

November 13, 2019

Dear Chairwoman Waters,

The undersigned consumer, community, civil rights, and small business advocacy organizations write to express our strong support for the HR 3490, the Small Business Lending Fairness Act. This bill will protect small businesses from predatory lenders by ensuring their ability to defend their businesses in the justice system, by codifying the ban on confessions of judgments in consumer and small business loans.

Confessions of judgment are provisions in credit contracts that require the borrowers to give up their right to defend themselves in court. With a signed confession of judgment, lenders are able to obtain a judgment against a borrower even if the borrower has been a victim of fraud, the lender has miscalculated the amount owed, or the borrower has other valid reasons for not paying. The judgment then allows the lender to seize the borrower's assets without warning or due process. The enforcement of confessions of judgments in some states against small businesses has permitted predators to devastate small businesses by seizing all their business assets without notice or proof, or the opportunity to defend themselves in court.

In 1984, the Federal Trade Commission banned confessions of judgment for consumers, and many states have banned this practice for both consumers and small business owners. However, small businesses have recently been victimized by perverted loan products, called "merchant cash advances," which in some situations have been erroneously held by courts to be something other than loans, such that bans on confessions of judgments in those states are not applicable to the transactions.

The Small Business Lending Fairness Act codifies the FTC's ban on confessions of judgment for consumers, extends it to include small businesses, and applies the ban to merchant cash advances. The bill would thus clearly provide all small businesses with the same federal protections as consumers to protect their right to defend themselves in court when they are accused of missing payments on their loans.

We look forward to working with you to swiftly pass the Small Business Lending Fairness Act to protect small business owners from predatory lending.

Sincerely,

Americans for Financial Reform  
Center for Responsible Lending  
Consumer Action  
Consumer Federation of America  
Consumer Reports  
Empire Justice Center  
Main Street Alliance  
NAACP  
National Association for Latino Community Asset Builders

National Association of Consumer Advocates  
National Community Reinvestment Coalition (NCRC)  
National Consumer Law Center (on behalf of its low income clients)  
Opportunity Fund  
Small Business Majority  
Woodstock Institute