



Comment of the Commercial Law League of America
Submitted to the United States House of Representatives in
Opposition to H.R. 6814

March 14, 2022

Introduction

The Commercial Law League of America (“CLLA”), founded in 1895, is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the fields of commercial law, bankruptcy, and reorganization. The CLLA has long been associated with the representation of creditor interests, while seeking fair, equitable and efficient treatment of all parties in interest. CLLA members can be found in every state across America and in many foreign countries. The CLLA regularly submits policy papers to Congress and CLLA members have testified on numerous occasions before Congress as experts in fields related to creditor interests.

On February 22, 2022, Rep. Al Lawson [D-Fla] introduced Bill H.R. 6814 to extend the consumer protections provided under the Fair Debt Collection Practices Act, 15 USC 1962 *et. seq.* (“FDCPA”) to any business that incurs a debt less than \$5,000,000.00, regardless of the size of the company. Under this proposed bill, the term “debt” would be expanded to include “any obligation or alleged obligation to pay money arising out of a transaction” and would define “small business debt” as “*any non-equity obligation or alleged obligation of a partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity that is less than \$5,000,000.*”

The CLLA opposes this bill because:

1. The bill does not protect small businesses since it extends consumer protections based on the size of the debt, regardless of the size of the company;
2. The bill will harm small businesses since it impacts small businesses’ ability to collect its own debts;
3. The bill will impact small businesses’ ability to obtain credit, including trade credit, which is essential to survival; and,
4. The bill improperly expands the FDCPA to commercial transactions.

I. H.R. 6814 DOES NOT PROTECT SMALL BUSINESSES AND UNNECESSARILY EXTENDS CONSUMER PROTECTIONS TO LARGE CORPORATIONS.

According to the U.S. Census Bureau January 19, 2021 article by Andrew Hait, small business is defined as those companies having annual revenues ranging from \$1 million to \$40 million. The Small Business Administration (“SBA”) also includes employment in this definition



and generally defines small businesses as companies with 100 to over 1,500 employees.¹ The Affordable Care Act defines a small business as those with 50 or fewer full-time equivalent employees. Although the I.R.S. does not specifically define a small business, it provides resources only for small businesses with assets under \$10 million. In comparison, H.R. 6814 does not define small business. Rather, if passed, it would extend consumer protection laws to *all* businesses, regardless of size, as long as the particular *obligation is less than \$5,000,000.00*. Since the vast majority of small business transactions are under the \$5,000,000 limit proposed in the legislation, ALL small businesses would be covered by this bill which will only further unlevel the playing ground in favor of major corporations.

For example, if a small business (as defined under the SBA) such as mom-and-pop store, sells \$500,000.00 of product to Amazon, which has \$470 billion in annual revenue, then it would be subject to the FDCPA under this Bill and would be required to treat Amazon as a small business. Likewise, if Amazon were to sell product worth \$4,999,999 to Zappos, which has annual revenue greater than \$2 billion and fails to pay its bill, then Zappos would be deemed a small business under this Bill and Amazon would have to comply with the FDCPA. Clearly, extending consumer protections to large corporations does not protect the small businesses that is intended to protect.

Moreover, extending FDCPA protections to all businesses will give large businesses another weapon in their efforts to monopolize market share. Given the power of these corporations and their available funds, H.R. 6814 will allow them to utilize the FDCPA as a sword, rather than a shield, and sue small businesses for alleged violations - leading to increased litigation *against* small businesses and a boon to large corporations and their attorneys. These types of lawsuits will likely lead to more small business failures as it is unlikely that small businesses could afford to defend themselves against corporations who have amassed large fortunes.

II. H.R. 6814 WILL ACTUALLY HARM THE SMALL BUSINESSES THAT IT WAS INTENDED TO HELP AND IMPAIRS PRINCIPLES OF COMMERCE.

Under H.R. 6814, a company with a “small business debt” would be protected like a consumer under the FDCPA. However, this bill disregards the fact that many small businesses are the creditors who are trying to collect the debts owed to them.

Small businesses with fewer than 500 employees make up 99.7% of all business in the U.S..² The Chamber of Commerce estimates that almost 50% of the entire US work force is made up of these small businesses. Given that small businesses account for 99.7% of U.S. firms, expanding this consumer protection law to almost all businesses will have a substantial effect on the U.S. economy. And, forcing small businesses to take on the added regulatory burdens and

¹*What Is the SBA's Definition of Small Business (And Why)?* (Fundera, G. McIntyre, 9/24/20). Retrieved from <https://www.fundera.com/blog/sba-definition-of-small-business>

² *Small Business Statistics: 19 Essential Numbers to Know* (2022) (Fundera, G. Schmid, 12/21/22) . Retrieved from <https://www.fundera.com/blog/small-business-statistics>



expenses of complying with the FDCPA will make it more difficult to collect their debts and sustain their operations.

The following is an example of the harm that could come to the 99.7% of U.S. businesses should this bill becomes law:

A Long Island commercial fisherman wakes up at 3:00 a.m. to go fishing and uses a small, local courier to deliver fresh fish to local grocery stores and restaurants, including to some that are part of a nationwide chain. He includes an invoice with the delivery of fish, setting forth a thirty-day payment date, and relies on this payment in order to timely pay his courier. The grocery store and restaurant sell the fish, and usually pay the fisherman within the due date, but not this time. When sixty to ninety days pass without being paid, the fisherman, who is unable to pay his courier, hires a collection agency to collect against the grocery store or restaurant who did not pay. In response, the grocery store or restaurant files a suit against the agency for alleged FDCPA violations, further delaying recovery of the debt owed to the small commercial fisherman. This delay would severely hurt the fisherman since he remains unpaid and is not able to pay his courier, and both may end up going out of business as a result. Alternatively, the fisherman might shift to a COD form of business, which could result in the loss of his small business customers who do not have the cash flow to pay COD for the fish, and it could also potentially cause some stores and restaurants to raise their prices for selling the fish. Since many small businesses are unable to absorb these costs, the impact to the supply chain could cause economic distress and failure to these other small companies, to the benefit of large companies. This is just one example of how curtailing the collection rights of one small business HURTS other small entrepreneurs, and creates an endless domino effect resulting in a significant collapse of the country's businesses and commerce.

III. THE BILL WILL IMPACT SMALL BUSINESSES' ABILITY TO OBTAIN CREDIT.

The US has a credit based economy. Industry and commerce thrive because banks and financial institutions extend credit to enable business growth. When one business loses its normal ability to obtain loans, the resulting loss of production, revenue and lag in receipt and payment of receivables, sets off a chain of events that affects the production, payment of receivables, and receipt of revenue for other businesses. In such instances, businesses may attempt to manage and collect receivables on their own or hire attorneys or collection agencies to resolve issues associated with outstanding receivables. Such efforts are critical to the foundation and continuation of credit-based transactions and business relationships. Should H.R. 6814 pass, it will disrupt the normal operations of businesses by severely impacting the extension of trade credit to small businesses and their ability to obtain business loans, which are essential to their survival.³

³ *10 Stats That Explain Why Business Credit is Important for Small Business*, (Marco Carbajo, March 09, 2017); Retrieved from <https://www.sba.gov/blog/10-stats-explain-why-business-credit-important-small-business> ("Having access to business credit is the lifeline for a business")



According to the Small Business Administration, Office of Advocacy, small business loans are crucial to the success of these businesses and policies should be adopted to increase small business loans, not deter them.⁴ Despite the necessity for business loans, most small businesses are self-funded (80%) and only a small majority receive bank loans (16%). The average Small Business Administration loan is \$417,316.00. According to the CARES Act statistics, 11,475,003 businesses received loans averaging \$69,087.00, with an average company size of eight employees. Moreover, around 27% of businesses have stated in the past that they were not able to receive the funding they needed and 46% stated they rely on personal credit cards.⁵ This lack of access to business credit prevents small businesses from growing (especially for women- and minority-owned businesses), and can lead to lost sales or employee lay-offs.⁶

Given the difficulty of obtaining business loans, many businesses rely on their vendors to extend lines of credit or credit limits for their very survival as those creditors are usually more willing to negotiate timing and terms for their customers.⁷ Trade credit is especially popular for international businesses.⁸ As a result, the use of trade credit has increased significantly as of December 2021 and is at the highest level in almost eighteen years, with the extension of credit increasing to 72.3 from an all-time low of 41.6 two years ago.⁹ However, if H.R. 6814 passes, it will affect accounts receivable as trade credit may be reduced. Without these types of revolving debt, small businesses would simply be unable to operate given that 82% of failed businesses cite cash flow problems as a factor in their failure, which includes not only the cash on hand, but the timing of cash infusion into the business.¹⁰ Thus, if a business operates on an invoicing system, but its collection efforts are stymied, it will likely end up with a cash flow problem.¹¹ Any legislation that disrupts business operations should not be considered by Congress since small businesses are the backbone of this country.

Additionally, this bill also will have a negative effect on the Small Business Administration's loan program. If a small business is stymied from collecting debts owed to it, a lender will not make a loan to that small business. As to debtors, this bill disregards the fact that most small businesses want to pay their debts and most creditors do provide an opportunity to work out a reasonable repayment schedule. If those small businesses can work out a debt repayment, then that small business can continue to purchase product to fill its shelves.

⁴ *Effects of Small Loans on Bank and Small Business Growth* (Emrehan Aktug, Dr. Devrim Ikizler, Assoc. Prof. Timur Hulagu Intelligent Analytics and Modeling Austin, TX 78702); Office of Advocacy U.S. Small Business Administration under contract number 73351019P0056 Release Date: March 2020

⁵ *Small Business Statistics: 19 Essential Numbers to Know* (2022) (Fundera, G. Schmid, 12/21/22) <https://www.fundera.com/blog/small-business-statistics>

⁶ *Id.*

⁷ Washington Post, U.S. Firms Extend Credit at 'Ballistic' Pace in Bet on a Recovery (Molly Smith, Jan. 7, 2022). Retrieved from https://www.washingtonpost.com/business/on-small-business/us-firms-extend-credit-at-ballistic-pace-in-bet-on-a-recovery/2022/01/06/3d4df5d0-6f0b-11ec-b1e2-0539da8f4451_story.html

⁸ *Id.*

⁹ *Id.*

¹⁰ *Small Business Statistics: 19 Essential Numbers to Know* (2022) (Fundera, G. Schmid, 12/21/22) . Retrieved from <https://www.fundera.com/blog/small-business-statistics>

¹¹ See *Id.*



IV. THE BILL IMPROPERLY EXPANDS CONSUMER PROTECTIONS TO BUSINESS TRANSACTIONS THAT ARE NEGOTIATED AT ARM'S LENGTH BETWEEN MERCHANTS.

On September 20, 1977, H.R. 5294 was introduced to Congress to amend the Consumer Credit Protection Act and address consumers' complaints about abusive debt collection tactics. "Findings and Purpose Section 802(a) reads:"...[a]busive debt collection practices contribute to the number of personal bankruptcies and marital instability, including the loss of jobs, and invasion of individual privacy." The term debt was defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which...the subject of the transaction are primarily for personal, family, or household purposes." The bill was signed into law by President Carter. The FDCPA followed shortly thereafter and became law in 1978. It was designed to protect consumers from abusive, deceptive, and unfair debt collection practices. Although the FDCPA has undergone many changes in the last forty-four years, the core purpose remains: To protect *unsophisticated consumers* from abusive debt collectors

Despite the historical context and purpose of the FDCPA, H.R. 6814 attempts to extend these consumer protections to commercial transactions to allegedly safeguard small businesses, promote entrepreneurship, and to protect small business loan borrowers and owners from predatory practices.¹² While the CLLA agrees that small businesses are the backbone of our country, the FDCPA was not designed or intended to govern the collection of business debt as businesses are held to a higher standard than unsophisticated consumers and business transactions are generally negotiated at arm's length between merchants. Moreover, imposing additional regulations on 99.7% of U.S. businesses do not safeguard small businesses, and may actually reduce entrepreneurship as small businesses have reported that regulatory burdens are one of the top challenges to running a small business.¹³

Small business owners are generally entrepreneurs who accept a certain amount of risk when opening their businesses. These entrepreneurs enter the world of commerce in order to reap the reward of personal financial independence. Moreover, small business debt differs from consumer debt in that business debt is not incurred for necessities, such as medical care and education. Small businesses also have built in protections such as corporate entities and LLCs which, in most cases, insulate the owners from personal liability for corporate debt. In fact, only about 10% of small businesses operate as sole proprietorships. Thus, most small business owners do not need the "protection" allegedly being proposed by H.R. 6814.

¹² Al Lawson Press Release, February 22, 2022. Retrieved from <https://lawson.house.gov/media/press-releases/-us-rep-al-lawson-re-introduces-bill-to-protect-small-businesses-from-harassment-by-debt-collectors>.

¹³ *Small Business Statistics: 19 Essential Numbers to Know* (2022) (Fundera, G. Schmid, 12/21/22) . Retrieved from <https://www.fundera.com/blog/small-business-statistics>



Conclusion

For the above reasons, H.R. 6814 should be withdrawn. At the very least, Congress should delve into these issues with caution and through careful analysis, and not act prematurely by including major policy changes to FDCPA by extending it to commercial transactions.

For further information please contact:

Mr. David Goch
Webster, Chamberlain & Bean, LLP
1747 Pennsylvania Avenue, N.W., Suite 1000
Washington, DC 20006
Tel: (202) 785-9500
Fax: (202) 835-0243 dgoch@wc-b.com