Act

Summary: This title would extend the FDCPA protections as it relates to debt owed to a federal agency, and it would limit the fees debt collectors can charge. The title clarifies that debt buyers are subject to FDCPA, and it would require a GAO study on the use of debt collectors by state and local government agencies. This title is similar to H.R. 4403 in the 116th Congress, Stop Debt Collection Abuse Act introduced by Rep. Cleaver which passed out with unanimous bipartisan support out of Committee November 2019.[61]

Background: Currently, the FDCPA makes it illegal for debt collectors to use abusive, unfair, or deceptive practices when collecting debts from consumers. As discussed at a September 2019 Committee hearing on debt collection practices,[62] the FDCPA currently does not apply to debt collectors hired federal government entities. At the hearing, April Kuehnhoff from the National Consumer Law Center testified that extending FDCPA to debt collectors hired by federal government entities is especially important because, "collection by, or on behalf of, the government is already unusually coercive as a result of the government's police power and other means of seizing citizen's assets."[63] Therefore, this title would close that loophole by amending the FDCPA to make clear that protections from certain debt collection practices also apply to debt collection agents hired by the federal government.

Specifically, the bill makes clear that overpayment, fines, penalties, and fees owed by private individuals to federal government entities would be considered "consumer debts" that fall under

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[58] Consumer Financial Protection Bureau, Debt Collection Practices (Regulation F), 12 CFR § 1006 (proposed Nov. 30, 2021) (to be codified at 12 CFR Part 1006).
[59] *See* National Consumer Law Center, *Consumer Watchdog's Proposed Debt Collection Rule Bites Consumers: Authorizes Harassment by Debt Collectors* (May 7, 2019); *See also* Melissa Stegman, *CFPB Proposed Debt Collection Rule Shortchanges Consumers*, Center for Responsible Lending (May 7, 2019).
[60] Consumer Financial Protection Bureau, CFPB Proposes Delay of Effective Date for Recent Debt Collection Rules (Apr. 7, 2021).
[61] H.R. 4403, 116th Cong. (2019); *See also* Financial Services Committee Markup (Nov. 13, 2019).
[62] *Supra,* note 15. *See also* Subcommittee on Consumer Protection and Financial Institutions, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices* (Sep. 26, 2019).
[63] *Id.*

the FDCPA's protections. This title would also prevent private debt collectors from charging exorbitant and unfair fees, and it would ensure that fees from debt collectors working on behalf of the federal government cannot be greater than 10% of the amount collected and must be reasonable. This title would also confirm that debt buyers are debt collectors for the purposes of the FDCPA, and it sets forth requirements that would prevent debt collectors from taking aggressive action unnecessarily quickly after a debt has allegedly gone unpaid. Finally, the bill would require the Government Accountability Office (GAO) to conduct a study into the use of third-party debt collectors by state and local government agencies.

Title VII - Debt Collection Practices Harmonization Act

Summary: This title expands the definition of debt covered under the FDCPA to include money owed to a state or local government, clarifying that private debt collectors who pursue debts such as municipal utility bills, tolls, traffic tickets, and court debts are subject to the FDCPA. It would also adjust monetary penalties for inflation and clarify that courts can award injunctive relief, as well as add protections to consumers affected by national disasters. This title is similar to H.R. 3498 in the 116th Congress, the "Debt Collection Practices Harmonization Act" introduced by Rep. Meeks, which also passed out of Committee November 2019.[64]

Background: Enacted in 1977, Congress passed the FDCPA to protect consumers from unfair, deceptive, and abusive practices conducted by debt collectors. However, as discussed at a September 2019 Committee hearing on abusive debt collection practices,[65] the FDCPA currently does not apply to debt collectors hired by state or local government entities. Furthermore, state and local governments faced with widening budget shortfalls are increasingly outsourcing the collection of fines and penalties to private debt collection firms. Private debt collection firms have been found to charge consumers large fees, including interest and penalties, which also includes the original debt owed.[66] This title would ensure robust consumer protections still apply, even if the debt is owed to a state or local government agency.

Additionally, this title would prohibit the Treasury Department from hiring a third-party debt collector to recoup any Federal Emergency Management Agency (FEMA) assistance awarded to victims of devastating natural disasters like Hurricanes Irma and Maria because of an overpayment, unless the overpayment occurred because of fraud or deceit and the recipient of such assistance knew or should have known about such fraud or deceit.

Title VIII - the Non-Judicial Foreclosure Debt Collection Clarification Act

Summary: This title would reverse the recent Supreme Court decision in *Obduskey v. McCarthy and Holthus LLP* by amending FDCPA to clarify that entities in non-judicial foreclosure proceedings are covered by the law. This title is similar to H.R. 5001 in the 116th Congress, the Non-Judicial Foreclosure Debt Collection Clarification Act introduced by then-representative

[64] H.R. 3948, 116th Cong. (2019); *See also* Financial Services Committee Markup (2019).
[65] Subcommittee on Consumer Protection and Financial Institutions, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices* (Sept. 26, 2019).
[66] *Supra,* note 15.

Clay and passed out of Committee November 2019.[67] In the 117th Congress, this bill, H.R.2458 was introduced by Rep. Auchincloss.

Background: In March 2019, the Supreme Court held in *Obduskey v. McCarthy & Holthus LLP* that businesses engaged in non-judicial foreclosure do not qualify as debt collectors under the FDCPA.[68] In that case, a homeowner in Colorado, which is a non-judicial foreclosure state, went through foreclosure proceedings, but the mortgage servicer's law firm refused to follow the FDCPA as it disputed that it was covered as a "debt collector" under the FDCPA. In its decision, although the Supreme Court acknowledged that non-judicial foreclosure would otherwise fit within the law's primary definition of "debt collector," it held that the secondary definition of "debt collector," which applies to the collection of a security interest, suggested that Congress intended for non-judicial foreclosure to be excluded from the broader definition.

However, in a concurrence, Justice Sotomayor noted that it was "too close a case for [her] to feel certain that Congress recognized that this complex statute would be interpreted the way that the Court does today" and that Congress could clarify the statute if the Court got it wrong. Justice Sotomayor also highlighted the majority's acknowledgement that nothing in the Court's opinion "suggest[s] that pursuing nonjudicial foreclosure is a license to engage in abusive debt collection practices like repetitive nighttime phone calls; enforcing a security interest does not grant an actor blanket immunity from the Act."[69] This title clarifies the FDCPA to clarify that parties bringing proceedings against consumers in non-judicial foreclosure are covered by FDCPA as debt collectors. As consumers face the end of mortgage and other payment moratoriums as the country recovers from the COVID-19 pandemic, families will need these necessary protections.

11. <u>Amendment in the Nature of a Substitute to H.R. 2553, "Real Estate Valuation Fairness and Improvement Act" (Cleaver)</u>

Summary: This bill would require a review of federal appraisal standards and recommended reforms to prevent disparate impacts on the valuation of homes in communities of color and those owned by people of color. The bill would also create a grant program administered by the Appraisal Subcommittee to support a diverse pipeline of professional appraisers.

Background: A 2018 study by the Brookings Institution found that in the average metropolitan area, homes in predominately Black neighborhoods are valued at roughly half the price as homes in neighborhoods with no Black residents.[70] Further, the study found that differences in home and neighborhood quality do not fully explain the disparities in property values.[71] In March of 2020, as the COVID-19 pandemic hit the U.S., the Federal Reserve cut interest rates in response to signs of economic downturn. Homeowners refinanced their mortgages into historically low rates to save money on their housing costs. Yet, reports began to show that Black homeowners faced barriers

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[67] H.R. 5001, 116th Cong (2019); *See also* Financial Services Committee Markup (2019).
[68] *Obduskey v. McCarthy and Holthus LLP*, No. 17-1307 (2019).
[69] *Id.*
[70] The Brookings Institution, *The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property*, (Nov. 27, 2018).
[71] *Id.*

in accessing those low rates due to alleged appraisal bias.[72,73,74,75] In one case, the home of a mixed-race family in a predominately White neighborhood was valued at $330,000—40 percent below the local average home sales price—and increased to $465,000 after the family removed racial signifiers from the home and received a second appraisal.[76] Meanwhile, according to the most recent data from the Appraisal Institute, there are over 78,000 appraisers in the U.S. with 85.4 percent identifying as White, 77.7 percent identify as male, and 70.8 percent being over the age of 51.[77]

Appraisal practices,[78] the legacy of discriminatory housing policies,[79] as well as a stark lack of diverse appraisal professionals have all come into question as compounding barriers to equitable appraisals—and homeownership generally—for people of color.[80] This bill will require analysis and action across local and federal entities involved in appraisal processes in rural, Native, and territorial housing markets to address disparities in home valuation. It will also support a diverse pipeline of future appraisers that reflect all communities and consumers.

This bill is supported by the Appraisal Institute, Appraisal Foundation, the Real Estate Valuation Advocacy Association, the National Consumer Law Center, on behalf of its low-income clients, Americans for Financial Reform, the California Reinvestment Coalition, the Center for Community Progress, the Center for Responsible Lending, the Color of Change, Consumer Action, the Consumer Federation of America, the Empire Justice Center (New York), Faith in Action, Legal Action Chicago, the Massachusetts Communities Action Network (MCAN), MICAH-Metropolitan Interfaith Council on Affordable Housing, the National Community Reinvestment Coalition (NCRC), the National Community Stabilization Trust, the National Disability Rights Network, the National Fair Housing Alliance, the National Housing Resource Center, Prosperity Now, Public Citizen, and the Woodstock Institute.

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[72] Chicago Sun-Times, *Black homeowner, 2 appraisals, $62,000 difference*, (Oct. 7, 2020).
[73] Washington Post, *For Black homeowners, a common conundrum with appraisals*, (Jan. 21, 2021).
[74] ABC News, *Black California couple lowballed by $500K in home appraisal, believe race was a factor*, (Feb. 12, 2021).
[75] ABC News, *Bay Area Black, Latina real estate couple lowballed $250K in home appraisal*, (Feb. 23. 2021).
[76] The New York Times, *Black Homeowners Face Discrimination in Appraisals*, (Aug. 25, 2020).
[77] Appraisal Institute, *U.S. Valuation Profession Fact Sheet*, (Jan. 29, 2019).
[78] Howell and Korver-Glenn, *Neighborhoods, Race, and the Twenty-first-century Housing Appraisal Industry*, (Feb. 28, 2018).
[79] Center for American Progress, *Racial Disparities in Home Appreciation*, (Jul. 15, 2019).
[80] Appraisal Institute, *Appraisal Institute, Fannie Mae, National Urban League Award Scholarships to Strengthen Diversity in Profession*, (Feb. 18, 2021).