



MEMORANDUM

May 25, 2021

To: Subcommittee on Consumer Protection and Commerce Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Markup of H.R. 2688, the “Consumer Protection and Recovery Act”

On **Thursday, May 27, 2021, at 11 a.m. (EDT) via Cisco WebEx online video conferencing**, the Subcommittee on Consumer Protection and Commerce will hold a virtual markup of **H.R. 2688**, the “Consumer Protection and Recovery Act.”

I. BACKGROUND

Section 13(b) of the Federal Trade Commission Act (FTC Act) authorized the Federal Trade Commission (FTC) to bring suit in federal courts seeking relief for consumers.¹ Over the past five years, the FTC refunded \$11.2 billion to consumers who had been targeted by illegal scams and practices.² On April 22, 2021, the Supreme Court held that section 13(b) is limited to stopping or mandating certain conduct and does not allow the FTC to seek monetary relief or require bad actors to return money earned through illegal activity.³

II. SUMMARY OF H.R. 2668, THE “CONSUMER PROTECTION AND RECOVERY ACT”

Rep. Cárdenas (D-CA), along with Chairman Pallone (D-NJ), Subcommittee Chair Schakowsky (D-IL), and Reps. Rush (D-IL), Castor (D-FL), Trahan (D-MA), McNerney (D-CA), Clarke (D-NY), Dingell (D-MI), Kelly (D-IL), Soto (D-FL), Rice (D-NY), Craig (D-MN), and Fletcher (D-TX), introduced H.R. 2668, the “Consumer Protection and Recovery Act,” on April 20, 2021.

H.R. 2668 amends section 13(b) of the FTC Act to provide the FTC with express authority to obtain both injunctive and monetary equitable relief for all violations of those laws it

¹ 15 U.S.C. § 53(b).

² House Committee on Energy and Commerce, Testimony of the Federal Trade Commission, *Hearing on The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers*, 117th Cong. (Apr. 27, 2021).

³ *AMG Capital Management, LLC et al. v. FTC*, 593 U.S. ____ (2021).

enforces. It adds a new subsection (e) to section 13 of the FTC Act that specifies types of equitable relief the FTC may pursue: restitution for losses, contract reformation and rescission, money refunds, and the return of property. The new subsection (e) also provides the FTC disgorgement authority to seek court orders requiring bad actors repay unjust gains acquired in violation of the law. Any amount a court orders to be returned in equitable relief must be offset by any amount the court orders be paid in disgorgement. Any equitable relief under this provision is allowed for violations occurring up to ten years prior to the date a suit is filed, including those violations that occur after the suit is filed. This ten-year period is extended when relief is sought for individuals who are outside of the United States during this period.

H.R. 2668 also provides that the FTC may seek temporary restraining orders and preliminary injunctions without bond and that any relief sought under section 13(b) may be for past violations in addition to ongoing and imminent violations. The bill applies to any currently pending FTC action or proceeding in addition to those commenced on or after, the date of enactment.