

# Energy and Commerce Committee Democrats Advance 13(b) Reform Legislation through Subcommittee

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## Section 13 (b)log



On May 27, the House Energy and Commerce Committee’s Subcommittee on Consumer Protection and Commerce [advanced](#) by voice vote [H.R. 2668](#), legislation to clarify the Federal Trade Commission’s authority under Section 13(b) of the Federal Trade Act, just five weeks after the Supreme Court gutted that authority in *AMG Capital Management, LLC v. FTC*. The subcommittee vote followed hours of political sparring, with Republicans accusing Democrats of pursuing a rushed, partisan process and Democrats accusing Republicans of ignoring the pleas of the FTC and refusing to engage on the issue.

As we’ve [described](#) previously, H.R. 2668, the *Consumer Protection and Recovery Act*, authored by Representative Tony Cárdenas (D-CA), would explicitly authorize the FTC to seek permanent injunctions and other equitable relief, including restitution and disgorgement, to redress perceived consumer injury. The subcommittee reported H.R. 2668 largely unchanged, save for a substitute amendment from Representative Cárdenas making minor changes to the bill. At the outset, subcommittee Democrats defeated two Republican motions to postpone consideration of the bill. Democrats subsequently voted down two Republican amendments: one delaying enactment of the bill until the FTC certifies that a 2003 policy statement on disgorgement in competition cases is more broadly applicable; and one prohibiting the Commission from seeking disgorgement unless it has conducted an economic analysis. Republicans also “offered and withdrew” an amendment to reduce the legislation’s proposed statute of limitations from 10 to five years.

Beyond 13(b)-specific guardrails, Republicans – including Subcommittee Ranking Member Gus Bilirakis (R-FL) – voiced their intent to address the agency’s 13(b) authority as part of a more holistic FTC policy revamp, including the establishment of a national privacy framework. To that end, another handful of Republican amendments – many dealing with FTC authorities beyond 13(b) –

were offered and withdrawn.

Whether Rep. Cárdenas and his Democratic colleagues can assuage Republican concerns and arrive at a bipartisan solution remains to be seen. Notably, the bill must still be approved by the full Energy and Commerce Committee before receiving a vote in the House. And, as we've [reported](#), the Senate is working on a legislative framework of its own, meaning the two versions may need to be reconciled prior to enactment. While Energy and Commerce Democrats and FTC Acting Chair Rebecca Slaughter continue to stress the urgency of the situation, a new law clarifying 13(b) is – at best – likely months away. Today, it's still just a bill sitting here on Capitol Hill.

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