

COMPREHENSIVE DEBT COLLECTION IMPROVEMENT ACT

APRIL 30, 2021.—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. 2547]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2547) to expand and enhance consumer, student, service-member, and small business protections with respect to debt collection practices, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	10
Background and Need for Legislation	10
Section-by-Section Analysis	19
Hearings	24
Committee Consideration	26
Committee Votes	26
Statement of Oversight Findings and Recommendations of the Committee	29
Statement of Performance Goals and Objectives	29
New Budget Authority and CBO Cost Estimate	29
Committee Cost Estimate	29
Unfunded Mandate Statement	29
Advisory Committee	29
Application of Law to the Legislative Branch	30
Earmark Statement	30
Duplication of Federal Programs	30
Changes to Existing Law	30
Minority Views	86

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Comprehensive Debt Collection Improvement Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS LENDING FAIRNESS ACT

Sec. 101. Short title.

Sec. 102. Obligor transactions.

Sec. 103. Enforcement of security interests.

TITLE II —FAIR DEBT COLLECTION PRACTICES FOR SERVICEMEMBERS ACT

Sec. 201. Short title.

Sec. 202. Enhanced protection against debt collector harassment of servicemembers.

Sec. 203. GAO study and report.

TITLE III—PRIVATE LOAN DISABILITY DISCHARGE ACT

Sec. 301. Short title.

Sec. 302. Protections for obligors and cosigners in case of death or total and permanent disability.

TITLE IV—CONSUMER PROTECTION FOR MEDICAL DEBT COLLECTIONS ACT

Sec. 401. Short title.

Sec. 402. Amendments to the Fair Debt Collection Practices Act.

Sec. 403. Prohibition on consumer reporting agencies reporting certain medical debt.

Sec. 404. Requirements for furnishers of medical debt information.

TITLE V—ENDING DEBT COLLECTION HARASSMENT ACT

Sec. 501. Short title.

Sec. 502. Consumer protections relating to debt collection practices.

TITLE VI—STOP DEBT COLLECTION ABUSE ACT

Sec. 601. Short title.

Sec. 602. Definitions.

Sec. 603. Debt collection practices for debt collectors hired by Federal agencies.

Sec. 604. Unfair practices.

Sec. 605. GAO study and report.

TITLE VII—DEBT COLLECTION PRACTICES HARMONIZATION ACT

Sec. 701. Short title.

Sec. 702. Award of damages.

Sec. 703. Prohibition on the referral of emergency individual assistance debt.

TITLE VIII—NON-JUDICIAL FORECLOSURE DEBT COLLECTION CLARIFICATION ACT

Sec. 801. Short title.

Sec. 802. Enforcement of security interests.

TITLE IX—EFFECTIVE DATE

Sec. 901. Effective date.

TITLE I—SMALL BUSINESS LENDING FAIRNESS ACT

SEC. 101. SHORT TITLE.

This title may be cited as the “Small Business Lending Fairness Act”.

SEC. 102. OBLIGOR TRANSACTIONS.

(a) **IN GENERAL.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

“§ 140B. Unfair credit practices

“(a) **IN GENERAL.**—In connection with the extension of credit or creation of debt in or affecting commerce, as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 44), including any advance of funds or sale or assignment of future income or receivables that may or may not be credit, no person may directly or indirectly take or receive from another person or seek to enforce an obligation that constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

“(b) **EXEMPTION.**—The exemptions described in section 104 shall not apply to this section.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end the following:
“(m) CREDITOR.—In this section, the term ‘creditor’ refers to any person charged with compliance that is not the obligor.”.

(2) The table of sections in chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

“140B. Unfair credit practices.”.

SEC. 103. ENFORCEMENT OF SECURITY INTERESTS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following:

“(ff) The term ‘debt’ means any obligation of a person to pay to another person money—

- “(1) regardless of whether such obligation is absolute or contingent;
- “(2) that includes the right of the person providing the money to an equitable remedy for breach of performance if the breach gives rise to a right to payment; and
- “(3) regardless of whether the obligation or right to an equitable remedy described in paragraph (2) has been reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, recourse, nonrecourse, secured, or unsecured.”.

TITLE II —FAIR DEBT COLLECTION PRACTICES FOR SERVICEMEMBERS ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “Fair Debt Collection Practices for Servicemembers Act”.

SEC. 202. ENHANCED PROTECTION AGAINST DEBT COLLECTOR HARASSMENT OF SERVICEMEMBERS.

(a) COMMUNICATION IN CONNECTION WITH DEBT COLLECTION.—Section 805 of the Fair Debt Collection Practices Act (15 U.S.C. 1692c) is amended by adding at the end the following:

“(e) COMMUNICATIONS CONCERNING SERVICEMEMBER DEBTS.—

“(1) DEFINITION.—In this subsection, the term ‘covered member’ means—

- “(A) a covered member or a dependent as defined in section 987(i) of title 10, United States Code; and
- “(B)(i) an individual who was separated, discharged, or released from duty described in such section 987(i)(1), but only during the 365-day period beginning on the date of separation, discharge, or release; or
- “(ii) a person, with respect to an individual described in clause (i), described in subparagraph (A), (D), (E), or (I) of section 1072(2) of title 10, United States Code.

“(2) PROHIBITIONS.—A debt collector may not, in connection with the collection of any debt of a covered member—

- “(A) threaten to have the covered member reduced in rank;
 - “(B) threaten to have the covered member’s security clearance revoked;
- or
- “(C) threaten to have the covered member prosecuted under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).”.

(b) UNFAIR PRACTICES.—Section 808 of the Fair Debt Collection Practices Act (15 U.S.C. 1692f) is amended by adding at the end the following:

“(9) The representation to any covered member (as defined under section 805(e)(1)) that failure to cooperate with a debt collector will result in—

- “(A) a reduction in rank of the covered member;
- “(B) a revocation of the covered member’s security clearance; or
- “(C) prosecution under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).”.

SEC. 203. GAO STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the impact of debt collection on covered members (as defined under section 805(e)(1) of the Fair Debt Collection Practices Act, as added by section 202), which shall—

(1) identify types of false, deceptive, misleading, unfair, abusive, and harassing debt collection practices experienced by covered members and make recommendations to eliminate these practices;

(2) identify collection practices of creditors and debt collectors experienced by covered members;

(3) discuss the effect of these practices on military readiness; and

(4) discuss any national security implications, including the extent to which covered members with security clearances would be impacted by uncollected debt.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the completed study required under subsection (a).

TITLE III—PRIVATE LOAN DISABILITY DISCHARGE ACT

SEC. 301. SHORT TITLE.

This title may be cited as the “Private Loan Disability Discharge Act of 2021”.

SEC. 302. PROTECTIONS FOR OBLIGORS AND COSIGNERS IN CASE OF DEATH OR TOTAL AND PERMANENT DISABILITY.

(a) IN GENERAL.—Section 140(g) of the Truth in Lending Act (15 U.S.C. 1650(g)) is amended—

(1) in paragraph (2)—

(A) in the heading, by striking “IN CASE OF DEATH OF BORROWER”;

(B) in subparagraph (A), by inserting after “of the death”, the following: “or total and permanent disability”; and

(C) in subparagraph (C), by inserting after “of the death”, the following: “or total and permanent disability”; and

(2) by adding at the end the following:

“(3) DISCHARGE IN CASE OF DEATH OR TOTAL AND PERMANENT DISABILITY OF BORROWER.—The holder of a private education loan shall, when notified of the death or total and permanent disability of a student obligor, discharge the liability of the student obligor on the loan and may not, after such notification—

“(A) attempt to collect on the outstanding liability of the student obligor; and

“(B) in the case of total and permanent disability, monitor the disability status of the student obligor at any point after the date of discharge.

“(4) PRIVATE DISCHARGE IN CASES OF CERTAIN DISCHARGE FOR DEATH OR DISABILITY.—The holder of a private education loan shall, when notified of the discharge of liability of a student obligor on a loan described under section 108(f)(5)(A) of the Internal Revenue Code of 1986, discharge any liability of the student obligor (and any cosigner) on any private education loan which the private education loan holder holds and may not, after such notification—

“(A) attempt to collect on the outstanding liability of the student obligor; and

“(B) in the case of total and permanent disability, monitor the disability status of the student obligor at any point after the date of discharge.

“(5) TOTAL AND PERMANENT DISABILITY DEFINED.—For the purposes of this subsection and with respect to an individual, the term ‘total and permanent disability’ means the individual is totally and permanently disabled, as such term is defined in section 685.102(b) of title 34, Code of Federal Regulations.”.

(b) RULEMAKING.—The Director of the Bureau of Consumer Financial Protection may issue rules to implement the amendments made by subsection (a) as the Director determines appropriate.

TITLE IV—CONSUMER PROTECTION FOR MEDICAL DEBT COLLECTIONS ACT

SEC. 401. SHORT TITLE.

This title may be cited as the “Consumer Protection for Medical Debt Collections Act”.

SEC. 402. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

(a) DEFINITION.—Section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a) is amended by adding at the end the following:

“(9) The term ‘medical debt’ means a debt arising from the receipt of medical services, products, or devices.”.

(b) UNFAIR PRACTICES.—Section 808 of the Fair Debt Collection Practices Act (15 U.S.C. 1692f), as amended by section 202(b), is amended by adding at the end the following:

“(10) Engaging in activities to collect or attempting to collect a medical debt owed or due or asserted to be owed or due by a consumer, before the end of the 2-year period beginning on the date that the first payment with respect to such medical debt is due.”.

SEC. 403. PROHIBITION ON CONSUMER REPORTING AGENCIES REPORTING CERTAIN MEDICAL DEBT.

(a) DEFINITION.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following:

“(bb) MEDICAL DEBT.—The term ‘medical debt’ means a debt arising from the receipt of medical services, products, or devices.

“(cc) MEDICALLY NECESSARY PROCEDURE.—The term ‘medically necessary procedure’ means—

“(1) health care services or supplies needed to diagnose or treat an illness, injury, condition, disease, or its symptoms and that meet accepted standards of medicine; and

“(2) health care to prevent illness or detect illness at an early stage, when treatment is likely to work best (including preventive services such as pap tests, flu shots, and screening mammograms).”.

(b) IN GENERAL.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding at the end the following new paragraphs:

“(9) Any information related to a debt arising from a medically necessary procedure.

“(10) Any information related to a medical debt, if the date on which such debt was placed for collection, charged to profit or loss, or subjected to any similar action antedates the report by less than 365 calendar days.”.

SEC. 404. REQUIREMENTS FOR FURNISHERS OF MEDICAL DEBT INFORMATION.

(a) ADDITIONAL NOTICE REQUIREMENTS FOR MEDICAL DEBT.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s-2) is amended by adding at the end the following:

“(f) ADDITIONAL NOTICE REQUIREMENTS FOR MEDICAL DEBT.—Before furnishing information regarding a medical debt of a consumer to a consumer reporting agency, the person furnishing the information shall send a statement to the consumer that includes the following:

“(1) A notification that the medical debt—

“(A) may not be included on a consumer report made by a consumer reporting agency until the later of the date that is 365 days after—

“(i) the date on which the person sends the statement;

“(ii) with respect to the medical debt of a borrower demonstrating hardship, a date determined by the Director of the Bureau; or

“(iii) the date described under section 605(a)(10); and

“(B) may not ever be included on a consumer report made by a consumer reporting agency, if the medical debt arises from a medically necessary procedure.

“(2) A notification that, if the debt is settled or paid by the consumer or an insurance company before the end of the period described under paragraph (1)(A), the debt may not be reported to a consumer reporting agency.

“(3) A notification that the consumer may—

“(A) communicate with an insurance company to determine coverage for the debt; or

“(B) apply for financial assistance.”.

(b) FURNISHING OF MEDICAL DEBT INFORMATION.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s-2), as amended by subsection (a), is further amended by adding at the end the following:

“(g) FURNISHING OF MEDICAL DEBT INFORMATION.—

“(1) PROHIBITION ON REPORTING DEBT RELATED TO MEDICALLY NECESSARY PROCEDURES.—No person shall furnish any information to a consumer reporting agency regarding a debt arising from a medically necessary procedure.

“(2) TREATMENT OF OTHER MEDICAL DEBT INFORMATION.—With respect to a medical debt not described under paragraph (1), no person shall furnish any information to a consumer reporting agency regarding such debt before the end of the 365-day period beginning on the later of—

“(A) the date on which the person sends the statement described under subsection (f) to the consumer;

“(B) with respect to the medical debt of a borrower demonstrating hardship, a date determined by the Director of the Bureau; or

“(C) the date described in section 605(a)(10).

“(3) TREATMENT OF SETTLED OR PAID MEDICAL DEBT.—With respect to a medical debt not described under paragraph (1), no person shall furnish any information to a consumer reporting agency regarding such debt if the debt is settled or paid by the consumer or an insurance company before the end of the 365-day period described under paragraph (2).

“(4) BORROWER DEMONSTRATING HARDSHIP DEFINED.—In this subsection, and with respect to a medical debt, the term ‘borrower demonstrating hardship’ means a borrower or a class of borrowers who, as determined by the Director of the Bureau, is facing or has experienced extenuating life circumstances or events that result in severe financial or personal barriers such that the borrower or class of borrowers does not have the capacity to repay the medical debt.”.

TITLE V—ENDING DEBT COLLECTION HARASSMENT ACT

SEC. 501. SHORT TITLE.

This title may be cited as the “Ending Debt Collection Harassment Act of 2021”.

SEC. 502. CONSUMER PROTECTIONS RELATING TO DEBT COLLECTION PRACTICES.

(a) REPORTS ON DEBT COLLECTION COMPLAINTS AND ENFORCEMENT ACTIONS.—

(1) SEMI-ANNUAL REPORT.—Section 1016(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5496(c)) is amended—

(A) in paragraph (8), by striking “and” at the end;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(10) an analysis of the consumer complaints received by the Bureau with respect to debt collection, including a State-by-State breakdown of such complaints; and

“(11) a list of enforcement actions taken against debt collectors during the preceding year.”.

(2) ANNUAL REPORT.—Section 815(a) of the Fair Debt Collection Practices Act (15 U.S.C. 1692m(a)) is amended by adding at the end the following new sentence: “Each such report shall also include an analysis of the impact of electronic communications by debt collectors on consumer experiences with debt collection, including a consideration of consumer complaints about the use of electronic communications in debt collection.”.

(b) LIMITATION ON DEBT COLLECTION RULES.—Section 1022 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512) is amended by adding at the end the following:

“(e) LIMITATION ON DEBT COLLECTION RULES.—The Director may not issue any rule with respect to debt collection that allows a debt collector to send unlimited email and text messages to a consumer.”.

(c) PROTECTION OF CONSUMERS FROM UNLIMITED TEXTS AND EMAILS USED IN DEBT COLLECTION.—Section 806 of the Fair Debt Collection Practices Act (15 U.S.C. 1692d) is amended by adding at the end the following new paragraph:

“(7) Contacting the consumer electronically (including by email or text message) without consent of the consumer to communicate via that method, after such consent has been withdrawn, or more frequently than the consumer consents to be contacted.”.

(d) ENSURING CONSUMERS RECEIVE NOTICE OF DEBT COLLECTION PROTECTIONS.—Section 809(a) of the Fair Debt Collection Practices Act (15 U.S.C. 1692g(a)) is amended in the matter preceding paragraph (1)—

(1) by striking “Within five days” and all that follows through “any debt,” and inserting the following: “NOTICE OF DEBT; CONTENTS.—Within five days after the initial communication with a consumer in connection with the collection of any debt,”; and

(2) by striking “, unless the following information is contained in the initial communication or the consumer has paid the debt.”.

(e) IMPROVED LIMITATIONS ON DEBT COLLECTION RULES.—Section 814(d) of the Fair Debt Collection Practices Act (15 U.S.C. 1692l(d)) is amended by adding at the end the following: “Such rules—

“(1) may not allow a debt collector to send unlimited electronic communications to a consumer;

“(2) shall require debt collectors to obtain consent directly from consumers before contacting them using a method other than by postal mail or by phone;

“(3) may not waive the requirements of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.); and

“(4) shall allow consumers to opt out of any method of communication that the debt collector uses to communicate with consumers, including a method for which such consumer had given prior consent.”.

TITLE VI—STOP DEBT COLLECTION ABUSE ACT

SEC. 601. SHORT TITLE.

This title may be cited as the “Stop Debt Collection Abuse Act of 2021”.

SEC. 602. DEFINITIONS.

Section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a) is amended—

(1) in paragraph (4), by striking “facilitating collection of such debt for another” and inserting “collection of such debt”;

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

“(5) The term ‘debt’ means any obligation or alleged obligation of a consumer—

“(A) 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;

“(B) to pay a loan, overpayment, fine, penalty, restitution, fee, or other money currently or originally owed to or guaranteed by a Federal or State government, including any courts or agencies; or

“(C) which is secured by real or personal property that is used or was obtained primarily for personal, family, or household purposes, where such property is subject to forfeiture or repossession upon nonpayment of the obligation or alleged obligation.”; and

(3) in paragraph (6)—

(A) by redesignating subparagraphs (A) through (F) as clauses (i) through (vi), respectively;

(B) in clause (iii), as so redesignated, by inserting “(not including an independent contractor)” after “any State”;

(C) by amending clause (vi), as so redesignated, to read as follows:

“(vi) 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.”;

(D) by striking the paragraph designation and the first and second sentences and inserting the following:

“(6)(A) The term ‘debt collector’ means—

“(i) 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;

“(ii) any person who regularly collects or attempts to collect, directly or indirectly, by the person’s own means or by hiring another debt collector, debts owed or due or asserted to be owed or due another or that have been obtained by assignment or transfer from another;

“(iii) any person who regularly collects debts currently or originally owed or allegedly owed to a Federal or State agency or court; or

“(iv) notwithstanding subparagraph (B)(vi), any creditor who in the process of collecting debts of such creditor, uses another name that would indicate that a third person is collecting or attempting to collect such debts.”; and

(E) in the fourth sentence, by striking “The term does not include” and inserting the following:
 “(B) The term does not include”.

SEC. 603. DEBT COLLECTION PRACTICES FOR DEBT COLLECTORS HIRED BY FEDERAL AGENCIES.

(a) IN GENERAL.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended by inserting after section 812 (15 U.S.C. 1692j) the following:

“§ 812A. Debt collection practices for debt collectors hired by Federal agencies

“(a) LIMITATION ON TIME TO TURN DEBT OVER TO DEBT COLLECTOR.—A Federal agency that is a creditor may sell or transfer a debt described in section 803(5)(B) to a debt collector not earlier than 90 days after the date on which the obligation or alleged obligation becomes delinquent or defaults.

“(b) REQUIRED NOTICE.—

“(1) IN GENERAL.—Before transferring or selling a debt described in section 803(5)(B) to a debt collector or contracting with a debt collector to collect such a debt, a Federal agency shall notify the consumer not fewer than 3 times that the Federal agency will take such action.

“(2) FREQUENCY OF NOTIFICATIONS.—The second and third notifications described in paragraph (1) shall be made not less than 30 days after the date on which the previous notification is made.”

(b) CLERICAL AMENDMENT.—The table of contents for the Fair Debt Collection Practices Act is amended by inserting after the item relating to section 812 the following:

“812A. Debt collection practices for debt collectors hired by Federal agencies.”.

SEC. 604. UNFAIR PRACTICES.

Section 808 of the Fair Debt Collection Practices Act (15 U.S.C. 1692f) is amended by striking paragraph (1) and inserting the following:

“(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless—

“(A) such amount is expressly authorized by the agreement creating the debt or permitted by law; and

“(B) in the case of any amount charged by a debt collector collecting a debt described in section 803(5)(B), such amount is—

“(i) reasonable in relation to the actual costs of the collection;

“(ii) authorized by a contract between the debt collector and the Federal or State government; and

“(iii) not greater than 10 percent of the amount collected by the debt collector.”.

SEC. 605. GAO STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall commence a study on the use of debt collectors by Federal, State, and local government agencies, including—

(1) the powers given to the debt collectors by Federal, State, and local government agencies;

(2) the contracting process that allows a Federal, State, or local government agency to award debt collection to a certain company, including the selection process;

(3) any fees charged to debtors in addition to principal and interest on the outstanding debt;

(4) how the fees described in paragraph (3) vary from State to State;

(5) consumer protection at the State level that offer recourse to those whom debts have been wrongfully attributed;

(6) the revenues received by debt collectors from Federal, State, and local government agencies;

(7) the amount of any revenue sharing agreements between debt collectors and Federal, State, and local government agencies;

(8) the difference in debt collection procedures across geographic regions, including the extent to which debt collectors pursue court judgments to collect debts;

(9) information regarding the amount collected by Federal, State, and local government agencies through debt collectors, including the total amount and the percentage of the amount referred to the debt collectors;

(10) the full cost of outsourcing collection to debt collectors;

(11) government agency oversight of debt collectors to ensure that the rights of a consumer (as defined in section 803(3) of the Fair Debt Collection Practices

Act (15 U.S.C. 1692a(3))) are protected and that any debt relief and payment options legally available to consumers is effectively communicated and made available;

(12) the extent to which Federal, State, and local contracts with debt collectors reflect or omit effective measures to encourage debt collectors to align their practices with public policy concerns (including relief for consumers experiencing financial hardship) beyond maximizing debt collection;

(13) the extent to which debt collectors induce payment through use or threat of adverse government actions, such as arrest warrants or suspension of licenses or vehicle registration; and

(14) demographic data, including race and income information, regarding the individuals subject to private collection of debts owed to government entities.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the completed study required under subsection (a).

TITLE VII—DEBT COLLECTION PRACTICES HARMONIZATION ACT

SEC. 701. SHORT TITLE.

This title may be cited as the “Debt Collection Practices Harmonization Act”.

SEC. 702. AWARD OF DAMAGES.

(a) ADDITIONAL DAMAGES INDEXED FOR INFLATION.—

(1) IN GENERAL.—Section 813 of the Fair Debt Collection Practices Act (15 U.S.C. 1692k) is amended—

(A) in subsection (a)(2)—

(i) in subparagraph (A), by striking “; or” and inserting the following: “with respect to any one action taken by a debt collector in violation of this subchapter; or”;

(ii) in subparagraph (B)(ii), by striking “or 1 per centum of the net worth of the debt collector; and” and inserting the following: “or 5 per cent of the gross annual revenue of the debt collector; and”;

(B) in subsection (b), by inserting “the maximum amount of statutory damages at the time of noncompliance,” before “the frequency” each place it appears; and

(C) by adding at the end the following:

“(f) ADJUSTMENT FOR INFLATION.—

“(1) INITIAL ADJUSTMENT.—Not later than 90 days after the date of the enactment of this subsection, the Bureau shall provide a percentage increase (rounded to the nearest multiple of \$100 or \$1,000, as applicable) in the amounts set forth in this section equal to the percentage by which—

“(A) the Consumer Price Index for All Urban Consumers (all items, United States city average) for the 12-month period ending on the June 30 preceding the date on which the percentage increase is provided, exceeds

“(B) the Consumer Price Index for the 12-month period preceding January 1, 1978.

“(2) ANNUAL ADJUSTMENTS.—With respect to any fiscal year beginning after the date of the increase provided under paragraph (1), the Bureau shall provide a percentage increase (rounded to the nearest multiple of \$100 or \$1,000, as applicable) in the amounts set forth in this section equal to the percentage by which—

“(A) the Consumer Price Index for All Urban Consumers (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

“(B) the Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).”.

(2) APPLICABILITY.—The increases made under section 813(f) of the Fair Debt Collection Practices Act, as added by paragraph (1)(C) of this subsection, shall apply with respect to failures to comply with a provision of such Act (15 U.S.C. 1601 et seq.) occurring on or after the date of enactment of this section.

(b) INJUNCTIVE RELIEF.—Section 813(d) of the Fair Debt Collection Practices Act (15 U.S.C. 1692k(d)) is amended by adding at the end the following: “In a civil action alleging a violation of this title, the court may award appropriate relief, including injunctive relief.”.

SEC. 703. PROHIBITION ON THE REFERRAL OF EMERGENCY INDIVIDUAL ASSISTANCE DEBT.

Chapter 3 of title 31, United States Code, is amended—

(1) in subchapter II, by adding at the end the following:

“§ 334. Prohibition on the referral of emergency individual assistance debt

“With respect to any assistance provided by the Federal Emergency Management Agency to an individual or household pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 et seq.), if the Secretary of the Treasury seeks to recoup any amount of such assistance because of an overpayment, the Secretary may not contract with any debt collector as defined in section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) or other private party to collect such amounts, 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.”; and

(2) in the table of contents for such chapter, by inserting after the item relating to section 333 the following:

“334. Prohibition on the referral of emergency individual assistance debt.”.

TITLE VIII—NON-JUDICIAL FORECLOSURE DEBT COLLECTION CLARIFICATION ACT

SEC. 801. SHORT TITLE.

This title may be cited as the “Non-Judicial Foreclosure Debt Collection Clarification Act”.

SEC. 802. ENFORCEMENT OF SECURITY INTERESTS.

Section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) is amended by striking “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.”.

TITLE IX—EFFECTIVE DATE

SEC. 901. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 180 days after the date of enactment of this Act.

PURPOSE AND SUMMARY

On April 15, 2021, Chairwoman Maxine Waters introduced H.R. 2547, the “Comprehensive Debt Collection Improvement Act,” which would amend the Fair Debt Collection Practices Act (FDCPA), the Truth in Lending Act (TILA), the Fair Credit Reporting Act (FCRA), and the Consumer Financial Protection Act, as well as reverse the recent Supreme Court decision in *Obduskey v. McCarthy and Holthus LLP*¹ in order to provide important protections for small businesses, servicemembers, students, and other consumers against the mistreatment and harassment by certain debt collectors. H.R. 2547 includes measures originally sponsored by Representative Velázquez, Representative Dean, Representative Tlaib, Representative Pressley, Representative Cleaver, Representative Meeks, and Representative Auchincloss.

BACKGROUND AND NEED FOR LEGISLATION

In a recent Consumer Financial Protection Bureau (CFPB) report on debt collection, the CFPB notes that almost 26 percent of Americans have an item in collections listed on their credit reports.² Ad-

¹*Obduskey v. McCarthy & Holthus LLP*, 586 U.S.—, (2019).

²Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act, CFPB Annual Report 2021* (Mar. 2021).

ditionally, as discussed at hearings held in September 2019 and March 2021 by the House Committee on Financial Services (the Committee) on debt collection, nearly one in three Americans with a credit record indicated in a CFPB survey that they had been contacted by at least one creditor or collector trying to collect one or more debts.³ 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. Testimony before the Committee has shown that being subject to a variety of debt collection practices and tactics can cause immense stress and uncertainty, especially when a consumer is subject to abuse and harassment through threats of a lawsuit or some other type of negative action against the consumer.⁴

During the coronavirus pandemic, many consumers and small businesses have struggled to keep up with their bills, while debt collectors have seen record profits.⁵ Amidst these developments, recent CFPB reporting reveals that its consumer complaint database received 82,700 consumer complaints regarding debt collection issues in 2020, a 10 percent increase from the previous year.⁶ These complaints frequently claim that the company was attempting collection on debt that was not even owed by the consumer.

Research has demonstrated that abusive debt collection practices disproportionately harm communities of color and low-income communities. For example, case studies from cities like Chicago, Newark, and St. Louis, as well as states like Maryland and New York, show debt collection lawsuits are concentrated in majority-minority communities.⁷ Additionally, recent research has shown that in debt collection litigation, almost all defendants are unable to secure legal representation. This is a significant problem, as research has also shown that when a defendant was represented by an attorney, the case was always dismissed—demonstrating how debt collectors regularly cannot prove they own the debt they are collecting on.⁸ Moreover, the CFPB found that in 2019 and 2020, they received more complaints regarding debt collection practices from consumers

³See House Committee on Financial Services, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong. (Sept. 26, 2019); Subcommittee on Consumer Protection and Financial Institutions, *Slipping Through the Cracks: Policy Options to Help America's Consumer During the Pandemic*, 117th Cong. (Mar. 11, 2021); see also Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection*, at 5 (Jan. 2017); Hanna Hassani & Signe-Mary McKernan, *71 Million US adults have debt in collections*, Urban Institute (July 19, 2018).

⁴House Committee on Financial Services, Testimony of April Kuehnhoff, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong., at 38 (Sept. 26, 2019).

⁵See, e.g., Paul Kiel & Jeff Ernsthausen, *Debt Collectors Have Made a Fortune This Year. Now They're Coming for More*, ProPublica (Oct. 5, 2020).

⁶Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act, CFPB Annual Report 2021* (Mar. 2021).

⁷See, e.g., Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, ProPublica (Oct. 8, 2020); Student Borrower Protection Center, *The Long Legacy of Predatory Private Student Loans* (Jan. 2021); Student Borrower Protection Center, *Dubious Debts: Ending an era of illegal private student loan debt collection practices* (Mar. 2021).

⁸See, e.g., Center for Responsible Lending, *Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act* (Oct. 2020).

that reside in predominantly minority counties compared to those that live in predominantly white, non-Hispanic counties.⁹

Protecting Small Businesses

Title I of H.R. 2547, which is designated as the Small Business Lending Fairness Act, would amend the TILA to codify protections that currently exist in consumer loans regarding a prohibition of the use of confessions of judgment, and to extend those protections to commercial loans to provide the same protections for small business owners.

A “confession of judgment” 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. These cash advances can often cost the equivalent of 400 percent or more in annualized interest. Once a borrower misses a payment or some other dispute arises between the borrower and lender, the lender can then send the signed confession of judgment to a county clerk, who enters judgment against the borrower. The lender can then take the judgment to the local marshal, who can demand the money allegedly owed to the lender from the borrower’s bank. The lender can then take the money directly from the borrower’s bank, with interest and fees added. At this point, a borrower’s account will usually be frozen, 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.” Small business loan borrowers do not enjoy the same protections individual consumers have at the federal level. Some small business loan terms include a confession of judgment, which can place additional burdens on 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. Moreover, some small businesses have been harmed by confessions of judgment included in merchant cash advances, which some courts have ruled are not technically loans and thus not subject to state bans on the practice.

The Committee received testimony from Bhairavi Desai, Executive Director of the New York Taxi Workers Alliance, and learned that in the experience of taxi drivers that received medallion loans, “Confessions of Judgment [were] used to intimidate borrowers into making large sum payments toward outstanding loan balances or

⁹See Consumer Financial Protection Bureau, *Complaint Bulletin: County-level demographic overview of consumer complaints* (Apr. 2021).

rush into refinancing agreements with interest, even interest-only provisions.”¹⁰

To address these issues, Title I of this bill amends TILA to codify FTC’s prohibition on the use of confessions of judgment for consumers and extends those protections to small business borrowers, and applies the ban to merchant cash advances.

This title is substantially similar to H.R. 2540, the Small Business Fairness Lending Act, introduced by Rep. Nydia Velázquez (D–NY), and S. 1119, introduced by Sens. Sherrod Brown (D–OH) and Marco Rubio (R–FL). This title is also similar to H.R. 3490 in the 116th Congress, sponsored by Rep. Velázquez and passed out of Committee on November 13, 2019 by a recorded vote of 31 yeas and 23 nays. Title I is supported by a range of consumer, civil rights, and small business groups, including Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Reports, Empire Justice Center, Main Street Alliance, NAACP, National Association for Latino Community Asset Builders, National Association of Consumer Advocates, National Community Reinvestment Coalition (NCRC), National Consumer Law Center (on behalf of its low income clients), Opportunity Fund, Responsible Business Lending Coalition, Small Business Majority, and Woodstock Institute.

Protecting Servicemembers

Title II of H.R. 2547, which is designated as the Fair Debt Collection Practices for Servicemembers Act, would amend the FDCPA to prohibit debt collectors from threatening a servicemember with reducing their rank, having their security clearance revoked, or prosecuting them under the Uniform Code of Military Justice.

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.¹¹ Abusive collection tactics include threatening punishment under the military’s justice system, threatening reductions in rank, and threatening revocation of a security clearance.

To address these issues, this title enhances FDCPA to prohibit debt collectors from threatening servicemembers about their outstanding debts, among other things. The title would cover active duty servicemembers, as well as servicemembers recently separated or discharged in the previous year. The title would also require a Government Accountability Office (GAO) study on the impact of debt collection on servicemembers.

This title is substantially similar to H.R. 1491, the Fair Debt Collection Practices for Servicemembers Act, introduced by Rep. Madeleine Dean (D–PA). H.R. 1491 was passed by the House of Representatives under suspension of the rules on April 20, 2021. This title is also similar to H.R. 5003 in the 116th Congress, sponsored by Rep. Dean and unanimously passed out of Committee on

¹⁰House Committee on Financial Services, Testimony of Bhairavi Desai, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong. (Sept. 26, 2019). Also see Brian Rosenthal, “They Were Conned: How Reckless Loans Devastated a Generation of Taxi Drivers,” *New York Times* (May 19, 2019).

¹¹See, e.g., House Committee on Financial Services, Testimony of April Kuehnhoff, *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong. (Sept. 26, 2019).

November 13, 2019 by a recorded vote of 31 yeas and 23 nays. This bipartisan bill passed unanimously by the House of Representatives on suspension in March 2, 2020. It is also similar to S. 3334, the Military Lending Improvement Act from the 115th Congress, sponsored by former Sen. Bill Nelson. Title II is supported by the National Military Family Association, Veterans Education Success, and Retired Army Colonel Paul Kantwill, the former CFPB Assistant Director for Servicemember Affairs.

Protecting Private Student Loan Borrowers With Disabilities

Title III of H.R. 2547, which is designated as the Private Loan Disability Discharge Act, would amend TILA to include a required discharge of private student loans for both the borrower and cosigner in the case of permanent disability of the borrower.

Federal student loans, generally provide greater protections than private student loans. For example, 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.¹² By contrast, 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 currently requires the discharge of a student loan for the borrower and cosigner in the case of death of the borrower. Beyond this requirement, however, private student lenders are free to make any policy on discharge of debt in their promissory notes. There is no standard system for disability cancellations for private student loans.

In March 2021, the Committee held a hearing on the need for robust consumer protection as a result of this unprecedented COVID-19 pandemic, during which 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 following the Great Recession.¹³ The witness further testified that “[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.”¹⁴

To provide greater protections for private student loan borrowers, 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, this 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. Finally, this title would authorize the CFPB to issue rules to implement these changes. This bill uses the same definition for total and

¹² See 20 U.S.C. § 1087(a).

¹³ Subcommittee on Consumer Protection and Financial Institutions, *Slipping Through the Cracks: Policy Options to Help America’s Consumer During the Pandemic*, 117th Cong. (Mar. 11, 2021).

¹⁴ *Id.*

permanent disability as the standard for discharging federal student loans.

This title is substantially similar to H.R. 2498, the Private Loan Disability Discharge Act, introduced by Rep. Dean. This title is also similar to H.R. 4545 in the 116th Congress, sponsored by Rep. Dean and passed out of Committee on December 11, 2019 by a recorded vote of 32 yeas and 22 nays. This title is supported by the National Council on Independent Living, National Consumer Law Center (on behalf of its low-income clients), Center for Responsible Lending, and The Institute for College Access and Success (TICAS).

Protecting Consumers With Medical Debt

Title IV of H.R. 2547, which is designated as the Consumer Protection for Medical Debt Collections Act, would amend FDCPA and FCRA to provide consumer protections for medical debts.

Debt collectors increasingly contact individuals for their medical bills in relation to other forms of debt. 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.¹⁵ Medical bills can be expensive for households, and the delinquency of payments can lead to individuals falling into bankruptcy and hurting their credit report.¹⁶ The American Journal of Public Health conducted a survey of bankruptcy filers between 2013 and 2016 and found that 59% of respondents agreed that medical debt played a role in their bankruptcy.¹⁷ The CFPB has also found that the medical pricing, billing, and reimbursement processes lack transparency and are 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. With the COVID-19 pandemic affecting the health of over 30 million infected Americans, many of whom have and will take on medical debt to pay for their care, consumer protections associated with medical debts are badly needed.

Title IV would bar entities from collecting medical debt or reporting it to a consumer reporting agency without giving a consumer notice about their rights under FDCPA and FCRA, including a minimum one-year delay before adverse information is reported and a two-year delay before collection attempts after the date that the first payment is due. This title also bans the reporting of medical debt arising from medically necessary procedures.

This title is substantially similar to H.R. 2537, the Consumer Protection for Medical Debt Collections Act, introduced by Rep. Rashida Tlaib (D-MI). This title is also similar to H.R. 5330 in the 116th Congress, which was also sponsored by Rep. Tlaib and passed out of Committee on December 11, 2019 by a recorded vote of 31 yeas and 24 nays. This title is supported by Americans for

¹⁵ See, e.g., Kaiser Family Foundation, *Data Note: Americans' Challenges with Health Care Costs* (Jun. 11, 2019).

¹⁶ See, e.g., House Committee on Financial Services, *Testimony of Chi Chi Wu, Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System*, 116th Cong., (Feb. 26, 2019); and House Committee on Financial Services, *Testimony of April Kuehnhoff, Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong., (Sept. 26, 2019).

¹⁷ National Consumer Law Center, *Medical Debt Collection* (accessed Apr. 10, 2021).

Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Reports, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low income clients), and U.S. PIRG.

Protecting Consumers Against Debt Collection Harassment

Title V of H.R. 2547, which is designated as the Ending Debt Collection Harassment Act, would amend the Consumer Financial Protection Act of 2010 and the FDCPA to prohibit a debt collector from contacting a consumer by email or text message without a consumer's consent and provide other defenses against harassing communications.

In May 2019, the CFPB released a notice of proposed rulemaking to establish guidelines on how communication may take place between debt collectors and consumers. The proposed rule would prohibit debt collectors from providing information to credit score furnishers without informing the debtor first. The proposed rule also permits up to seven collection calls a week, per debt,¹⁸ and would allow debt collectors to use other methods of communication to contact consumers, including unlimited email or text messages.¹⁹ Consumer groups have argued that the rule does not go far enough to protect consumers against predatory debt collection practices.²⁰ This rule was finalized in October 2020, and in 2021 the interim leadership of the CFPB proposed a delay in the effective date of the rule, along with a delay in a disclosure-focused debt collection rule that was finalized in November 2020.

Title V would 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, and would require CFPB to include in its 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 substantially similar to H.R. 1657, the Ending Debt Collection Harassment Act, introduced by Rep. Ayanna Pressley (D-MA). This title is also similar to H.R. 5021 in the 116th Congress, sponsored by Rep. Pressley and passed out of Committee on November 13, 2019 by a recorded vote of 31 yeas and 23 nays. This title is supported by Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Reports, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low income clients), and U.S. PIRG.

¹⁸ See *Debt Collection Practices (Regulation F)*, 12 C.F.R. part 1006 (proposed May 6, 2019) (to be codified at 12 C.F.R. part 1006).

¹⁹ *Id.*

²⁰ See, e.g., House Committee on Financial Services, *Testimony of April Kuehnhoff, Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices*, 116th Cong. (Sept. 26, 2019).

Protecting Consumers With Government-Owned Debts

Title VI of H.R. 2547, which is designated as the Stop Debt Collection Abuse Act, would, among other things, extend the protections in the FDCPA as it relates to debt owed to a federal, state, territory, District of Columbia, and local government agency and limit the fees debt collectors can charge.

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, the FDCPA currently does not apply to debt collectors hired by federal government entities. At the hearing, one consumer advocate testified that extending FDCPA to debt collectors hired by federal government entities is 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 citizens’ assets.”²¹

To address these issues, this title makes clear that overpayment, fines, penalties, and fees owed by private individuals to federal, state, territory, D.C., and local government entities would be considered “consumer debts” that fall under the FDCPA’s protections. This title also prevents private debt collectors from charging exorbitant and unfair fees, and it would ensure that fees from debt collectors working on behalf of federal, state, territory, D.C., or local government entities are reasonable. This title also confirms 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 until 90 days after a debt has allegedly gone unpaid. Finally, this title would require the GAO to conduct a study into the use of third-party debt collectors by federal, state, and local government agencies.

This title is similar to H.R. 2572, the Stop Debt Collection Abuse Act, introduced by Rep. Emanuel Cleaver (D–MO). This title is also similar to H.R. 4403 in the 116th Congress, sponsored by Rep. Cleaver and unanimously passed out of Committee on November 13, 2019 by a recorded vote of 54 yeas and 0 nays. It is also similar to the bipartisan H.R. 864, from the 115th Congress, sponsored by former Reps. Mia Love and Keith Ellison as well as Reps. Cleaver and Hill. Furthermore, this title is supported by over twenty civil rights and consumer rights groups, including Americans for Financial Reform, Allied Progress, California Reinvestment Coalition, Consumer Action, Consumer Federation of America, Consumer Reports, Florida Alliance for Consumer Protection, Illinois Asset Building Group, Legal Services of New Jersey, Maryland Consumer Rights Coalition, NAACP, National Association of Consumer Advocates, National Center for Law and Economic Justice, National Consumer Law Center, Public Citizen, Public Justice Center, Public Law Center, Statewide Poverty Action Network, and Tennessee Citizen Action.

Additionally, while this title’s expansion of FDCPA to cover federal government agency debts originated from H.R. 2572, the title’s proposed FDCPA expansion to cover state, territory, D.C., and local government agency debts is similar to H.R. 2628, the Debt Collection Practices Harmonization Act, introduced by Rep. Gregory

²¹*Id.* at 38.

Meeks (D-NY). Other provisions similar to H.R. 2628 are included in Title VII as described below.

Protecting Consumers From Egregious Debt Collection Fees

Title VII of H.R. 2547, which is designated as the Debt Collection Practices Harmonization Act, would amend the FDCPA to tie damages for violations to inflation and allow for injunctive relief.

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, 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.

To address these issues, this title would adjust monetary penalties for inflation and clarify that courts can award injunctive relief. 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 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.

This title is similar to H.R. 2628, the Debt Collection Practices Harmonization Act, introduced by Rep. Meeks. This title is also similar to H.R. 3498 in the 116th Congress, sponsored by Rep. Meeks and passed out of Committee on November 13, 2019 by a recorded vote of 31 yeas and 23 nays. The National Consumer Law Center, Center for Responsible Lending, NAACP, and the National Urban League have endorsed this title.

Protecting Consumers Facing Non-Judicial Foreclosure

Title VIII of H.R. 2547, which is designated as the Non-Judicial Foreclosure Debt Collection Clarification Act, would reverse the recent Supreme Court decision in *Obduskey v. McCarthy and Holthus LLP* by amending the FDCPA to clarify that entities in non-judicial foreclosure proceedings are covered by the law.

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. 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.”²²

This title would clarify the FDCPA to state 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 offered to help consumers during the COVID–19 pandemic, families will need these necessary protections.

This title is substantially similar to H.R. 2458, the Non-Judicial Foreclosure Debt Collection Clarification Act, introduced by Rep. Jacob Auchincloss (D–MA). This title is also similar to H.R. 5001 in the 116th Congress, sponsored by then-Rep. Clay and passed out of Committee on November 13, 2019 by a recorded vote of 31 yeas and 23 nays. This title is supported by over twenty consumer, civil rights, labor, and community organizations, including Americans for Financial Reform, Consumer Federation of America, NAACP, National Association of Consumer Advocates, National Consumer Law Center, and Public Citizen.

Conclusion

Abusive debt collection practices and inadequate federal oversight have long plagued consumers. The COVID–19 pandemic and its devastating health and economic ramifications have highlighted the precarious position millions of U.S. consumers and small businesses are in with respect to unscrupulous collectors. It is critical that Congress immediately enhance and expand protections to ensure borrowers are not subjected to the wide range of abuse and harassment by predatory debt collectors. H.R. 2547 is supported by a coalition of consumer groups, including the Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Reports, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low income clients), Public Citizen, and U.S. PIRG.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the title of the bill is the Comprehensive Debt Collection Improvement Act.

TITLE I—SMALL BUSINESS LENDING FAIRNESS ACT

Sec. 101. Short title

This section states that the short title of Title I is the “Small Business Lending Fairness Act.”

²²*Obduskey v. McCarthy & Holthus LLP*, 586 U.S., (2019) (concurrence by Justice Sotomayor).

Sec. 102. Obligor transactions

This section amends Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) by prohibiting any person—including consumers and small businesses—from directly or indirectly taking or receiving from another person—including lenders and merchant cash advance companies—an obligation that constitutes or contains a cognovit or confession of judgment, warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of a lawsuit or judicial process.

Sec. 103. Enforcement of security interests

This section amends Section 103 of TILA (15 U.S.C. 1602) by clarifying the definition of “debt” as “any obligation of a person to pay to another person money.” This definition would apply regardless of whether the obligation is absolute or contingent. This definition includes the right of the person providing the money to an equitable remedy for breach of performance if the breach gives rise to a right to payment. This definition would also apply regardless of whether the obligation or right to an equitable remedy has been reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, recourse, nonrecourse, secured, or unsecured.

TITLE II—FAIR DEBT COLLECTION PRACTICES FOR SERVICEMEMBERS
ACT

Sec. 201. Short title

This section states that the short title of Title II is the “Fair Debt Collection Practices for Servicemembers Act.”

Sec. 202. Enhanced protection against debt collector harassment of servicemembers

This section prohibits debt collectors from threatening a servicemember with reducing their rank, having their security clearance revoked, or prosecuting them under the Uniform Code of Military Justice regarding an outstanding debt. This section also clarifies these actions are an unfair practice under the FDCPA. In addition to active servicemembers, this section also covers an individual who has separated, discharged, or released from duty in the previous year.

Sec. 203. GAO study and report

This section directs the Government Accountability Office (GAO) to conduct a study and submit a report to Congress within one year identifying the types of false, deceptive, misleading, unfair, abusive, and harassing debt collection practices experienced by servicemembers and making recommendations to eliminate these practices; identifying collection practices of creditors and debt collectors experienced by covered members; analyzing the effect of these practices on military readiness and any national security implications.

TITLE III—PRIVATE LOAN DISABILITY DISCHARGE ACT

Sec. 301. Short title

This section states that the short title of Title III is the “Private Loan Disability Discharge Act of 2021.”

Sec. 302. Protections for obligors and cosigners in case of death or total and permanent disability

This section amends Section 140(g) of TILA to include a required discharge of private student loans in the case of permanent and total disability of the borrower. It adds the cosigner discharge in the case of the borrower’s permanent disability. It requires 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. This section gives the CFPB Director the power to issue rules to implement these changes. This section uses the same definition for total and permanent disability as the standard for discharging federal student loans.

TITLE IV—CONSUMER PROTECTION FOR MEDICAL DEBT COLLECTIONS ACT

Sec. 401. Short title

This section states that the short title of Title IV is the “Consumer Protection for Medical Debt Collections Act.”

Sec. 402. Amendments to the Fair Debt Collection Practices Act

This section amends Sections 803 and 808 of the Fair Debt Collection Practices Act. Subsection (a) amends section 803 by adding a definition for medical debt.

Subsection (b) makes it an unfair practice under the FDCPA for debt collectors to collect or attempt to collect medical debt owed before two years after the first payment is due.

Sec. 403. Prohibition on consumer reporting agencies reporting certain medical debt

This section amends sections 603 and 605(a) of the Fair Credit Reporting Act. Subsection (a) amends section 603 by adding a definition of medical debt and a medically necessary procedure.

Subsection (b) bans an entity from reporting information related to a debt arising from a medically necessary procedure. It also requires a minimum one-year delay before adverse information is reported on any other medical debt.

Sec. 404. Requirements for furnishers of medical debt information

This section amends section 623 of the Fair Credit Reporting Act to require that the entity reporting the medical debt of a consumer to a consumer reporting agency will, prior to reporting the debt, send the consumer a disclosure that informs the consumer that medical debt may not be reported to a CRA until the end of the one year period of the medical debt statement or the last day a consumer made a payment on the medical debt and that the debt may never be reported if it arises from a medically necessary procedure. The entity must also send a notification to the consumer that says

if the debt is paid or settled by the consumer or insurance company before the end of the one year period described above, the debt may not be reported to a CRA and that the consumer has the right to contact their insurance agency to determine debt coverage.

TITLE V—ENDING DEBT COLLECTION HARASSMENT ACT

Sec. 501. Short title

This section states that the short title of Title V is the “Ending Debt Collection Harassment Act of 2021.”

Sec. 502. Consumer protections relating to debt collection practices

This section amends the Consumer Financial Protection Act of 2010 and FDCPA. Subsection (a)(1) amends section 1016(c) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5496) by requiring the CFPB’s semi-annual report to Congress to include an analysis of debt collection consumer complaints received by the Bureau, including a state-by-state breakdown of such complaints, and a list of enforcement actions taken against debt collectors during the preceding year.

Subsection (a)(2) amends section 815(a) of FDCPA (15 U.S.C. 1692m) by requiring the CFPB’s annual report to Congress to include an analysis of the impact of electronic communications by debt collectors on consumer experiences with debt collection, including a consideration of consumer complaints about the use of electronic communications in debt collection.

Subsection (b) amends section 1022 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512) by prohibiting the CFPB Director from issuing any rule with respect to debt collection that allows a debt collector to send unlimited email and text messages to a consumer.

Subsection (c) amends section 806 of the Fair Debt Collection Practices Act (15 U.S.C. 1692d) by prohibiting debt collectors from contacting consumers electronically, including by email or text message, without consent of the consumer, after such consent has been withdrawn, or more frequently than the consumer consents to be contacted.

Subsection (d) amends section 809(a) of FDCPA (15 U.S.C. 1692g(a)) by ensuring that consumers receive notice of debt collection protections, regardless of whether that information is contained in the initial communication or the consumer has paid the debt.

Subsection (e) amends section 814(d) of FDCPA (15 U.S.C. 1692l(d)) by prohibiting CFPB from prescribing rules that allow a debt collector to send unlimited electronic communications to a consumer. This amendment also requires CFPB to prescribe rules that require debt collectors to obtain consent directly from consumers before contacting them using a method other than by postal mail or by phone. Under the amendments made by this subsection, the CFPB is prohibited from waiving the requirements of the Electronic Signatures in Global and National Commerce Act. The amendments made by this section also require the CFPB to prescribe rules that allow consumers to opt out of any method of communication that the debt collector uses to communicate with con-

sumers, including a method for which such consumer had given prior consent.

TITLE VI—STOP DEBT COLLECTION ABUSE ACT

Sec. 601. Short title

This section states that the title of Title VI is the “Stop Debt Collection Abuse Act of 2021.”

Sec. 602. Definitions

This section amends Section 803 of FDCPA to make certain technical edits, and to include, as part of the definition of debt, any obligation or alleged obligation by a consumer to pay a loan, an overpayment, a fine, a penalty, a restitution, a fee, or other money currently or originally owed to a Federal, State, territory, D.C. or local government, including any courts or agencies and includes, as part of the definition of debt collector, any person who regularly collects debts currently or originally owed to a government agency or court.

Sec. 603. Debt collection practices for debt collectors hired by Federal agencies

This section amends the FDCPA to place a limitation on Federal agencies that are creditors to sell or transfer a debt covered by this legislation for a certain period of time. This section also requires the Federal agency to notify the consumer not fewer than 3 times when a debt is transferred or sold and requires these notices to not be sent out less than 30 days apart.

Sec. 604. Unfair practices

This section amends Section 808 of the FDCPA to require that collections of any covered account can only occur when expressly authorized by the agreement creating the debt or permitted by law. Furthermore, when the amount is charged by the debt collector, this section, among other things, requires that the charge is reasonable in relation to the actual costs of the collection and authorized by a contract between the debt collector and a Federal, State, territory, D.C. or local government.

Sec. 605. GAO study and report

This section requires GAO to conduct a study on the use of debt collectors by Federal, State, and local government agencies, and submit, within one year of enactment of this legislation, a report to Congress on the completed study.

TITLE VII—DEBT COLLECTION PRACTICES HARMONIZATION ACT

Sec. 701. Short title

This section states that the title of Title VII is the “Debt Collection Practices Harmonization Act.”

Sec. 702. Award of damages

This section amends Section 813 of FDCPA to provide annual adjustments for inflation for the amount of damages that a debt collector who fails to comply with the provisions in the Act must pay. This section also allows for a court to award injunctive relief in a civil action alleging a violation of this title.

Sec. 703. Prohibition on the referral of emergency individual assistance debt.

This section adds a section at the end of subchapter II of Chapter 3 of title 31, United States Code, “Prohibition on the referral of emergency individual assistance debt.” This section prohibits the Secretary of Treasury from contracting with any debt collector or other private party to collect overpayment of FEMA assistance, unless the overpayment occurred because of fraud or deceit that the recipient should have known about.

TITLE VIII—NON-JUDICIAL FORECLOSURE DEBT COLLECTION
CLARIFICATION ACT

Sec. 801. Short title

This section states that the title of Title VIII is the “Non-Judicial Foreclosure Debt Collection Clarification Act.”

Sec. 802. Enforcement of security interests

This section amends Section 803(6) of FDCPA (15 U.S.C. 1692a(6)) by clarifying the definition of “debt collector” to not include “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.”

TITLE IX—EFFECTIVE DATE

Sec. 901. Effective date

This section states that the amendments of this bill shall take effect 180 days after the date of enactment.

HEARINGS

For the purposes of section 3(c)(6) of House Rule XIII, the following hearing was used to consider H.R. 2547:

(1) On March 11, 2021, the Subcommittee on Consumer Protection and Financial Institutions held a hearing entitled, “Slipping Through the Cracks: Policy Options to Help America’s Consumers During the Pandemic,” which considered a number of measures that assembled into H.R. 2547. The witnesses at this subcommittee hearing consisted of Ashley Harrington, Federal Advocacy Director and Senior Counsel, Center for Responsible Lending (CRL); Robert E. James, II, President, Carver Development CDE, and Chairman, National Bankers Association; Carla Sanchez-Adams, Attorney, Team Manager of Survivor-Centered Economic Advocacy Team, Texas RioGrande Legal Aid; Valarie Shultz-Wilson, Managing Partner, Shultz&Co Non-Profit Management Consultants; and Joel Griffith, Research Fellow, Financial Regulations, The Roe Institute for Economic Policy Studies, The Heritage Foundation.

(2) During the 116th Congress, the following hearings considered issues that would be addressed by H.R. 2547:

a. 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,” which considered H.R. 3490, the “Small Business Lending Fairness Act,” H.R. 4403, the “Stop Debt Collection Abuse Act,” H.R. 3948, the “Debt Collection Prac-

tices Harmonization Act,” the “Non-Judicial Foreclosure Debt Collection Clarification Act,” the “Fair Debt Collection Practices for Servicemembers Act,” and the “Consumer Protections for Medical Debt Collections Act.” The witnesses at this hearing consisted of: 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 Dalié Jiménez, Professor of Law, University of California, Irvine School of Law; Ms. Sarah Auchterlonie, Shareholder, Brownstein Hyatt Farber Shreck; and Mr. John H. Bedard, Jr., Owner, Bedard Law Group, P.C..

b. On September 10, 2019, the Committee on Financial Services held a hearing entitled, “A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable,” which considered the “Private Loan Disability Discharge Act.” The witnesses at this hearing consisted of Seth Frotman, Executive Director, Student Borrower Protection Center; Persis Yu, Staff Attorney, National Consumer Law Center; Ashley Harrington, Senior Policy Counsel, Center for Responsible Lending; Hasan Minhaj, Writer, Producer, and Host; and Jason Delisle, Resident Fellow, American Enterprise Institute.

c. On February 26, 2019, the Committee on Financial Services held a hearing entitled, “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System,” which considered the “Comprehensive Consumer Credit Reporting Reform Act of 2019.” The witnesses at this hearing consisted of Mark Begor, CEO, Equifax; James M. Peck, President and CEO, TransUnion; Craig Boundy, CEO, Experian North America; Lisa Rice, President and CEO, National Fair Housing Alliance (NFHA); Chi Chi Wu, Staff Attorney, National Consumer Law Center (NCLC); Jennifer Brown, Associate Director, Economic Policy, UnidosUS; Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group (PIRG); and Thomas P. Brown, Partner, Paul Hastings.

d. On July 27, 2020, the Committee on Financial Services held a hearing entitled, “Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau,” which discussed the findings from the CFPB’s semi-annual report, including debt collection issues.

e. On February 6, 2020, the Committee on Financial Services held a hearing entitled “Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Financial Protection Bureau,” which discussed the findings from the CFPB’s semi-annual report, including debt collection issues.

f. On October 16, 2019, the Committee on Financial Services held a hearing entitled “Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau,” which discussed the findings from the CFPB’s semi-annual report, including debt collection issues.

g. On March 7, 2019, the Committee on Financial Services held a hearing entitled “Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau,” which discussed the findings from the CFPB’s semi-annual report, including debt collection issues.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 21, 2021, and ordered H.R. 2547 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 30 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. 2547.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>		x
	Mrs. Maloney		x
	Ms. Velázquez		x
	Mr. Sherman		x
	Mr. Meeks		x
	Mr. Scott		x
	Mr. Green		x
	Mr. Cleaver		x
	Mr. Perlmutter		x
	Mr. Himes		x
	Mr. Foster		x
	Mrs. Beatty		x
	Mr. Vargas		x
	Mr. Gottheimer		x
	Mr. Gonzalez (TX)		x
	Mr. Lawson		x
	Mr. San Nicolas		x
	Ms. Axne		x
	Mr. Casten		x
	Ms. Pressley		x
	Mr. Torres		x
	Mr. Lynch		x
	Ms. Adams		x
	Ms. Tlaib		x
	Ms. Dean		x
	Ms. Ocasio-Cortez		x
	Mr. Garcia (IL)		x
	Ms. Garcia (TX)		x
	Ms. Williams (GA)		x
	Mr. Auchincloss		x
30			
	Mr. McHenry, <i>Ranking Member</i>	x	
	Mrs. Wagner	x	
	Mr. Lucas	x	
	Mr. Posey	x	
	Mr. Luetkemeyer	x	
	Mr. Huizenga	x	
	Mr. Stivers	x	
	Mr. Barr	x	
	Mr. Williams (TX)	x	
	Mr. Hill	x	
	Mr. Emmer	x	
	Mr. Zeldin	x	
	Mr. Loudermilk	x	
	Mr. Mooney	x	
	Mr. Davidson	x	
	Mr. Budd	x	
	Mr. Kustoff	x	
	Mr. Hollingsworth	x	
	Mr. Gonzalez (OH)		
	Mr. Rose	x	
	Mr. Steil	x	
	Mr. Gooden	x	
	Mr. Timmons	x	
	Mr. Taylor	x	
24			
54			

Committee on Financial Services

Full Committee
117th Congress (1st Session)

Date: 4.21.2021

Measure H.R. 2547

Amendment No. 3B

Offered by: McHenry

Agreed To	Yes	No	Prsnt	Wdrn
		x		
Voice Vote	Ayes		Nays	

Final Vote	FC	
	23 Ayes	30 Noes

Present	Representatives	Ayes	Nays
	Mrs. Waters, <i>Chairwoman</i>	x	
	Mrs. Maloney	x	
	Ms. Velázquez	x	
	Mr. Sherman	x	
	Mr. Meeks	x	
	Mr. Scott	x	
	Mr. Green	x	
	Mr. Cleaver	x	
	Mr. Perlmutter	x	
	Mr. Himes	x	
	Mr. Foster	x	
	Mrs. Beatty	x	
	Mr. Vargas	x	
	Mr. Gotthelmer	x	
	Mr. Gonzalez (TX)	x	
	Mr. Lawson	x	
	Mr. San Nicolas	x	
	Ms. Axne	x	
	Mr. Casten	x	
	Ms. Pressley	x	
	Mr. Torres	x	
	Mr. Lynch	x	
	Ms. Adams	x	
	Ms. Tlaib	x	
	Ms. Dean	x	
	Ms. Ocasio-Cortez	x	
	Mr. Garcia (IL)	x	
	Ms. Garcia (TX)	x	
	Ms. Williams (GA)	x	
	Mr. Auchincloss	x	
30			
	Mr. McHenry, <i>Ranking Member</i>		x
	Mrs. Wagner		x
	Mr. Lucas		x
	Mr. Posey		x
	Mr. Luetkemeyer		x
	Mr. Huizenga		x
	Mr. Stivers		x
	Mr. Barr		x
	Mr. Williams (TX)		x
	Mr. Hill		x
	Mr. Emmer		x
	Mr. Zeldin		x
	Mr. Loudermilk		x
	Mr. Mooney		x
	Mr. Davidson		x
	Mr. Budd		x
	Mr. Kustoff		x
	Mr. Hollingsworth		x
	Mr. Gonzalez (OH)		x
	Mr. Rose		x
	Mr. Steil		x
	Mr. Gooden		x
	Mr. Timmons		x
	Mr. Taylor		x
24			
54			

Committee on Financial ServicesFull Committee
117th Congress (1st Session)

Date: 4.21.2021

Measure H.R. 2547

Amendment No. _____

Offered by: Final Passage

Agreed To	Yes	No x	Prsnt	Wdrn
Voice Vote	Ayes		Nays	

Final Vote	FC	
	30Ayes	23Noes

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. 2547 are to ensure increased protections for small businesses, servicemembers, students, and other consumers against the mistreatment and harassment of certain debt collectors.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

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*, provide that the Congressional Budget Office's estimate of H.R. 2547 be submitted along with the Committee Report. However, the Committee has requested but has not received a timely estimate for H.R. 2547 from the Director of the Congressional Budget Office. The Committee expects an estimate prior to any consideration of H.R. 2547 by the House of Representatives.

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. 2547. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act* has been submitted. The Committee expects the Congressional Budget Act to submit such an estimate prior to any consideration of H.R. 2547 by the House of Representatives, and adopts that estimate. Based on informal consultations with the Congressional Budget Office, the Committee estimates that certain provisions of the bill will have insignificant increases in direct 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 adopts as its own the forthcoming estimate of federal mandates regarding H.R. 2547, as amended, 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. 2547, 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. 2547 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. 2547 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. 2547, 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):

TRUTH IN LENDING ACT

TITLE I—CONSUMER CREDIT COST
DISCLOSURE

* * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * *

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(c) The term “Bureau” refers to the Bureau of Governors of the Federal Reserve System.

(d) The term “organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term “person” means a natural person or an organization.

(f) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term “creditor” refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term “creditor” shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title. The term “creditor” includes a private educational lender (as that term is defined in section 140) for purposes of this title.

(h) The term “credit sale” refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective “consumer”, used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms “open end credit plan” and “open end consumer credit plan” mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the

meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term “adequate notice”, as used in section 133, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term “credit card” means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term “accepted credit card” means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term “cardholder” means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term “card issuer” means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term “unauthorized use”, as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term “discount” as used in section 167 means a reduction made from the regular price. The term “discount” as used in section 167 shall not mean a surcharge.

(r) The term “surcharge” as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(s) The term “State” refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term “agricultural purposes” includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term “agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term “material disclosures” means the disclosure, as required by this title, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge,

the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 129(a).

(w) The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term “residential mortgage transaction” means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer’s dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 167, the term “regular price” means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder’s open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Bureau under this title or the provision thereof in question.

(aa) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

(bb) HIGH-COST MORTGAGE.—

(1) DEFINITION.—

(A) IN GENERAL.—The term “high-cost mortgage”, and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage transaction, if—

(i) in the case of a credit transaction secured—

(I) by a first mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction;

(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; or

(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Bureau shall prescribe by regulation); or

(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

(i) any premium provided by an agency of the Federal Government or an agency of a State;

(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

(iii) any premium paid by the consumer after closing.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994,

and no more frequently than biennially after the first increase or decrease under this subparagraph, the Bureau may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Bureau determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A)—

(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Bureau shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;

(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(G) such other charges as the Bureau determines to be appropriate.

(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.

(6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(cc) The term “reverse mortgage transaction” means a non-recourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer’s principal dwelling—

- (1) securing one or more advances; and
- (2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—
 - (A) the transfer of the dwelling;
 - (B) the consumer ceases to occupy the dwelling as a principal dwelling; or
 - (C) the death of the consumer.

(dd) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

(1) COMMISSION.—Unless otherwise specified, the term “Commission” means the Federal Trade Commission.

(2) MORTGAGE ORIGINATOR.—The term “mortgage originator”—

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

- (i) takes a residential mortgage loan application;
- (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or
- (iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is—

- (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or
- (ii) a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable—

(I) does not receive compensation or gain for engaging in activities described in subparagraph (A) that is in excess of any compensation or gain received in a comparable cash transaction;

(II) discloses to the consumer—

(aa) in writing any corporate affiliation with any creditor; and

(bb) if the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(III) does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs).

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Bureau may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and Registry” has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(4) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan” means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

(6) SECRETARY.—The term “Secretary”, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) SERVICER.—The term “servicer” has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

(ee) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point—

(A) the average prime offer rate, as defined in section 129C; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points—

(A) the average prime offer rate, as defined in section 129C; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(3) For purposes of paragraph (1), the term “bona fide discount points” means loan discount points which are knowingly

paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(ff) *The term “debt” means any obligation of a person to pay to another person money—*

(1) regardless of whether such obligation is absolute or contingent;

(2) that includes the right of the person providing the money to an equitable remedy for breach of performance if the breach gives rise to a right to payment; and

(3) regardless of whether the obligation or right to an equitable remedy described in paragraph (2) has been reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, recourse, nonrecourse, secured, or unsecured.

* * * * *

CHAPTER 2—CREDIT TRANSACTIONS

Sec.

121. General requirement of disclosure.

* * * * *

140B. *Unfair credit practices.*

* * * * *

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter, including any requirement under section 125, subsection (f) or (g) of section 131, or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$200 nor greater than \$2,000, (iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of \$500 and a maximum of \$5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$400 or greater than \$4,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$1,000,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 125 or 128(e)(7), the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 129, paragraph (1) or (2) of section 129B(c), or section 129C(a), an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, 127(a), or any of paragraphs (4) through (13) of section 127(b), or for failing to comply with disclosure requirements under State law for any term or item that the Bureau has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a), or any of paragraphs (4) through (13) of section 127(b). In connection with the disclosures referred to in subsection (c) or (d) of section 127, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 127(c)(1)(A)(ii)(I) or section 127(c)(4)(A)(i) or who uses the credit card or charge card. In connection with the disclosures referred to in section 128, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 128(a), or section 128(b)(2)(C)(ii), of subparagraphs (A), (B), (D), (F), or (J) of section 128(e)(2) (for purposes of paragraph (2) or (4) of section 128(e)), or paragraph (4)(C), (6), (7), or (8) of section 128(e), or for failing to comply with disclosure requirements under State law for any term which the Bureau has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms referred to in any of those paragraphs of section 128(a) or section 128(b)(2)(C)(ii). With respect to any failure to make disclosures required under this chapter or chapter 4 or 5 of this title, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 131.

(b) A creditor or assignee has no liability under this section or section 108 or section 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if within sixty days after discovering an error, whether pursuant to a final written

examination report or notice issued under section 108(e)(1) or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) A creditor or assignee may not be held liable in any action brought under this section or section 125 for a violation of this title if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this title is not a bona fide error.

(d) When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) for a violation of this title.

(e) Except as provided in the subsequent sentence, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation or, in the case of a violation involving a private education loan (as that term is defined in section 140(a)), 1 year from the date on which the first regular payment of principal is due under the loan. Any action under this section with respect to any violation of section 129, 129B, or 129C may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this title in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H of this Act may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 108 and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

- (1) intervene in the action;
- (2) upon intervening—
 - (A) remove the action to the appropriate United States district court, if it was not originally brought there; and
 - (B) be heard on all matters arising in the action; and
- (3) file a petition for appeal.

(f) No provision of this section, section 108(b), section 108(c), section 108(e), or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) The multiple failure to disclose to any person any information required under this chapter or chapter 4 or 5 of this title to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 125.

(h) A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this title has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this title.

(i) CLASS ACTION MORATORIUM.—

(1) IN GENERAL.—During the period beginning on the date of the enactment of the Truth in Lending Class Action Relief Act of 1995 and ending on October 1, 1995, no court may enter any order certifying any class in any action under this title—

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor—

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 128;

(ii) to properly make any other disclosure required under section 128 as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 125(a) due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Bureau or from among forms based on such model forms.

(2) EXCEPTIONS FOR CERTAIN ALLEGED VIOLATIONS.—Paragraph (1) shall not apply with respect to any action—

- (A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 107(c); or
- (B) described in paragraph (1)(B)(iii), if—
 - (i) no notice relating to rescission rights under section 125(a) was provided in any form; or
 - (ii) proper notice was not provided for any reason other than the reason described in such paragraph.
- (j) PRIVATE EDUCATIONAL LENDER.—A private educational lender (as that term is defined in section 140(a)) has no liability under this section for failure to comply with section 128(e)(3)).
- (k) DEFENSE TO FORECLOSURE.—
 - (1) IN GENERAL.—Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 129B(c), or of section 129C(a), as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under subsection (e).
 - (2) AMOUNT OF RECOUPMENT OR SETOFF.—
 - (A) IN GENERAL.—The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney's fee.
 - (B) SPECIAL RULE.—Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.
 - (1) EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.—In addition to any other remedy available by law or contract, no creditor or assignee shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.
 - (m) CREDITOR.—*In this section, the term “creditor” refers to any person charged with compliance that is not the obligor.*

* * * * *

§ 140. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest

- (a) DEFINITIONS.—As used in this section—
 - (1) the term “cosigner”—
 - (A) means any individual who is liable for the obligation of another without compensation, regardless of how des-

ignated in the contract or instrument with respect to that obligation, other than an obligation under a private education loan extended to consolidate a consumer's pre-existing private education loans;

(B) includes any person the signature of which is requested as condition to grant credit or to forbear on collection; and

(C) does not include a spouse of an individual described in subparagraph (A), the signature of whom is needed to perfect the security interest in a loan.

(2) the term "covered educational institution"—

(A) means any educational institution that offers a post-secondary educational degree, certificate, or program of study (including any institution of higher education); and

(B) includes an agent, officer, or employee of the educational institution;

(3) the term "gift"—

(A)(i) means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred; and

(ii) includes an item described in clause (i) provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that individual's relationship with the officer, employee, or agent, if—

(I) the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent; and

(B) does not include—

(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;

(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of the officer, employee, or agent of the covered educational institution;

(iii) favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in

coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure—

(I) applications for private education loans or private education loan volume;

(II) applications or loan volume for any loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); or

(III) the purchase of a product or service of a specific private educational lender;

(v) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(vi) State education grants, scholarships, or financial aid funds administered by or on behalf of a State;

(4) the term “institution of higher education” has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(5) the term “postsecondary educational expenses” means any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll);

(6) the term “preferred lender arrangement” has the same meaning as in section 151 of the Higher Education Act of 1965;

(7) the term “private educational lender” means—

(A) a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

(8) the term “private education loan”—

(A) means a loan provided by a private educational lender that—

(i) is not made, insured, or guaranteed under of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; and

(9) the term “revenue sharing” means an arrangement between a covered educational institution and a private educational lender under which—

(A) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

(B) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

(C) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

(b) PROHIBITION ON CERTAIN GIFTS AND ARRANGEMENTS.—A private educational lender may not, directly or indirectly—

(1) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private education loan activities; or

(2) engage in revenue sharing with a covered educational institution.

(c) PROHIBITION ON CO-BRANDING.—A private educational lender may not use the name, emblem, mascot, or logo of the covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.

(d) ADVISORY BOARD COMPENSATION.—Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

(e) PROHIBITION ON PREPAYMENT OR REPAYMENT FEES OR PENALTY.—It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan.

(f) CREDIT CARD PROTECTIONS FOR COLLEGE STUDENTS.—

(1) DISCLOSURE REQUIRED.—An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(2) INDUCEMENTS PROHIBITED.—No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open end consumer credit plan offered by such card issuer or creditor, if such offer is made—

(A) on the campus of an institution of higher education;

(B) near the campus of an institution of higher education, as determined by rule of the Bureau; or

(C) at an event sponsored by or related to an institution of higher education.

(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that each institution of higher education should consider adopting the following policies relating to credit cards:

(A) That any card issuer that markets a credit card on the campus of such institution notify the institution of the location at which such marketing will take place.

(B) That the number of locations on the campus of such institution at which the marketing of credit cards takes place be limited.

(C) That credit card and debt education and counseling sessions be offered as a regular part of any orientation program for new students of such institution.

(g) ADDITIONAL PROTECTIONS RELATING TO BORROWER OR COSIGNER OF A PRIVATE EDUCATION LOAN.—

(1) PROHIBITION ON AUTOMATIC DEFAULT IN CASE OF DEATH OR BANKRUPTCY OF NON-STUDENT OBLIGOR.—With respect to a private education loan involving a student obligor and 1 or more cosigners, the creditor shall not declare a default or accelerate the debt against the student obligor on the sole basis of a bankruptcy or death of a cosigner.

(2) COSIGNER RELEASE [IN CASE OF DEATH OF BORROWER].—

(A) RELEASE OF COSIGNER.—The holder of a private education loan, when notified of the death *or total and permanent disability* of a student obligor, shall release within a reasonable timeframe any cosigner from the obligations of the cosigner under the private education loan.

(B) NOTIFICATION OF RELEASE.—A holder or servicer of a private education loan, as applicable, shall within a reasonable time-frame notify any cosigners for the private education loan if a cosigner is released from the obligations of the cosigner for the private education loan under this paragraph.

(C) DESIGNATION OF INDIVIDUAL TO ACT ON BEHALF OF THE BORROWER.—Any lender that extends a private education loan shall provide the student obligor an option to designate an individual to have the legal authority to act on behalf of the student obligor with respect to the private education loan in the event of the death *or total and permanent disability* of the student obligor.

(3) DISCHARGE IN CASE OF DEATH OR TOTAL AND PERMANENT DISABILITY OF BORROWER.—*The holder of a private education loan shall, when notified of the death or total and permanent disability of a student obligor, discharge the liability of the student obligor on the loan and may not, after such notification—*

(A) attempt to collect on the outstanding liability of the student obligor; and

(B) in the case of total and permanent disability, monitor the disability status of the student obligor at any point after the date of discharge.

(4) PRIVATE DISCHARGE IN CASES OF CERTAIN DISCHARGE FOR DEATH OR DISABILITY.—*The holder of a private education loan*

shall, when notified of the discharge of liability of a student obligor on a loan described under section 108(f)(5)(A) of the Internal Revenue Code of 1986, discharge any liability of the student obligor (and any cosigner) on any private education loan which the private education loan holder holds and may not, after such notification—

(A) attempt to collect on the outstanding liability of the student obligor; and

(B) in the case of total and permanent disability, monitor the disability status of the student obligor at any point after the date of discharge.

(5) TOTAL AND PERMANENT DISABILITY DEFINED.—For the purposes of this subsection and with respect to an individual, the term “total and permanent disability” means the individual is totally and permanently disabled, as such term is defined in section 685.102(b) of title 34, Code of Federal Regulations.

* * * * *

§ 140B. Unfair credit practices

(a) IN GENERAL.—In connection with the extension of credit or creation of debt in or affecting commerce, as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 44), including any advance of funds or sale or assignment of future income or receivables that may or may not be credit, no person may directly or indirectly take or receive from another person or seek to enforce an obligation that constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) EXEMPTION.—The exemptions described in section 104 shall not apply to this section.

* * * * *

FAIR DEBT COLLECTION PRACTICES ACT

TITLE VIII—DEBT COLLECTION PRACTICES

Sec.

801. Short title.

* * * * *

812A. *Debt collection practices for debt collectors hired by Federal agencies.*

* * * * *

§ 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] *collection of such debt*.

[(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 of a consumer—*

(A) 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;

(B) to pay a loan, overpayment, fine, penalty, restitution, fee, or other money currently or originally owed to or guaranteed by a Federal or State government, including any courts or agencies; or

(C) which is secured by real or personal property that is used or was obtained primarily for personal, family, or household purposes, where such property is subject to forfeiture or repossession upon nonpayment of the obligation or alleged obligation.

[(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—]

(6)(A) *The term “debt collector” means—*

(i) 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;

(ii) any person who regularly collects or attempts to collect, directly or indirectly, by the person’s own means or by hiring another debt collector, debts owed or due or asserted to be owed or due another or that have been obtained by assignment or transfer from another;

(iii) *any person who regularly collects debts currently or originally owed or allegedly owed to a Federal or State agency or court; or*

(iv) *notwithstanding subparagraph (B)(vi), any creditor who in the process of collecting debts of such creditor, uses another name that would indicate that a third person is collecting or attempting to collect such debts.*

(B) *The term does not include—*

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

[(B)] (ii) *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)] (iii) *any officer or employee of the United States or any State (not including an independent contractor) to the extent that collecting or attempting to collect any debt is in the performance of his official duties;*

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

[(E)] (v) *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.】*

(vi) *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 Com-

monwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(9) *The term “medical debt” means a debt arising from the receipt of medical services, products, or devices.*

* * * * *

§ 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 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 communication 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.

(e) *COMMUNICATIONS CONCERNING SERVICEMEMBER DEBTS.*—

(1) *DEFINITION.*—*In this subsection, the term “covered member” means—*

(A) a covered member or a dependent as defined in section 987(i) of title 10, United States Code; and

(B)(i) an individual who was separated, discharged, or released from duty described in such section 987(i)(1), but only during the 365-day period beginning on the date of separation, discharge, or release; or

(ii) a person, with respect to an individual described in clause (i), described in subparagraph (A), (D), (E), or (I) of section 1072(2) of title 10, United States Code.

(2) *PROHIBITIONS.*—*A debt collector may not, in connection with the collection of any debt of a covered member—*

(A) threaten to have the covered member reduced in rank;

(B) threaten to have the covered member’s security clearance revoked; or

(C) threaten to have the covered member prosecuted under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

§ 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 allegedly refuse to pay debts, except to a consumer reporting agency 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.

(7) *Contacting the consumer electronically (including by email or text message) without consent of the consumer to communicate via that method, after such consent has been withdrawn, or more frequently than the consumer consents to be contacted.*

* * * * *

§ 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

【(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.】

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless—

(A) such amount is expressly authorized by the agreement creating the debt or permitted by law; and

(B) in the case of any amount charged by a debt collector collecting a debt described in section 803(5)(B), such amount is—

(i) reasonable in relation to the actual costs of the collection;

(ii) authorized by a contract between the debt collector and the Federal or State government; and

(iii) not greater than 10 percent of the amount collected by the debt collector.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(9) *The representation to any covered member (as defined under section 805(e)(1)) that failure to cooperate with a debt collector will result in—*

(A) a reduction in rank of the covered member;

(B) a revocation of the covered member's security clearance; or

(C) prosecution under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

(10) *Engaging in activities to collect or attempting to collect a medical debt owed or due or asserted to be owed or due by a consumer, before the end of the 2-year period beginning on the date that the first payment with respect to such medical debt is due.*

§ 809. Validation of debts

(a) **Within five days after the initial communication with a consumer in connection with the collection of any debt, NOTICE OF DEBT; CONTENTS.—***Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall***,** unless the following information is contained in the initial communication or the consumer has paid the debt, **send the consumer a written notice containing—**

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the dis-

closure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) **LEGAL PLEADINGS.**—A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) **NOTICE PROVISIONS.**—The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

* * * * *

§812A. Debt collection practices for debt collectors hired by Federal agencies

(a) **LIMITATION ON TIME TO TURN DEBT OVER TO DEBT COLLECTOR.**—A Federal agency that is a creditor may sell or transfer a debt described in section 803(5)(B) to a debt collector not earlier than 90 days after the date on which the obligation or alleged obligation becomes delinquent or defaults.

(b) **REQUIRED NOTICE.**—

(1) **IN GENERAL.**—Before transferring or selling a debt described in section 803(5)(B) to a debt collector or contracting with a debt collector to collect such a debt, a Federal agency shall notify the consumer not fewer than 3 times that the Federal agency will take such action.

(2) **FREQUENCY OF NOTIFICATIONS.**—The second and third notifications described in paragraph (1) shall be made not less than 30 days after the date on which the previous notification is made.

§ 813. Civil liability

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000[; or] *with respect to any one action taken by a debt collector in violation of this subchapter; or*

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 [or 1 per centum of the net worth of the debt collector; and] *or 5 percent of the gross annual revenue of the debt collector; and*

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), *the maximum amount of statutory damages at the time of noncompliance*, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), *the maximum amount of statutory damages at the time of noncompliance*, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs. *In a civil action alleging a violation of this title, the court may award appropriate relief, including injunctive relief.*

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) **ADJUSTMENT FOR INFLATION.**—

(1) **INITIAL ADJUSTMENT.**—*Not later than 90 days after the date of the enactment of this subsection, the Bureau shall provide a percentage increase (rounded to the nearest multiple of \$100 or \$1,000, as applicable) in the amounts set forth in this section equal to the percentage by which—*

(A) *the Consumer Price Index for All Urban Consumers (all items, United States city average) for the 12-month period ending on the June 30 preceding the date on which the percentage increase is provided, exceeds*

(B) *the Consumer Price Index for the 12-month period preceding January 1, 1978.*

(2) **ANNUAL ADJUSTMENTS.**—*With respect to any fiscal year beginning after the date of the increase provided under paragraph (1), the Bureau shall provide a percentage increase (rounded to the nearest multiple of \$100 or \$1,000, as applica-*

ble) in the amounts set forth in this section equal to the percentage by which—

(A) the Consumer Price Index for All Urban Consumers (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) the Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

§ 814. Administrative enforcement

(a) **FEDERAL TRADE COMMISSION.**—The Federal Trade Commission shall be authorized to enforce compliance with this title, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) the Acts to regulate commerce, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act;

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this title. *Such rules—*

(1) may not allow a debt collector to send unlimited electronic communications to a consumer;

(2) shall require debt collectors to obtain consent directly from consumers before contacting them using a method other than by postal mail or by phone;

(3) may not waive the requirements of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.); and

(4) shall allow consumers to opt out of any method of communication that the debt collector uses to communicate with consumers, including a method for which such consumer had given prior consent.

§ 815. Reports to Congress by the Bureau

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Bureau under section 814 of this title. *Each such report shall also include an analysis of the impact of electronic communications by debt collectors on consumer experiences with debt collection, including a consideration of consumer complaints about the use of electronic communications in debt collection.*

(b) In the exercise of its functions under this title, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

* * * * *

FAIR CREDIT REPORTING ACT

TITLE VI—CONSUMER CREDIT REPORTING

* * * * *

§ 603. Definitions and rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term “consumer” means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 604.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term “consumer report” does not include—

(A) subject to section 624, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

- (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615; or
- (D) a communication described in subsection (o) or (x).

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

- (A) medical information;
- (B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or
- (C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term “investigative consumer report” means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term “consumer reporting agency” 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 consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term “file”, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term “employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) MEDICAL INFORMATION.—The term “medical information”—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

- (A) the past, present, or future physical, mental, or behavioral health or condition of an individual;
- (B) the provision of health care to an individual; or
- (C) the payment for the provision of health care to an individual.

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) DEFINITIONS RELATING TO CHILD SUPPORT OBLIGATIONS.—

(1) OVERDUE SUPPORT.—The term “overdue support” has the meaning given to such term in section 466(e) of the Social Security Act.

(2) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—The term “State or local child support enforcement agency” means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) ADVERSE ACTION.—

(1) ACTIONS INCLUDED.—The term “adverse action”—

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and

(B) means—

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D); and

(iv) an action taken or determination that is—

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii); and

(II) adverse to the interests of the consumer.

(2) APPLICABLE FINDINGS, DECISIONS, COMMENTARY, AND ORDERS.—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Bureau or any court shall apply.

(l) FIRM OFFER OF CREDIT OR INSURANCE.—The term “firm offer of credit or insurance” means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—

- (A) before selection of the consumer for the offer; and
 - (B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.
- (2) Verification—
- (A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or
 - (B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.
- (3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—
- (A) established before selection of the consumer for the offer of credit or insurance; and
 - (B) disclosed to the consumer in the offer of credit or insurance.
- (m) CREDIT OR INSURANCE TRANSACTION THAT IS NOT INITIATED BY THE CONSUMER.—The term “credit or insurance transaction that is not initiated by the consumer” does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—
- (1) reviewing the account or insurance policy; or
 - (2) collecting the account.
- (n) STATE.—The term “State” means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.
- (o) EXCLUDED COMMUNICATIONS.—A communication is described in this subsection if it is a communication—
- (1) that, but for subsection (d)(2)(D), would be an investigative consumer report;
 - (2) that is made to a prospective employer for the purpose of—
 - (A) procuring an employee for the employer; or
 - (B) procuring an opportunity for a natural person to work for the employer;
 - (3) that is made by a person who regularly performs such procurement;
 - (4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and
 - (5) with respect to which—
 - (A) the consumer who is the subject of the communication—
 - (i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;
 - (ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS.—The term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

(1) ACTIVE DUTY MILITARY CONSUMER.—The term “active duty military consumer” means a consumer in military service who—

(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

(B) is assigned to service away from the usual duty station of the consumer.

(2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms “fraud alert” and “active duty alert” mean a statement in the file of a consumer that—

(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim

of fraud, including identity theft, or is an active duty military consumer, as applicable; and

(B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.

(3) **IDENTITY THEFT.**—The term “identity theft” means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.

(4) **IDENTITY THEFT REPORT.**—The term “identity theft report” has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—

(A) that alleges an identity theft;

(B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau; and

(C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

(5) **NEW CREDIT PLAN.**—The term “new credit plan” means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.

(r) **CREDIT AND DEBIT RELATED TERMS**—

(1) **CARD ISSUER.**—The term “card issuer” means—

(A) a credit card issuer, in the case of a credit card; and

(B) a debit card issuer, in the case of a debit card.

(2) **CREDIT CARD.**—The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.

(3) **DEBIT CARD.**—The term “debit card” means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(4) **ACCOUNT AND ELECTRONIC FUND TRANSFER.**—The terms “account” and “electronic fund transfer” have the same meanings as in section 903 of the Electronic Fund Transfer Act.

(5) **CREDIT AND CREDITOR.**—The terms “credit” and “creditor” have the same meanings as in section 702 of the Equal Credit Opportunity Act.

(s) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(t) **FINANCIAL INSTITUTION.**—The term “financial institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

(u) **RESELLER.**—The term “reseller” means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) COMMISSION.—The term “Commission” means the Bureau.

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

(x) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—The term “nationwide specialty consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

- (1) medical records or payments;
- (2) residential or tenant history;
- (3) check writing history;
- (4) employment history; or
- (5) insurance claims.

(y) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

- (i) suspected misconduct relating to employment; or
- (ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer’s credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

- (i) to the employer or an agent of the employer;
- (ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;
- (iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;
- (iv) as otherwise required by law; or
- (v) pursuant to section 608.

(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term “self-regulatory organization” in-

cludes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

(z) VETERAN.—The term “veteran” has the meaning given the term in section 101 of title 38, United States Code.

(aa) VETERAN’S MEDICAL DEBT.—The term “veteran’s medical debt”—

(1) means a medical collection debt of a veteran owed to a non-Department of Veterans Affairs health care provider that was submitted to the Department for payment for health care authorized by the Department of Veterans Affairs; and

(2) includes medical collection debt that the Department of Veterans Affairs has wrongfully charged a veteran.

(bb) MEDICAL DEBT.—*The term “medical debt” means a debt arising from the receipt of medical services, products, or devices.*

(cc) MEDICALLY NECESSARY PROCEDURE.—*The term “medically necessary procedure” means—*

(1) *health care services or supplies needed to diagnose or treat an illness, injury, condition, disease, or its symptoms and that meet accepted standards of medicine; and*

(2) *health care to prevent illness or detect illness at an early stage, when treatment is likely to work best (including preventive services such as pap tests, flu shots, and screening mammograms).*

* * * * *

§ 605. Requirements relating to information contained in consumer reports

(a) INFORMATION EXCLUDED FROM CONSUMER REPORTS.—Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or

provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(7) With respect to a consumer reporting agency described in section 603(p), any information related to a veteran's medical debt if the date on which the hospital care, medical services, or extended care services was rendered relating to the debt antedates the report by less than 1 year if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(8) With respect to a consumer reporting agency described in section 603(p), any information related to a fully paid or settled veteran's medical debt that had been characterized as delinquent, charged off, or in collection if the consumer reporting agency has actual knowledge that the information is related to a veteran's medical debt and the consumer reporting agency is in compliance with its obligation under section 302(c)(5) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

(9) *Any information related to a debt arising from a medically necessary procedure.*

(10) *Any information related to a medical debt, if the date on which such debt was placed for collection, charged to profit or loss, or subjected to any similar action antedates the report by less than 365 calendar days.*

(b) The provisions of paragraphs (1) through (5) of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more.

(c) **RUNNING OF REPORTING PERIOD.—**

(1) **IN GENERAL.**—The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) **EFFECTIVE DATE.**—Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996.

(d) INFORMATION REQUIRED TO BE DISCLOSED.—

(1) TITLE 11 INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11, United States Code, shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(2) KEY FACTOR IN CREDIT SCORE INFORMATION.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(f)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.

(e) INDICATION OF CLOSURE OF ACCOUNT BY CONSUMER.—If a consumer reporting agency is notified pursuant to section 623(a)(4) that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) INDICATION OF DISPUTE BY CONSUMER.—If a consumer reporting agency is notified pursuant to section 623(a)(3) that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) LIMITATION.—This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) EFFECTIVE DATE.—This subsection shall become effective—

(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

(h) NOTICE OF DISCREPANCY IN ADDRESS.—

(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) REGULATIONS.—

(A) REGULATIONS REQUIRED.—The Bureau shall, in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(B) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.

* * * * *

SEC. 623. RESPONSIBILITIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES.

(a) DUTY OF FURNISHERS OF INFORMATION TO PROVIDE ACCURATE INFORMATION.—

(1) PROHIBITION.—

(A) REPORTING INFORMATION WITH ACTUAL KNOWLEDGE OF ERRORS.—A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) REPORTING INFORMATION AFTER NOTICE AND CONFIRMATION OF ERRORS.—A person shall not furnish information relating to a consumer to any consumer reporting agency if—

- (i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and
- (ii) the information is, in fact, inaccurate.

(C) NO ADDRESS REQUIREMENT.—A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) DEFINITION.—For purposes of subparagraph (A), the term “reasonable cause to believe that the information is inaccurate” means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(E) REHABILITATION OF PRIVATE EDUCATION LOANS.—

(i) IN GENERAL.—Notwithstanding any other provision of this section, a consumer may request a financial institution to remove from a consumer report a reported default regarding a private education loan, and such information shall not be considered inaccurate, if—

(I) the financial institution chooses to offer a loan rehabilitation program which includes, without limitation, a requirement of the consumer to make consecutive on-time monthly payments in a number that demonstrates, in the assessment of the financial institution offering the loan rehabilitation program, a renewed ability and willingness to repay the loan; and

(II) the requirements of the loan rehabilitation program described in subclause (I) are successfully met.

(ii) BANKING AGENCIES.—

(I) IN GENERAL.—If a financial institution is supervised by a Federal banking agency, the financial institution shall seek written approval concerning the terms and conditions of the loan rehabilitation program described in clause (i) from the appropriate Federal banking agency.

(II) FEEDBACK.—An appropriate Federal banking agency shall provide feedback to a financial institution within 120 days of a request for approval under subclause (I).

(iii) LIMITATION.—

(I) IN GENERAL.—A consumer may obtain the benefits available under this subsection with respect to rehabilitating a loan only 1 time per loan.

(II) RULE OF CONSTRUCTION.—Nothing in this subparagraph may be construed to require a financial institution to offer a loan rehabilitation program or to remove any reported default from a consumer report as a consideration of a loan rehabilitation program, except as described in clause (i).

(iv) DEFINITIONS.—For purposes of this subparagraph—

(I) the term “appropriate Federal banking agency” has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(II) the term “private education loan” has the meaning given the term in section 140(a) of the Truth in Lending Act (15 U.S.C. 1650(a)).

(F) REPORTING INFORMATION DURING COVID-19 PANDEMIC.—

(i) DEFINITIONS.—In this subsection:

(I) ACCOMMODATION.—The term “accommodation” includes an agreement to defer 1 or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the coronavirus disease 2019 (COVID-19) pandemic during the covered period.

(II) COVERED PERIOD.—The term “covered period” means the period beginning on January 31, 2020 and ending on the later of—

(aa) 120 days after the date of enactment of this subparagraph; or

(bb) 120 days after the date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

(ii) REPORTING.—Except as provided in clause (iii), if a furnisher makes an accommodation with respect to 1 or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make 1 or more payments pursuant to the accommodation, the furnisher shall—

(I) report the credit obligation or account as current; or

(II) if the credit obligation or account was delinquent before the accommodation—

(aa) maintain the delinquent status during the period in which the accommodation is in effect; and

(bb) if the consumer brings the credit obligation or account current during the period described in item (aa), report the credit obligation or account as current.

(iii) EXCEPTION.—Clause (ii) shall not apply with respect to a credit obligation or account of a consumer that has been charged-off.

(2) DUTY TO CORRECT AND UPDATE INFORMATION.—A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting

agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) DUTY TO PROVIDE NOTICE OF DISPUTE.—If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) DUTY TO PROVIDE NOTICE OF CLOSED ACCOUNTS.—A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) DUTY TO PROVIDE NOTICE OF DELINQUENCY OF ACCOUNTS.—(A) IN GENERAL.—A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as

provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

(6) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED INFORMATION.—

(A) REASONABLE PROCEDURES.—A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) NEGATIVE INFORMATION.—

(A) NOTICE TO CONSUMER REQUIRED.—

(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) TIME OF NOTICE.—

(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(D) MODEL DISCLOSURE.—

(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.

(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

(G) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) NEGATIVE INFORMATION.—The term “negative information” means information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms “customer” and “financial institution” have the same meanings as in section 509 Public Law 106–102.

(8) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

(A) IN GENERAL.—The Bureau shall, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration, prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

(B) CONSIDERATIONS.—In prescribing regulations under subparagraph (A), the agencies shall weigh—

(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

(iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and

(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3), including entities that would be a credit repair organization, but for section 403(3)(B)(i), are able to circumvent the prohibition in subparagraph (G).

(C) APPLICABILITY.—Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

(D) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

(i) identifies the specific information that is being disputed;

(ii) explains the basis for the dispute; and

(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(E) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall—

(i) conduct an investigation with respect to the disputed information;

(ii) review all relevant information provided by the consumer with the notice;

(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

(F) FRIVOLOUS OR IRRELEVANT DISPUTE.—

(i) IN GENERAL.—This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

(ii) NOTICE OF DETERMINATION.—Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

(iii) CONTENTS OF NOTICE.—A notice under clause (ii) shall include—

(I) the reasons for the determination under clause (i); and

(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(G) EXCLUSION OF CREDIT REPAIR ORGANIZATIONS.—This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i).

(9) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.

(b) DUTIES OF FURNISHERS OF INFORMATION UPON NOTICE OF DISPUTE.—

(1) IN GENERAL.—After receiving notice pursuant to section 611(a)(2) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2);

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished

the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

- (i) modify that item of information;
- (ii) delete that item of information; or
- (iii) permanently block the reporting of that item of information.

(2) DEADLINE.—A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; or

(3) subsection (e) of section 615.

(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.

(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

(f) *ADDITIONAL NOTICE REQUIREMENTS FOR MEDICAL DEBT.*—Before furnishing information regarding a medical debt of a consumer to a consumer reporting agency, the person furnishing the information shall send a statement to the consumer that includes the following:

(1) *A notification that the medical debt—*

(A) *may not be included on a consumer report made by a consumer reporting agency until the later of the date that is 365 days after—*

(i) *the date on which the person sends the statement;*

(ii) *with respect to the medical debt of a borrower demonstrating hardship, a date determined by the Director of the Bureau; or*

(iii) *the date described under section 605(a)(10); and*

(B) *may not ever be included on a consumer report made by a consumer reporting agency, if the medical debt arises from a medically necessary procedure.*

(2) *A notification that, if the debt is settled or paid by the consumer or an insurance company before the end of the period described under paragraph (1)(A), the debt may not be reported to a consumer reporting agency.*

(3) *A notification that the consumer may—*

(A) *communicate with an insurance company to determine coverage for the debt; or*

(B) *apply for financial assistance.*

(g) *FURNISHING OF MEDICAL DEBT INFORMATION.*—

(1) *PROHIBITION ON REPORTING DEBT RELATED TO MEDICALLY NECESSARY PROCEDURES.*—No person shall furnish any information to a consumer reporting agency regarding a debt arising from a medically necessary procedure.

(2) *TREATMENT OF OTHER MEDICAL DEBT INFORMATION.*—With respect to a medical debt not described under paragraph (1), no person shall furnish any information to a consumer reporting agency regarding such debt before the end of the 365-day period beginning on the later of—

(A) *the date on which the person sends the statement described under subsection (f) to the consumer;*

(B) *with respect to the medical debt of a borrower demonstrating hardship, a date determined by the Director of the Bureau; or*

(C) *the date described in section 605(a)(10).*

(3) *TREATMENT OF SETTLED OR PAID MEDICAL DEBT.*—With respect to a medical debt not described under paragraph (1), no

person shall furnish any information to a consumer reporting agency regarding such debt if the debt is settled or paid by the consumer or an insurance company before the end of the 365-day period described under paragraph (2).

(4) BORROWER DEMONSTRATING HARDSHIP DEFINED.—In this subsection, and with respect to a medical debt, the term “borrower demonstrating hardship” means a borrower or a class of borrowers who, as determined by the Director of the Bureau, is facing or has experienced extenuating life circumstances or events that result in severe financial or personal barriers such that the borrower or class of borrowers does not have the capacity to repay the medical debt.

* * * * *

CONSUMER FINANCIAL PROTECTION ACT OF 2010

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Act of 2010”.

* * * * *

Subtitle A—Bureau of Consumer Financial Protection

* * * * *

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, a report, beginning with the session following the designated transfer date. The Bureau may also submit such report to the Committee on Commerce, Science, and Transportation of the Senate.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; **[and]**

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion**[.]**;

(10) an analysis of the consumer complaints received by the Bureau with respect to debt collection, including a State-by-State breakdown of such complaints; and

(11) a list of enforcement actions taken against debt collectors during the preceding year.

* * * * *

Subtitle B—General Powers of the Bureau

* * * * *

SEC. 1022. RULEMAKING AUTHORITY.

(a) **IN GENERAL.**—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

(1) **GENERAL AUTHORITY.**—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) **STANDARDS FOR RULEMAKING.**—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

- (i) the total assets of the class of covered persons;
- (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
- (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in

such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) CONFIDENTIALITY RULES.—

(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a pru-

dential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a “financial institution”, as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or

order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) **REPORTS.**—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) **PUBLIC COMMENT REQUIRED.**—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

(e) **LIMITATION ON DEBT COLLECTION RULES.**—*The Director may not issue any rule with respect to debt collection that allows a debt collector to send unlimited email and text messages to a consumer.*

* * * * *

TITLE 31, UNITED STATES CODE

* * * * *

SUBTITLE I—GENERAL

* * * * *

CHAPTER 3—DEPARTMENT OF THE TREASURY

SUBCHAPTER I—ORGANIZATION

Sec.

301. Department of the Treasury.

* * * * *

SUBCHAPTER II—ADMINISTRATIVE

* * * * *

334. *Prohibition on the referral of emergency individual assistance debt.*

* * * * *

SUBCHAPTER II—ADMINISTRATIVE

* * * * *

§ 334. *Prohibition on the referral of emergency individual assistance debt*

With respect to any assistance provided by the Federal Emergency Management Agency to an individual or household pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 et seq.), if the Secretary of the Treasury seeks to recoup any amount of such assistance because of an overpayment, the Secretary may not contract with any debt collector as defined in section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) or other private party to collect such amounts, 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.

* * * * *

MINORITY VIEWS

Consumers should not be subject to harmful debt collection practices. *The Fair Debt Collection Practices Act* (FDCPA) ensures that consumers are protected from illegal practices while at the same time ensures businesses are paid for services rendered.

H.R. 2547 is a progressive retread of several bills from the 116th Congress. If enacted, this bill will fundamentally restructure the consumer credit market as well as how businesses, most of whom are small businesses, are paid for their services. As a result, credit will be more expensive for all borrowers and may exclude the lowest income borrowers entirely.

The bill prohibits the use of confession of judgment provisions in all loan contracts, including all extensions of credit, regardless of the nature of the loan or borrower. Confessions of judgment are a tool for businesses to collect from delinquent borrowers.

- Recouping a loss is necessary for a credit-based economy to function properly.

- H.R. 2547 is another attempt by House Democrats to expand the CFPB's authority to include commercial businesses.

The bill discharges private student loan debt if the borrower dies or becomes permanently disabled.

- Private student lenders and borrowers already have an effective process in place to discharge debt in the event of borrower death or permanent disability.

- H.R. 2547 intervenes in private contracts negotiated by lender and borrower.

The bill prohibits medical debt from being included on a consumer credit report and prevents businesses from collecting on medical debt for two years.

- Removing predictive information from a credit report has the potential to increase the cost of credit, particularly for borrowers with limited credit histories.

- Additionally, preventing businesses from recouping payment for services provided makes healthcare more expensive, weakens our credit markets, and raises safety and soundness concerns for financial institutions and the financial system more broadly.

The bill prevents businesses from contacting consumers by email or text message to collect payment without explicit prior consent from the consumer and prevents the Consumer Financial Protection Bureau (CFPB) from issuing any final rule that allows debt collectors to send unlimited emails and text messages to consumers.

- H.R. 2547 undermines the CFPB's October 2020 Final Rule intended to modernize debt collection practices. The final rule was

the result of more than seven years of research and analysis conducted by the CFPB. It sets forth clear rules of the road for both consumers and debt collection agencies and outlines acceptable communications.

- H.R. 2547 ignores the fact that consumers have the ability to opt-out of updated means of communications used by consumers and debt collectors, including emails and text messages.

The bill subjects debt owed to a federal agency or a state and local government to the requirements of the FDCPA and sets further restrictions beyond FDCPA requirements. The bill prohibits a collector of debt owed to a federal agency from collecting interest, fees, charges, or expenses. The bill also prohibits the Secretary of the Treasury from referring disaster aid debt to a third-party debt collector.

- H.R. 2547 undermines the CFPB's October 2020 Final Rule intended to modernize debt collection practices. In promulgating its final rule, the CFPB acknowledged the unique nature of certain types of debt and declined to extend the definition of debt and debt collectors to include creditors, debt buyers, or governments.

- The bill interferes with the federal government's ability to obtain payment owed to it, such as federal student loan payments, including fees and interest.

- This is outside this Committee's jurisdiction and better addressed by the Committee on Education and Labor.

- Moreover, ensuring state and local governments can efficiently collect payments owed is essential to these economies.

- The bill makes the U.S. Treasury Department responsible for collecting overpayments made by the Federal Emergency Management Agency (FEMA).

- The bill prohibits the government from contracting with a third-party business to collect the debt.

- The Department of Treasury has more important responsibilities than collecting overpayments made by FEMA.

The bill expands the definition of a debt collector to include a person in a business that enforces security interests.

- H.R. 2547 rejects the U.S. Supreme Court's 2019 decision in *Obduskey v. McCarthy and Holthus LLP* which recognized states' authority to regulate non-judicial foreclosures.

- H.R. 2547 is another attempt by the Democrats to prevent individuals and small businesses from recouping payments owed to them or to another.

Ranking Member Patrick McHenry (NC-10) offered an amendment to replace the underlying bill with several targeted approaches to improve and strengthen the debt collection and credit reporting framework. This is a commonsense attempt to ensure our financial system remains safe and sound while protecting and introducing options for consumers. The amendment was blocked by Committee Democrats by party line vote of 23-30.

Democrats continue to be emboldened by their "one party rule," refusing to work with Republicans to identify bipartisan solutions that will help consumers who need it the most. Republicans will continue to advocate for policies that ensure Americans have access

to affordable credit while ensuring the financial system remains safe and sound. For these reasons, Committee Republicans oppose H.R. 2547.

PATRICK T. MCHENRY.
BILL POSEY.
BILL HUIZENGA.
ANN WAGNER.
SCOTT R. TIPTON.
J. FRENCH HILL.
LEE M. ZELDIN.
ALEXANDER X. MOONEY.
TED BUDD.
TREY HOLLINGSWORTH.
JOHN W. ROSE.
LANCE GOODEN (TX).
WILLIAM R. TIMMONS IV.
FRANK D. LUCAS.
BLAINE LUETKEMEYER.
STEVE STIVERS.
ANDY BARR.
ROGER WILLIAMS (TX).
TOM EMMER.
BARRY LOUDERMILK.
WARREN DAVIDSON.
DAVID KUSOFF.
ANTHONY GONZALEZ (OH).
BRYAN STEIL.
DENVER RIGGLEMAN.
VAN TAYLOR.

