

DEBT COLLECTION PRACTICES HARMONIZATION ACT

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

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3948]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3948) to amend the Fair Debt Collection Practices Act to extend the provisions of that Act to cover a debt collector who is collecting debt owed to a State or local government, to index award amounts under such Act for inflation, to provide for civil injunctive relief for violations of such Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. PREVENTING DECEPTIVE AND HARASSING PRACTICES WHEN COLLECTING DEBT OWED TO A STATE OR LOCAL GOVERNMENT.

Section 803(5) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(5)) is amended—

- (1) by striking “money arising out” and inserting the following: “money—
“(A) arising out”;
- (2) by striking “judgment.” and inserting “judgment; or”; and
- (3) by adding at the end the following:
“(B) owed to a State.”.

SEC. 3. 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 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) 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 Act.

(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. 4. 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 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.”.

PURPOSE AND SUMMARY

On July 24, 2019, Congressman Gregory Meeks (D-NY), Chairman of the Subcommittee on Consumer Protection and Financial Institutions, introduced H.R. 3948, the “Debt Collection Practices Harmonization Act,” which amends the Fair Debt Collection Practices Act (FDCPA) to clarify that private debt collectors who pursue debts such as municipal utility bills, tolls, traffic tickets, and court debts are subject to the FDCPA.

BACKGROUND AND NEED FOR LEGISLATION

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, which also includes the original debt owed.

This legislation would ensure robust consumer protections still apply, even if the debt is owed to a state or local government agency. Additionally, the ANS would prohibit the Treasury Department from hiring a third-party debt collector to recoup any Federal Emergency Management Agency (FEMA) assistance awarded to victims of devastating natural disasters like Hurricanes Irma and Maria because of an overpayment, unless the overpayment occurred because of fraud or deceit and the recipient of such assistance knew or should have known about such fraud or deceit.

The National Consumer Law Center, Center for Responsible Lending, NAACP, and the National Urban League have endorsed this bill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that H.R. 3948 may be cited as the “Debt Collection Practices Harmonization Act”.

Section 2. Award of damages

Section 2 amends Section 803(5) of the Fair Debt Collection Practices Act to expand the definition of “debt” to include any obligation or alleged obligation of a consumer to pay money “owed to a state”.

Section 3. Exclusion for employees affected by a shutdown

Section 3 amends Section 813 of the Fair Debt Collection Practices Act by addressing inflation. It provides 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.

Section 4. Prohibition on the Referral of Emergency Individual Assistance Debt

Section 4 adds a new section 334 at the end of subchapter II of Chapter 3 of title 31, United States Code, entitled, “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.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, on September 26, 2019, the Committee on Financial Services held a hearing entitled, “Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices” to discuss three bills, of which H.R. 3948 was one, and seven discussion drafts. This single-panel hearing included the following witnesses: the Honorable Rohit Chopra, Commissioner, Fed-

eral 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.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 13, 2019, and ordered H.R. 3948 to be reported favorably to the House as amended in the nature of a substitute by a recorded vote of 31 yeas and 23 neas, 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. 3948:

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. 3948 are to expand the definition of debt covered under the FDCPA, adjust monetary penalties for inflation, and clarify that courts can award injunctive relief, as well as add protections to consumers affected by national disasters.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested an estimate for H.R. 3948 from the Director of the Congressional Budget Office. CBO was unable to provide an estimate in a timely manner.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3948. After careful review, including discussions with CBO, the Committee estimates that this legislation may have a significant effect on spending, and the Committee therefore adopts as its own the forthcoming estimate prepared by the Director of the Congressional Budget Office.

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 estimate of federal mandates regarding H.R. 3948, 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. 3948, 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. 3948 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. 3948 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. 3948, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

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

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§ 803. Definitions

As used in this title—

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

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

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

(4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term “debt” means any obligation or alleged obligation of a consumer to pay [money arising out] *money*—

(A) *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.】** *judgment*; or

(B) *owed to a State*.

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

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

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

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

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

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

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

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

(8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Com-

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

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§ 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

(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

(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 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 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 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).

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TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 3—DEPARTMENT OF THE TREASURY

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SUBCHAPTER II—ADMINISTRATIVE

Sec.

321. General authority of the Secretary.

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

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SUBCHAPTER II—ADMINISTRATIVE

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§ 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 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.

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MINORITY VIEWS

Committee Republicans believe consumers should not be subjected to harassment and predatory practices. To that end, Committee Republicans supported extending the *Fair Debt Collection Practices Act* (FDCPA) to debt collected by the federal government in a separate bill considered by the Financial Services Committee, H.R. 4403, the *Stop Debt Collection Abuse Act*, introduced by Rep. Cleaver and Rep. Hill.

Unlike H.R. 4403, which was ordered reported by the Committee by a unanimous vote, H.R. 3948 creates a different paradigm for debt collected by state and local governments.

Instead of simply including debt owed to state and local governments within the scope of the FDCPA like H.R. 4403, this bill also increases the size of monetary awards, adds duplicative injunctive relief, and prohibits the Secretary of the Treasury from referring emergency individual assistance debt to a debt collector. While these additions may be meaningful, there was no Committee discussion on the importance of their inclusion nor the reasoning for two different standards.

Rep. Riggleman (R-VA) offered an amendment to H.R. 4403 during markup that would have provided all consumers with the same protections under the FDCPA regardless of whether their debt is owed to a private entity, the federal government, or a state or local government. Rep. Riggleman ultimately withdrew his amendment to H.R. 4403 with the understanding that he would work with the bill's sponsor to ensure there is a single approach.

Committee Republicans believe such uniform treatment would provide clear rules of the road to debt collectors and urge the inclusion of Rep. Riggleman's amendment to H.R. 4403 prior to floor consideration. However, Committee Republicans remain opposed to H.R. 3948.

ALEXANDER X. MOONEY.
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TED BUDD.
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