

SMALL BUSINESS FAIR DEBT COLLECTION PROTECTION  
 ACT

DECEMBER 16, 2020.—Committed to the Committee of the Whole House on the State  
 of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,  
 submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5013]

The Committee on Financial Services, to whom was referred the bill (H.R. 5013) to apply the Fair Debt Collection Practices Act to small businesses to the same extent as such Act applies to consumers, to require the Director of the Bureau of Consumer Financial Protection to define “small business” for purposes of such Act, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Small Business Fair Debt Collection Protection Act”.

**SEC. 2. FAIR DEBT COLLECTION PRACTICES FOR LOANS TO SMALL BUSINESSES.**

(a) IN GENERAL.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) in section 803—

(A) by amending paragraph (5) to read as follows:

“(5) The term ‘debt’ means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.”; and

(B) by adding at the end the following new paragraph:

“(9) The term ‘commercial credit bureau’ means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating commercial credit information or other information on businesses for the purpose of furnishing credit reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.”;

(2) by redesignating section 819 as section 820; and

(3) by inserting after section 818 the following:

**“§ 819. Application to small business debt**

“(a) IN GENERAL.—This Act shall apply to small business debt to the same extent as this Act applies to debt of consumers.

“(b) SMALL BUSINESS DEBT DEFINED.—The term ‘small business debt’—

“(1) means any non-equity obligation or alleged obligation of a partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity that is less than \$5,000,000; and

“(2) does not include any obligation or alleged obligation—

“(A) of an individual; or

“(B) that is primarily for personal, family, or household purposes.”.

(b) CLERICAL AMENDMENT.—The table of contents for the Fair Debt Collection Practices Act is amended by striking the item relating to section 819 and inserting the following:

“819. Application to small business debt.

“820. Effective date.”.

(c) CONFORMING AMENDMENTS.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) in section 805(b), by inserting “or a commercial credit bureau (as applicable)” after “consumer reporting agency”;

(2) in section 806(3)—

(A) by striking “consumers who” and inserting “consumers or small businesses that”; and

(B) by inserting “ or to a commercial credit bureau (as applicable),” after “consumer reporting agency”; and

(3) in section 807(16), by inserting “or a commercial credit bureau” after “this Act”.

Amend the title so as to read:

A bill to apply the Fair Debt Collection Practices Act to small business debt to the same extent as such Act applies to consumers, and for other purposes.

PURPOSE AND SUMMARY

On November 8, 2019, Congressman Al Lawson introduced H.R. 5013, the “Small Business Fair Debt Collection Protection Act,” which expands the Fair Debt Collection Practices Act’s (FDCPA) protections to cover small business loans, as determined by CFPB in consultation with the Small Business Administration.

## BACKGROUND AND NEED FOR LEGISLATION

In 1977, Congress enacted the FDCPA in order to help curb abusive debt collection practices. CFPB has authority to write regulations implementing the FDCPA. The agency also enforces the law, along with the Federal Trade Commission (FTC). The FDCPA defines a debt collector as a third-party entity whose primary business is in collection or pursuing debts owed to a creditor. However, entities pursuing business debts (including small business debts) are not covered by FDCPA.

Small business loan borrowers do not enjoy the same protections individual consumers have under federal law. Some stakeholders have argued that small business borrowers should be treated fairly and respectfully throughout a collections process and have similar protections afforded to consumers under the FDCPA. Recently, the New York Times investigated how this practice has harmed taxi drivers with overvalued taxi medallion loans that have left thousands of drivers bankrupt. Some consumers looking to earn a living as taxi medallion operators were offered and signed contracts amounting up to \$1 million dollars. These lenders loosened standards and encouraged borrowers to refinance and take out more money when medallion prices rose. As was discussed in testimony by Bhairavi Desai, Executive Director of the New York Taxi Workers Alliance, some lenders included confession of judgement provisions in the contracts. As taxi revenue fell, some lenders refinanced terms while others exercised confessions of judgments to garnish wages, seize medallions or other assets, and employed private debt collectors who reportedly harassed affected borrowers after they had defaulted.

This legislation would amend FDCPA to expand the definition of debt to include debt incurred from small business loans. It would restrict the means and methods by which collectors can contact small business debtors, as well as the time of day and number of times contact can be made. Furthermore, it would limit actions of third-party debt collectors who are attempting to collect debts from small businesses on behalf of another person or entity.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title.*

This section provides that H.R. 5013 may be cited as the “Small Business Fair Debt Collection Protection Act”.

*Section 2. Consumer Protections Related to Debt Collection Practices*

Amends Section 803 of The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) to define debt as “any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.”

Amends Section 803 of The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) by adding a new section entitled “Application to Small Businesses”. This applies the Act to small businesses in the same manner as the Act applies to consumers. This section requires the Director of the Bureau to issue a rule to define the term ‘small business’ for purposes of this section.

Makes a clerical amendment by striking the effective date section and replacing it with an amendment to Section 806(3) of the Fair

Debt Collection Practices Act (15 U.S.C. 1692d). This amendment protects small businesses from harassment or abuse by prohibiting small businesses from being published on a list of consumers who allegedly refuse to pay debts.

#### HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, on September 26, 2019, the Committee on Financial Services held a hearing entitled, “Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices” to discuss three bills and seven discussion drafts. A discussion draft of HR 5013 the “Small Business Lending Fairness Act”, was considered. Witnesses included the Honorable Rohit Chopra, Commissioner, Federal Trade Commission; Rev. Dr. Cassandra Gould, Pastor, Quinn Chapel A.M.E. Church and Executive Director, Missouri Faith Voices; Ms. Bhairavi Desai, Executive Director, New York Taxi Workers Alliance; Ms. April Kuehnhoff, Staff Attorney, National Consumer Law Center; Professor Dalie Jiménez, Professor of Law, University of California, Irvine School of Law; Ms. Sarah Auchterlonie, Shareholder, Brownstein Hyatt Farber Schreck; and Mr. John H. Bedard, Jr., Owner, Bedard Law Group, P.C.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 13, 2019, and ordered H.R. 5013 to be reported favorably to the House as amended in the nature of a substitute by a recorded vote of 31 yeas and 23 nays, a quorum being present.

#### COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H.R. 5013:



STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 5013 are to expand the definition of debt to include debt incurred from small business loans; to restrict the means and methods by which collectors can contact small business debtors, as well as the time of day and number of times contact can be made; and to limit actions of third-party debt collectors who are attempting to collect debts from small businesses on behalf of another person or entity.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested an estimate for H.R. 5013 from the Director of the Congressional Budget Office. CBO was unable to provide an estimate in a timely manner.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 5013. After careful review, including discussions with CBO, and after consulting with debt collection experts, the Committee estimates that this legislation will have an insignificant effect on spending.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee does not believe H.R. 5013, as amended, contains any unfunded mandates and adopts any future estimate in this regard prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1 H.R. 5013, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

## EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5013 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 5013 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## CHANGES TO EXISTING LAW

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 5013, as reported, are shown as follows:

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**FAIR DEBT COLLECTION PRACTICES ACT****TITLE VIII—DEBT COLLECTION PRACTICES**

Sec.

801. Short title.

\* \* \* \* \*

**[819. Effective date.]**

*819. Application to small business debt.*

*820. Effective date.*

\* \* \* \* \*

**§ 803. Definitions**

As used in this title—

(1) The term “Bureau” means the Bureau of Consumer Financial Protection.

(2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

(4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but

such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

【(5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.】

*(5) The term “debt” means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.*

(6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.

(8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(9) *The term “commercial credit bureau” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating commercial credit information or other information on businesses for the purpose of furnishing credit reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.*

\* \* \* \* \*

#### **§ 805. Communication in connection with debt collection**

(a) COMMUNICATION WITH THE CONSUMER GENERALLY.—Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o’clock antimeridian and before 9 o’clock postmeridian, local time at the consumer’s location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer’s place of employment if the debt collector knows or has reason to know that the consumer’s employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES.—Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency or a commercial credit bureau (as applicable) if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION.—If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communica-

tion with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated:

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

#### **§ 806. Harassment or abuse**

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of **consumers who** *consumers or small businesses that* allegedly refuse to pay debts, except to a consumer reporting agency or to a commercial credit bureau (as applicable), or to persons meeting the requirements of section 603(f) or 604(3) of this Act.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

#### **§ 807. False or misleading representations**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act *or a commercial credit bureau.*

\* \* \* \* \*

**§ 819. Application to small business debt**

(a) *IN GENERAL.*—*This Act shall apply to small business debt to the same extent as this Act applies to debt of consumers.*

(b) *SMALL BUSINESS DEBT DEFINED.*—*The term “small business debt”—*

*(1) means any non-equity obligation or alleged obligation of a partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity that is less than \$5,000,000; and*

*(2) does not include any obligation or alleged obligation—*

*(A) of an individual; or*

*(B) that is primarily for personal, family, or household purposes.*

**§ [819.] 820. Effective date**

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

\* \* \* \* \*

## MINORITY VIEWS

Committee Republicans support small businesses, including ensuring they have access to the resources they need. However, H.R. 5013, the *Small Business Fair Debt Collection Protection Act*, would expand the Fair Debt Collection Practices Act (FDCPA) to pull small businesses under the jurisdiction of the Consumer Financial Protection Bureau (CFPB).

This bill is another attempt by the Democrats to expand the already extensive authority of the CFPB beyond consumer financial products and services. Congressional Republicans believe granting broad authority to an agency that is not authorized or equipped to supervise commercial lending would only harm small businesses. The Small Business Administration (SBA) and the Federal Trade Commission (FTC), among others, are already well resourced to assist the millions of small businesses that exist nationwide, including their needs, grants, and programmatic support.

Consumer loans differ from commercial loans. The borrowers are different, the pricing and underwriting are different, and the risk is different. If enacted, H.R. 5013 could fundamentally change the way lenders treat small business loans, potentially limiting access to or driving up the cost of credit.

The Financial Services committee should thoroughly review the needs of small businesses to determine how the financial services industry can better support them. Committee Republicans oppose H.R. 5013 and call on the Democrat majority to focus on legislation that will actually help small businesses to continue to thrive, grow our economy, and create jobs.

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