

Factsheet: The Senate must pass the Consumer Protection Recovery Act and Strengthen the Federal Trade Commission

The Federal Trade Commission (FTC)¹ is responsible for protecting consumers from deceptive and unfair business practices. Historically, the FTC has relied on Section 13(b) of the Federal Trade Commission Act to make consumers whole by seeking monetary relief for consumers in district courts.² For over 40 years, the FTC has used this authority to return billions of dollars to defrauded consumers and businesses.³ In the 2021 case *AMG Capital*,⁴ the U.S. Supreme Court unanimously limited the authority of the FTC. In their decision, the Court held that Section 13(b) of the Federal Trade Commission Act does not give the FTC authority to seek monetary relief directly from federal courts as an alternative to administrative proceedings.⁵

This decision limited the FTC's authority by changing when the FTC can use federal courts to seek recovery for consumers. Through injunctions and disgorgement, the FTC has been able to ensure that scammed people are refunded in a timely manner in clear cases of fraud, all while continuing to hold large bad actors, like Big Pharma companies, liable to consumers.⁶ Without their full 13(b) authority, the Commission cannot provide consumers with timely refunds for legal violations and anticompetitive conduct. Between 2016 and 2020, consumers across all fifty states received \$11.2 billion in refunds⁷ from the FTC. Limiting the FTC's access to monetary relief through courts will increase the time it takes consumers to get the restitution they are owed. In addition to harming consumers, this ruling diminished a key deterrence tool for the FTC: Being able to seek monetary relief through the court kept bad actors from profiting from fraud and deterred repetitive bad behavior.

The FTC has been left with inadequate measures to enforce consumer protection laws. Weakening 13(b) limits the FTC to using Section 19 of the FTC Act to provide customers with refunds or redress. Under Section 19, the FTC must seek administrative adjudication⁸ before resulting to federal court litigation to get consumers refunds. This process is incredibly lengthy, in some cases taking as long as ten years. In addition to the Section 19 process being long, federal courts are not likely to order asset freezes to require defendants to preserve money for consumers until the conclusion of the litigation. Consequently, even when the Commission is successful in the Section 19 process, there is no guarantee

¹ *About the FTC*. (2022, April 25). Federal Trade Commission. <https://www.ftc.gov/about-ftc>

² 87 Stat. 592, 15 U. S. C. §53(b).

³ *Restoring the Federal Trade Commission's Authority to Protect Consumers and the Marketplace*. May 2022. U.S. Senate Committee on Commerce, Science, and Transportation.

<https://www.commerce.senate.gov/services/files/575CE1CE-19D7-4972-BFC6-5FB2A56E6D32>

⁴ *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*

⁵ *Id.*

⁶ *Press Release, Fed. Trade Comm'n, Reckitt Benckiser Group plc to Pay \$50 Million to Consumers, Settling FTC Charges that the Company Illegally Maintained a Monopoly over the Opioid Addiction Treatment Suboxone* (July 11, 2019) <https://www.ftc.gov/news-events/news/press-releases/2019/07/reckitt-benckiser-group-plc-pay-50-million-consumers-settling-ftc-charges-company-illegally>

⁷ *Supra* Note 3.

⁸ *Id.*

that defendants will have enough assets to pay potential monetary judgments once the process is complete. Furthermore, Section 19 has a three-year statute of limitations that limits which victims of fraud may get refunds, and it only authorizes monetary relief in consumer protection cases. This leaves consumers harmed by violations of antitrust laws without protection. The fact that administrative action must play out before going to court prolongs the processing time of claims and allows fraudulent businesses to make gains on their violations of law.

Congress can restore the FTC's 13(b) authority. In the *AMG Capital* opinion, the Court was clear that legislative action was required to fix the gap in the Commission's authority created by the decision. After the Chairman of the FTC issued a statement⁹ urging Congress to restore the FTC's power, the Consumer Protection Recovery Act¹⁰ was introduced. In July 2021, the Act was passed in the House of Representatives and received in the Senate. This bill would provide the FTC with express authority¹¹ to directly go to the federal courts to obtain injunctive and equitable monetary relief for violations of the law it enforces. Additionally, this bill will add specific types of equitable relief the FTC may pursue including restitution for losses, contract reformation and rescission, money refunds, and return of property. The bill will also give the FTC disgorgement authority to seek court orders requiring violators to repay unjust gains acquired in violation of the law.

Consumers need protection from fraud more than ever. Millions of consumers report instances of marketplace fraud and deception annually. Since 2010, these reports have quadrupled and in 2021 consumers reported losing \$5.8 billion¹² to fraud. Technology makes it easier for scams and schemes to have broad impacts on consumers and American families are losing billions of dollars annually to these rip-offs. To protect consumers and ensure fairness, the FTC needs multiple avenues to prevent fraud and hold violators of consumer protection laws accountable for their actions. The passing of the Consumer Protection Recovery Act will restore the FTC's ability to make consumers whole, curb fraud, and protect families impacted by unfair practices.

⁹ *Statement Of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(B) Of The FTC Act.* (2022, May 31). Federal Trade Commission. <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-rebecca-kelly-slaughter-joined-chair-lina-m-khan-regarding-section-13b-ftc>

¹⁰ H.R.2668 - 117th Congress (2021-2022): Consumer Protection and Recovery Act. (2021, July 21).

<http://www.congress.gov/>

¹¹ *Press Release, Pallone & Schakowsky on House Passage of Legislation Restoring FTC's 13(b) Consumer Protection Powers.* (2021, July 26). Democrats, Energy and Commerce Committee.

<https://energycommerce.house.gov/newsroom/press-releases/pallone-schakowsky-on-house-passage-of-legislation-restoring-ftc-s-13b>

¹² *Press Release, New Data Shows FTC Received 2.8 Million Fraud Reports from Consumers in 2021.* (2022, February 22). Federal Trade Commission. <https://www.ftc.gov/news-events/news/press-releases/2022/02/new-data-shows-ftc-received-28-million-fraud-reports-consumers-2021-0>