July 2021

Fact Sheet for H.R. 2668
The Consumer Protection and Recovery Act

COMMITTEE ON ENERGY & COMMERCE

The Consumer Protection and Recovery Act restores the Federal Trade Commission's (FTC) urgently needed authority to return money and other relief to victimized consumers under section 13(b) of the Federal Trade Commission Act.

- On April 22, the Supreme Court held that the FTC may no longer force companies that engage in wrongdoing to pay back consumers or give up ill-gotten profits.
    - The Court's decision is hampering ongoing efforts to combat fraud, including COVID-19 scams, and rein in big tech.
- Section 13(b) has long been the primary and most effective tool the FTC uses to return money unlawfully taken from consumers and honest businesses.
    - Using section 13(b), the FTC returned billions of dollars to millions of Americans, including over $11.2 billion in refunds paid since 2016.
- "With this ruling, the Court has deprived the FTC of the strongest tool we had to help consumers when they need it most," said then-Acting FTC Chairwoman Rebecca Slaughter.

The Act restores the FTC's authority under section 13(b) to seek equitable monetary relief in line with bipartisan FTC leadership requests, Congressional intent, and over 40 years of practice.

- The Consumer Protection and Recovery Act restores 13(b) as the FTC's primary consumer protection tool through amendments and clarifications of existing law.
    - The legislation explicitly provides the FTC the ability to obtain both injunctive and monetary relief for all violations of the laws it enforces.
    - Nothing in the Act would limit or expand the rights of any business or individual; nothing currently legal would be made illegal.
- In October 2020, all five FTC Commissioners called for quick congressional action to restore section 13(b) and preserve the ability to recover ill-gotten gains for victims.
- Congressional intent on 13(b)'s critical role is clear. Amendments to the FTC Act in 1994 and 2006 strengthened 13(b)'s consumer redress authority and in each case explicitly stated the law was meant to allow consumer redress and restitution for victims.
- The FTC's use of section 13(b) to protect consumers over the past 40 plus years has not harmed the growth and prosperity of honest businesses.
    - Instead, it gives the FTC a powerful tool to return money to consumers who have been defrauded by dishonest businesses and other scammers.

Relying on remaining FTC authorities is not a viable substitute to section 13(b) reform and would allow law breakers to keep ill-gotten gains.

- Without 13(b), the FTC can only recover money when there is a violation of one of its few rules or following lengthy administrative and court proceedings.

- Without 13(b), the FTC also has no clear authority to seek court ordered asset freezes, meaning money is long gone by the time the FTC gets a court decision in favor of victims.

- Section 19 of the FTC Act is unworkable and is not a replacement for section 13:
    - Its three-year statute of limitations would not allow the FTC to learn of wrongdoing in many cases.
    - It imposes unnecessary additional burdens of proof enacted for the penalty provisions 13(b) lacks.
    - It requires additional layers of process that on average take over a decade to complete before anything reaches consumers.
    - Section 19 explicitly states that its remedies were intended to come in addition to and not to replace or limit section 13.