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Potential Policy Shift

Congress and the CFPB have signaled an interest in expanding the FDCPA to commercial collections.

ere's something that should be on your radar: this year both Congress and the Consumer Financial Protection Bureau have indicated that they would like to see the scope of the Fair Debt Collection Practices Act expanded to cover commercial debt collection.

Congress

The movement first started in Congress, when U.S. Rep. Al Lawson, D-Fla., introduced H.R. 6814, the Small Business Fair Debt Collection Protection Act, in February 2022.

The bill would expand the FDCPA to small businesses, and would apply to debts collected from businesses where the obligation is less than \$5 million. This would supposedly give debt collectors "guardrails" on what they can and cannot do to collect those debts.

"H.R. 6814 is trying to treat every small business as though it is a consumer and, therefore, subject to all the requirements of the FDCPA," said Wanda Borges, Esq., principal member at Borges & Associates, LLC. "But small businesses are not consumers—they're in business because they wanted to be in business. Many of them are corporate entities or limited liability companies, which means they are insulated from personal liability and therefore don't need FDCPA protection."

Ultimately, Borges said, treating small businesses like consumers would end up hurting vendors, who themselves might be small businesses, as well as collection agencies, who also might be small businesses.

The new compliance burdens "may very well drive some of these small companies out of business because the requirements are going to be extremely onerous," Borges said.

She noted that commercial debt collectors have been fighting almost since the enactment of the FDCPA to prevent it from crossing over from consumer credit to commercial credit, but this particular piece of legislation is the most explicit, and therefore, the most dangerous that she has seen.

IACC is joining with ACA International to fight against the passage of this bill, which will cause harm to our debt collector members. IACC submitted comments to the House Financial Services Committee explaining why they opposed the bill. In part, the comment letter said that IACC opposes the bill because it:

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PRESIDENT'S LETTER



Team Work Makes the Dream Work

By Brad Lohner, IACC President

am so pleased to report that our committees are back in full swing, with many of you volunteering your time and talents. Several of our committees have made meaningful steps toward our strategic plan, and I am grateful for your participation.

Like any other association, we get out of IACC what we put into it.

Our next opportunity to collaborate on behalf of our industry is coming up quickly at our mid-year conference in Austin, Texas, June 22-24, 2022. Our lineup of sessions and speakers is coming along very well. It will be another don't-miss event, especially with all the issues concerning compliance and the domestic impact the FDCPA will have on the U.S. and our foreign members.

I was looking at our membership the other day. We have a conspicuous absence of members from Australia and New Zealand. If anyone reading this message has industry partners in that part of the world, please invite them to join our organization.

And finally, a shout out to one of our favorite European colleagues, Erwin Faulkner, for referring a new member! Well done, Erwin. Thank you.

See you all in Austin!

Yours truly, Brad Lohner



Join Our IACC LinkedIn Group

Keep the virtual conversations going with IACC's

private <u>LinkedIn</u> page. Join now to connect with your fellow members! This members-only group empowers you to network, get answers to your questions and find helpful resources from other collection professionals.

- 1. Does not protect the small businesses it purports to protect since it extends consumer protections based on the size of the debt, regardless of the size of the company.
- 2. Will impact small businesses by limiting their ability to obtain credit, including trade credit, which is essential to continued profitable operations.
- 3. Will negatively impact the small businesses it purports to protect by limiting small businesses' ability to collect debts owed to it.
- 4. Improperly expands the FDCPA to commercial transactions.

Sarah Auchterlonie and Leah Dempsey, shareholders with Brownstein Hyatt Farber Schreck, wrote in a recent article that altering the FDCPA to cover commercial collections would require "a statutory change through Congress and a signature from the president to enact this change into law. The Small Business Fair Debt Collection Protection Act aims to make this change statutorily."

The legislation was pulled from the House Financial Services Committee markup hearing in March and then again in June, but it could return to Capitol Hill at any time.

The CFPB

In its annual report on the Fair Debt Collection Practices Act to Congress, the Consumer Financial Protection Bureau is exploring language in the FDCPA pertaining to collection issues for small businesses as well as servicing practices. According to the report, small businesses in collections should be protected under the FDCPA.

"Although the FDCPA generally does not cover the collection of small business debt, the CFPB is concerned about abuses pertaining to collections and servicing practices associated with financing for small business. It is in the

public interest, especially in light of the increased vulnerabilities of small-business owners during the pandemic, that they receive adequate protections," the report states.

According to the report, small businesses make up nearly 99.9% of all the country's estimated 31.7 million businesses, and almost 81% of those small businesses are run by self-employed staff.

"Every year it seems that the CFPB is looking more and more at how they are going to throw more burdens onto commercial vendors dealing with small businesses," Borges said.

Joe Batie, chief commercial officer for Caine Weiner, called it "an environment of overcorrection."

"It's not a surprise that once [the CFPB] got their hands on the collection world, it would go into areas that nobody really expected," he said.

Industry Impact

The implications of changing the FDCPA would be widespread, negatively affecting both commercial collectors and their clients.

"First, it would add some additional layers of complexity on what we would consider a low-yield segment anyway," Batie said. "Small businesses usually come with low dollar values associated with them, from a collection perspective, and you're typically taking those types of businesses on from your clients almost as a courtesy to make sure that you're in the more lucrative sectors as well. And I think what could end up happening is that you've got to then layer in a lot more of a compliance environment to continue to service those portfolios, which drives up the cost of servicing them."

It would also subject commercial collectors to the extensive litigation associated with the FDCPA that has long plagued the consumer collection space.

"Any time you're in a more highly regulated area, there are more chances for slip-ups, if you will, that could create litigation—or even the perception that something improper is happening, which also invites litigation," Batie said. "When you look at the consumer side of our industry, there is a lot of attorney involvement that isn't warranted. Often there was no infraction of any regulation, but because consumers have the right to sue and seek remedies that way, they typically do it. I think once you overlay that in the small-business sector or commercial sector, you're going to invite that same sort of litigious environment."

He suggested that overall, part of the problem is that regulators don't fully understand the positive impact that debt collectors have on the economy. "That's something we can share with them," Batie said.

IACC urges members to reach out to their representatives and voice their opinion concerning H.R. 6814, the Small Business Fair Debt Collection Protection Act, and to keep an eye on IACC communications for further updates.

An Interview with the Board

Featuring: Lee VandenHeuvel, President of Ross, Stuart & Dawson Inc.

ee VandenHeuvel, president of Ross, Stuart & Dawson Inc., has been a member of IACC since 2007 and joined the board 10 years ago. VandenHeuvel serves on five IACC committees, including the Leadership & Nominating, Membership Development & Retention and Governing Documents Review committees.

Why did you decide to join IACC?

I joined in 2007 after seeing IACC pop up in an internet search. I thought to myself, "Who are these guys operating in the B2B collection space? I thought I was the only one!" I joined just to learn more about them.

How did you get started in the commercial collection industry?

In 1997, I was hired by a small consumer and commercial collection agency in Michigan as a sales representative. I was the first full-time sales rep they hired. I found I had a knack for the business and loved it, and consistently brought in eight to 10 new clients every month—commission checks were rolling in. Eight years later, I was the vice president/general manager and we were a 1MM+ agency. Everything was great, right? Not exactly. The owner had some ethical and moral differences that didn't sit right with me, so I made the decision to leave the agency and start my own.

When I announced my resignation, my top sales representative walked into my office and said, "If you leave, I'm leaving with you." He also suggested we consider pooling our limited resources to purchase a small agency with a stable client portfolio rather than starting from scratch. After doing our due diligence, we identified Ross, Stuart & Dawson, a 30-year-old commercial collection

agency as our target agency. In July 2005, after two lunches, one dinner and several cocktails, we convinced the two owners (Ross and Stuart) to sell to us and retire. We paid them off in three years and have grown steadily each year for the past 16 years.

What professional accomplishment are you most proud of?

I'm proud of the fact that I have been able to grow two agencies to over \$1 million in revenue through the recession and all the challenges that come with running an agency: hiring, training, turnover, compliance, licensing, budgets, etc. Sometimes I think it would have been a lot easier to just open a bakery or something like that, but I don't like getting up at 4 a.m. and I don't bake either, so I'll just keep collecting money for my clients, which I actually still quite enjoy. I love it when clients say, "You guys are the best!" or "You rock!" That's what keeps me going.

What has been the biggest challenge of your career and what have you learned from that?

Two weeks after my partner and I purchased RSD, my former employer sued us over a non-compete agreement he forced us to sign years ago. Even though we honored the agreement and had no intention of taking our old clients for the nine-month period, he sued us anyways. We had to spend \$60,000 in attorney's fees that we didn't have. It took a year, and in the end, we won (if you can call it that) and he lost. When the lawsuit was settled, we did connect with former clients who wanted to follow us to RSD.



How do you inspire your employees?

Leading by example. I try to treat everybody the way I like to be treated. I'm a fair, honest person by nature, and employees see me on daily basis treating both debtors and clients with respect and integrity. I also give 100% and take no shortcuts. People pick up on that. There are no shortcuts to success. You must be willing to work very hard and bust your rear end. Out-hustle your competitors. Work smart. These are all values I not only preach, but live by.

I also treat my employees like family and take good care of them. I try to do the little things right that make a difference, like recognizing birthdays, work anniversaries or even medical procedures, and show them I care by just remembering to acknowledge these milestones and challenges. In addition, I try to give them time off, cash bonuses or simple rewards like gift cards and sending them meals to their offices or homes. I'm very fortunate that my team is very loyal and has been with me for several years. I'd like to think it's because of these little things.

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What has been the most rewarding aspect of serving on the IACC board?

It has been an honor to sit on the board for the past 10 years and get to know the other board members—who all run much larger agencies than mine—and pick their brains to find out how they think and run them. It's not often that you have the opportunity to collaborate with your competitors in such a friendly and cooperative environment. Our board members have all been great to work with and they often go out of their way to help you, if asked.

I have also enjoyed serving on the many committees that I have been assigned to and watching IACC grow and develop over the years. It's been rewarding to see how the association has faced many challenges head-on: the recession in 2007, the COVID-19 pandemic, membership swings, budgets,

etc. The IACC board has proven adept at being flexible, rolling with the punches and pivoting. IACC is well-positioned to continue to lead the B2B commercial debt collection market for years to come.

What do you see for the future of the collections industry and what role do you think IACC or your company will play in that?

I believe the future of the commercial debt collection industry remains bright as there will always be demand for our services. I anticipate a very strong third and fourth quarter this year and into 2023. Placements should increase as a result of inflation pressures, rising interest rates and supply chain disruptions, leading to higher default rates. IACC will continue to play a vital role in this industry by continuing to develop the next generation of leaders and providing a collaborative environment of learning,

networking and education that serves our members well as we navigate our way through the ever-changing collection landscape and new legislation (both good and bad) that we must deal with in order to prosper and survive.

What does your involvement with the Emerging Leaders program mean to you?

As I look around the board room, the faces keep getting older and older, including mine! Ten years ago, I think I was the youngest board member—now it's Valerie Ingold. The point is we must do a better job of identifying, recruiting and developing new leaders to replace us as we retire and move on from the industry. The young members of today are the future of IACC. It is our job to prepare them so they are ready to rule the world when their time comes.



Thank You to Our 2022-23 Sustaining Members

ACC is pleased to recognize its sustaining members for the 2022-2023 membership year. Sustaining members take it upon themselves to contribute an additional amount of money during the membership year in support of IACC. For more information on how your company can become a sustaining member, please email IACC or call (952) 925-0760.

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Account Adjustment Bureau, Inc. Ann Arbor, Mich.

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Bilateral Credit Corp, LLC East Providence, R.I.

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Cisco, Inc. Houston, Texas

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Creditreform Egeli Zurich AG, Zurich, Switzerland

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DAL, Inc. Clifton Heights, Pa.

Dynamic Legal Recovery Santa Clarita, Calif.

Epic Credit Recoveries Manama, Bahrain

Esezobor & Partners Ikoyi, Lagos, Nigeria

ESP Receivables Management, LLC Mandeville, La.

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Get Ready to Renew Your Membership in IACC

It's almost membership renewal time! Watch your mailboxes in late June/early July for your 2023 dues statement.

Franklin & O'Brien Legal Services Inc.

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RAB, Inc. Plano, Texas

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Roosen, Varchetti & Olivier, PLLC Clinton Township, Mich.

Ross, Stuart & Dawson, Inc. Clawson, Mich.

Simpson, Uchitel & Wilson, LLP Atlanta, Ga.

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Southern Oregon Credit Service, Inc.

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Sweet & Walker, A Professional Corporation San Francisco, Calif.

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Zenarruza & Zenarruza, Abogados / Zenarruza & Zenarruza, Attorneys Buenos Aires, Argentina

Boost Your Team's Productivity

IACC's Certified Commercial Collector program carries multiple agency and client benefits.

or over 40 years, IACC has promoted excellence through the training and education of commercial collection professionals. IACC believes that collectors must be knowledgeable about a wide variety of issues for their agency to compete effectively in the challenging commercial collection industry. Whether you have new collectors to train or experienced collectors to motivate to achieve higher levels of performance, the IACC Certified Commercial Collector (CCC) Program is an affordable tool to help you reach these goals.

"The CCC program has enhanced the way we train our employees," said Valerie Ingold, managing director of Commercial Collection Corp. of NY and IACC's vice president and Education Committee chair. "In my opinion, it should be something that every IACC member uses as it will help to not only improve your agency operations, but the commercial collection industry as a whole."

Why You Should Use the Certified Commercial Collector Program

In addition to the productivity gained by thoroughly trained collectors, your agency's clients will also benefit from the skills of IACC certified professionals. When your collectors attain the CCC designation, your clients and potential clients are assured that knowledgeable industry experts will be handling their accounts.



Commercial collection agencies across the country use the CCC program as an affordable training and motivation tool for both new and experienced collectors. Having a CCC certified staff also provides an effective marketing advantage, since clients and potential clients recognize certification as confirmation of both expertise and trustworthiness.

"The CCC program allows all of our collectors to adhere to industry compliance requirements and helps with standardized training," Ingold said. "All of our collectors are certified and we make sure any new collectors go through the program. Ours is a changing industry and we have to be able to stand out among our competition. One of the ways we do this is to ensure we're adhering to the highest standards of compliance and training in the industry, and the CCC program helps us accomplish these goals."

The CCC course explores the following topics:

- » Methods of contacting debtors.
- » Skiptracing.
- » Overcoming objections to payment.
- » Asset location training.
- » Collection problems and solutions.
- » Commercial law definitions.
- » Using a sales approach to collections.
- » Motivating the debtor to pay.
- » Various credit instruments.

To begin the process of becoming an IACC Certified Commercial Collector, download the application on our website at www.commercialcollector.com/certification Questions? Send us an email.

Upcoming IACC Events and Education

June 22-24

2022 Mid-Year Conference

What you hear is true. With vibrant entertainment, art and culture, inspiring cuisine and stunning outdoor experiences, Austin lets you create a soundtrack all your own. So take a look around, and put the Live Music Capital of the World® on your playlist during the IACC Mid-Year Conference hosted at the Hyatt Regency.

Hyatt Regency Austin, Austin, TX



Credit Instruments: Properly Documenting Your Commercial Credit Transactions

Online seminar; 11:00 a.m. - 12:30 p.m. CDT

Sept. 15

Collection Laws and Bankruptcy Fundamentals

Online seminar; 11:00 a.m. - 12:30 p.m. CDT



Client Relationships

Online seminar; 11:00 a.m. - 12:30 p.m. CDT

Nov. 10

Legal Aspects of Commercial Collection

Online seminar; 11:00 a.m. - 12:30 p.m. CDT

Jan. 18 2023 IACC Annual Convention

Join IACC in South Beach, a trendy and quirky neighborhood of Miami Beach.

Royal Palm South Beach Miami

Additional topics and dates will be added. Please visit the IACC Events calendar for the current events and details: www.commercialcollector.com/events.





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IACC Promotion:

For IACC members we are waiving all start-up costs (including payment build costs) and cancellation costs, so you can try us risk free. We are also offering specialized pricing - we guarantee to beat your current vendors pricing!

If you would like some more information on our services or a quote please contact Dan.

Dan Cadesky

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Directory of Associate Members

hen forwarding accounts, please use IACC's Associate (attorney) members!

Remember to let the Associate member know you are forwarding to them because they are IACC members so they will see the value in their membership with IACC.

- To find complete contact information, please visit the Member Directory on the IACC website at www.commercialcollector.com and click on the directory button on the top right hand side of the home page.
- When forwarding to Associate
 Member law firms, we recommend
 that you designate IACC and a Law
 List in your forwarding letter and
 notify the Law List designated. These
 actions will ensure your account is
 covered by the Law List's bond and
 let the associate member know it is



coming from a fellow IACC member. The Law Lists that are members of IACC include:

- > American Lawyers Quarterly www.alqlist.com
- > The Columbia Law List www.columbialist.com
- > The Forwarders List of Attorneys www.forwarderslist.com

- > General Bar Law Directory www.generalbar.com
- > Wright Holmes Law List

www.collectioncenter.com

If you have any questions, please do not hesitate to contact the IACC staff at iacc@commercialcollector.com.

IACC AFFINITY PARTNERS

The IACC Board and Affinity Committee have been working diligently to provide members additional benefits to their IACC membership through the Affinity Program. Each of these partners offers discounts exclusive to IACC members. For more information on a specific partner, visit the IACC website at www.commercialcollector.com.

If you have any questions about the Affinity Program, contact IACC at *iacc@commercialcollector.com* or (800) 859-9526. Please continue to watch your email for more Affinity partners!



OptilinguaINTERNATIONAL

Alphatrad provides documentation translation and telephone interpretation services.



Applied Innovation offers a suite of software solutions specifically for the collection industry.



Bridge Capital Partners provides payment processing services.



Codix is a debt collection and recovery software provider for an all-in-one software solution called iMX Debt Collection.

Collectors Insurance Agency.

IACC members have access to industry leading E&O coverage, business package insurance, bonds and licensing services through Collectors Insurance Agency.



Polaris Assessment Systems, Inc. helps organizational leaders make smart decisions about the people they hire.



TCN is a cloud-based, multi-faceted telephony solution for all sizes of commercial collection agencies.



United Field Chase is a national field services provider, assisting businesses to make informed decisions.