Maryland Financial Consumer Protection Commission

2017 INTERIM REPORT

Annapolis, Maryland
January 2018

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

Maryland Financial Consumer Protection Commission

January 26, 2018

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Maryland General Assembly

Ladies and Gentlemen:

Pursuant to Chapters 18 (Senate Bill 884) and 781 (House Bill 1134) of 2017, the Maryland Financial Consumer Protection Commission is responsible for (1) assessing the impact of potential changes to federal financial industry laws and regulations, budgets, and policies, including changes to specified federal financial regulators as well as the Dodd-Frank Wall Street Reform and Consumer Protection Act and (2) issuing recommendations for federal and State actions that are intended to protect residents of the State when conducting financial transactions and receiving financial services.

In light of the retrenchment on the federal level, the commission recommends that Maryland take steps to further protect consumers and investors. While Maryland's laws and regulations generally provide strong consumer protections, and some systemic safeguards can only be addressed in Washington, Maryland can act to fill new gaps in financial consumer protection.

This 2017 report is unanimously supported by commission members. I wish to thank each of them for their diligence and attention to the work of the commission. The commission met two times during 2017 and is due to deliver its final report at the end of 2018. On behalf of the commission, I wish to thank members of the public who submitted testimony as well as the Department of Legislative Services' staff who generously gave their time to support the work of the commission and produce this report.

The commission stands ready to continue to assist the Governor, the General Assembly, and the Maryland Congressional Delegation in their ongoing efforts to protect Maryland consumers.

Sincerely,

Gary Gensler
Commission Chair

cc: Maryland Congressional Delegation

Maryland Financial Consumer Protection Commission
Membership Roster

Gary Gensler, Chair
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Former Chairman of the U.S. Commodity Futures Trading Commission, Undersecretary of the U.S. Treasury for Domestic Finance, and Assistant Secretary of the Treasury

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Contents

Abbreviations

AIG	American International Group
CFPB	Consumer Financial Protection Bureau
CFTC	U.S. Commodity Futures Trading Commission
CPD	Consumer Protection Division
CRA	Congressional Review Act
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
DOL	U.S. Department of Labor
Exchange	Maryland Health Benefit Exchange
FCC	Federal Communications Commission
FDIC	Federal Deposit Insurance Corporation
Fintech	financial technology
FIO	Federal Insurance Office
FSOC	Financial Stability Oversight Council
FTC	Federal Trade Commission
GDP	gross domestic product
HEAU	Health Education Advocacy Unit
ICO	initial coin offering
MCPA	Maryland Consumer Protection Act
MFECC	Maryland Financial Education and Capability Commission
MFU	Mortgage Foreclosure Unit
MU	Mediation Unit
NASAA	The North American Securities Administration Association
NCUA	National Credit Union Association
OAG	Office of the Attorney General
OCC	Office of the Comptroller of the Currency
OCFR	Office of the Commissioner of Financial Regulation
OFR	Office of Financial Research
OLA	Orderly Liquidation Authority
SCRA	Servicemembers Civil Relief Act
SEC	U.S. Securities and Exchange Commission
SIFI	systematically important financial institutions
U.S. Treasury	U.S. Department of the Treasury

Executive Summary

This is the 2017 interim report of the Maryland Financial Consumer Protection Commission. The commission was established in 2017 to watch out for the consumer and financial protections of everyday Marylanders. The commission's mission is to monitor changes in Washington and on Wall Street and make recommendations for action to the Governor, the General Assembly, and the Maryland Congressional Delegation as necessary to safeguard Maryland consumers. The commission has benefited from two public hearings with testimony from 11 witnesses and significant staff research.

Background and History

The 2008 crisis was years in the making. When it erupted, it exposed the deficiencies in prior public policies and regulatory structures and clearly showed that policies and practices that fostered, and in some cases, encouraged, excessive risk-taking were detrimental to the economy in general and particularly to the American consumer who were, in many cases, victimized by bad financial practices. The 111th Congress (2009-2011) and President Barack Obama, recalling the lessons of earlier financial crises, came together to update the rules of the road for consumer protection and the financial markets. As appropriate, this included vigorous debate on how best to readjust the balance between promoting innovation and investment within the free market financial system while better protecting the public and the economy at large.

The result of these public debates culminated in the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) along with implementing regulations adopted by the federal financial and consumer regulatory agencies.

Proponents of reform said that new laws and regulations were needed both to better protect the public and to serve as a critical piece of revitalizing our economy through rebuilding confidence in the financial sector. Opposition to reform, though, centered around the opposite: that such efforts might significantly curtail economic activity, lending, and the health of the banking system without yielding real improvement in consumer protection.

Seven years since the passage of major reforms, along with significant monetary policy easing and fiscal stimulus, though, credit is flowing and the economy has significantly recovered. Corporate and industrial loans as well as overall loans in the banking sector have grown significantly since pre-crisis levels, 35% and 31% respectively. The financial system is back to pre-crisis levels of activity, representing over 7% of gross domestic product, consistent with some other developed nations. Bank profits were at record levels in 2016 and, in the third quarter of 2017, banking industry's average return on assets was at a 10-year high.

In the wake of the crisis, financial reform has been one of the essential factors keeping a stable flow of credit to Main Street and providing the stabilization that was important to the improvement in the economy's overall performance. Subsequent to Dodd-Frank's passage, the United States economic growth has outpaced that of other advanced economies. And though many factors contribute to boosting job creation and wage growth for working families, the unemployment rate of 4.1% is the lowest in 17 years, and the stock market recently recorded all-time highs.

The recently enacted federal tax cut legislation is also anticipated to provide a significant boost to the finance and insurance industries. The *New York Times* and *Washington Post* have both reported on recent estimates that the new law represents a 35% tax cut for the industry, or a total of $249 billion over the next 10 years. In comparison, during the heart of the financial crisis, the U.S. Department of Treasury (U.S. Treasury) injected $245 billion directly into banks, and along with the Federal Reserve Board, provided $182 billion in support to American International Group, all of which in aggregate was later returned to taxpayers.

Through Dodd-Frank and related reforms, much progress in strengthening the financial system and consumer protection has been made. Regulators have brought tougher capital and liquidity standards along with annual stress tests to large banks and requirements that they have credible plans for the wind-down of their affairs if they were to fail. Banks have been reoriented toward customers and Main Street by prohibiting proprietary trading. The swaps market, which was at the heart of the crisis, has been completely transformed, with bright lights of transparency and central clearing now shining on and lowering risk in the over $300 trillion market. Regulators have taken significant steps to address the risks of potential runs on money market funds and created reporting requirements for hedge funds. Through a new council, the Financial Stability Oversight Council (FSOC), regulators are collaborating with each other as a real deliberative body.

Further, consumers now have an agency – the Consumer Financial Protection Bureau (CFPB) – whose key mission is to make consumer financial markets work for consumers and to protect consumers from predatory lending practices and ensure they get a fair deal on financial products from mortgages to credit cards. This mission is not only good for consumers but also promotes safety and soundness and helps stabilize the real economy.

These new common-sense rules of the road have been truly transformative, helping stabilize the financial services sector and help it better serve the rest of the economy.

Further, Maryland's existing financial consumer protection legal framework is quite comprehensive, including many protections provided as well by federal law. The Office of the Commissioner of Financial Regulation (OCFR) and Office of the Attorney General (OAG) are very active in enforcing Maryland laws and taking action to protect Maryland's consumers.

Federal Efforts to Roll Back Financial Consumer Protection

Recent federal actions to roll back certain financial consumer protections, though, may prove detrimental to Marylanders. The Trump Administration, working with the U.S. Congress, has made efforts to loosen a variety of the post-crisis reforms. These efforts can be summarized along four principal pathways.

The first has been through personnel appointments. As is often stated, "personnel is policy," and the Trump Administration has now replaced, or nominated, nearly all of the relevant Cabinet and regulatory leaders who play critical roles setting the course of regulation, oversight, and enforcement. In reviewing the public statements of the new appointees, there is a consistent emphasis on rolling back or modifying many of the post-crisis reforms.

The second pathway has been through use of the Congressional Review Act (CRA). Congress has overturned a number of key consumer and investor protections through CRA, which allows Congress, with the president's concurrence, to overturn rules issued by federal agencies. To date, they have overturned: (a) the U.S. Department of Labor (DOL) rule promoting state-run retirement plans; (b) the U.S. Securities and Exchange Commission (SEC) rule relating to disclosure of payments by resource extraction issuers; and (c) the CFPB rules relating to arbitration agreements. There also are efforts underway in Congress to overturn the CFPB's Payday Lending rule, which ensures that products are reasonable and consumers are protected from payday debt traps.

The third pathway has been through Congress's legislative efforts. Though Congress has yet to send any completed deregulation legislation to President Trump, the U.S. House of Representatives, as well as the U.S. Senate, have been very active in considering bills. Last spring, the U.S. House of Representatives passed the Financial CHOICE Act of 2017 (CHOICE Act 2.0), which includes a comprehensive roll back of many aspects of consumer and financial protection. During 2017, the House Financial Services Committee passed over 60 targeted deregulation bills out of committee, with 25 later passing the full House as well.

The effort underway in the U.S. Senate bears close attention as it appears to have the most potential to become law. More specifically, in December 2017, the Senate Banking Committee voted 16-7 for S.2155. Amongst its many provisions, S.2155 would:

(a) raise the threshold from $50 billion to $250 billion in asset size for a bank to be considered "systemically important," thus eliminating the requirement for enhanced prudential standards, other than stress tests, for 25 regional and super regional banks with aggregate holdings of over $3.5 trillion in assets;

(b) exempt manufactured home retailers from mortgage lending protections;

(c) exempt community banks from the Volcker Rule prohibiting proprietary trading; and

(d) generally exempt community and rural banks from a variety of mortgage and consumer protection regulations.

While many of the bills before Congress, such as CHOICE Act 2.0 and S.2155, are categorized as providing regulatory relief for community banks, they are generally tailored to benefit the largest institutions while providing modest benefit to the smaller ones serving the community.

The fourth, and possibly most significant pathway to date, has been the roll back efforts through regulatory and administrative actions. Regulatory implementation of the Dodd-Frank reforms was largely complete by the end of 2016. The regulatory agencies have significant authority, though, to revise, interpret, and enforce their rules. Starting in January 2017, President Trump issued a number of executive orders and memoranda with a call for less regulation of the financial sector. He called for a U.S. Treasury review of all regulations and for regulators to repeal two rules for every new rule that is promulgated.

The U.S. Treasury has now issued three of its four required reports, with a total of nearly 250 specific recommendations, of which 80% can be implemented without congressional actions.

Amongst the many regulatory actions taken or proposed to date are:

(a) U.S. Treasury has called on bank regulators to loosen key requirements on the largest banks, in particular with regard to stress testing, capital requirements, resolution planning, liquidity tests, and the Volcker Rule;

(b) DOL has delayed implementation of the "Conflicts of Interests" rule related to fiduciary duty of advisors for retirement savings;

(c) FSOC has de-designated systemically important financial institutions;

(d) SEC is soliciting input on a new fiduciary duty rule as well as financial disclosure simplification and has removed executive compensation rules from their agenda;

(e) U.S. Treasury has called for the U.S. Commodity Futures Trading Commission (CFTC) to weaken derivatives trading requirements as well as to restrict the cross-border applications of their reforms;

(f) U.S. Treasury and the Office of the Comptroller of the Currency (OCC) have indicated the intent to propose changes to the Community Reinvestment Act and related enforcement efforts that could diminish capital and services available to low-income and underserved communities; and

(g) CFPB recently announced that it will conduct a review of inherited regulations.

Recent Developments in Finance and Technology

The commission also heard from witnesses regarding developments in finance and technology since the passage of reform. These discussions highlighted concerns related to certain new developments in finance technology (Fintech), particularly related to often inadequately regulated online lending platforms. The commission heard recommendations to oppose efforts of OCC to grant special-purpose charters to Fintech companies, including online lenders, that could undermine state consumer protections by extending federal preemption to new financial services providers and products, further impairing the State's ability to protect its citizens.

The commission heard concerns about the risks to consumers and investors in light of last year's nearly 50-fold increase in the aggregate value of cryptocurrencies or virtual currencies, such as Bitcoin. Now with an aggregate market value of over $800 billion as of January 7, 2018, witnesses raised concerns about appropriately protecting the public from fraud and manipulative schemes, as well as concerns if this may be a valuation asset bubble yet to burst.

The commission also heard concerns relating to the data breaches at Equifax and Uber, and overall vulnerability to consumer's private information that results from lax cybersecurity and lack of transparency at entities and institutions trusted to hold consumer information.

Additionally, the commission learned that mortgage loan servicing and foreclosure abuse still occurs years after the financial crisis in certain communities across the State and particularly in communities of color. Further, the commission heard continuing concerns about the student loan market, which has more than doubled in size since the financial crisis.

Furthermore, despite the substantial developments since the crisis, there may be further benefits Maryland consumers could realize, as evidenced by the commission staff's review of complaints filed by Marylanders with CFPB. In the last two years, though many were subsequently adequately resolved, over 12,000 complaints have been filed, with the majority relating to mortgages (including loan servicing and foreclosures), debt collectors, and credit reporting.

Recommendations

In light of the retrenchment on the federal level, the commission recommends that Maryland take steps to further protect consumers and investors. While some safeguards can only be addressed in Washington, particularly with regard to protecting against systemic risk and the failure of the largest banks, other states are taking actions to fill new gaps in financial consumer protection.

Thus, the commission recommends continued advocacy and opposition, when appropriate, by Maryland's Congressional Delegation to legislative and regulatory efforts to reduce consumer and financial protections.

The commission recommends continued vigorous enforcement by OAG and OCFR, enhanced by additional dedicated enforcement and investigative funding and higher penalties that may be imposed.

And the commission recommends that the General Assembly adopt additional new consumer protection laws to backfill where federal regulators may be stepping back or where new developments have revealed new risks.

(1) **Congressional Delegation Actions** – The commission recommends that the Maryland Congressional Delegation remain focused on the need to maintain strong and balanced financial consumer protection laws and regulations at the federal level – and adequately enforced by federal regulators.

  (a) While some legislative revisions and initiatives may be appropriate in order to stay abreast of an ever-changing world of finance and technology, or to lessen some of the compliance costs for community banks and credit unions, the commission recommends the delegation's continued opposition to most of the efforts to roll back Dodd-Frank provisions and other financial consumer protections. In that regard, the commission commends the delegation's general approach in opposition to the legislative and CRA initiatives to date.

(b) The commission recommends the delegation's continued support for an independent CFPB as well as full funding of SEC and CFTC.

(c) The commission recommends, where appropriate, continuing to weigh in on behalf of everyday Marylanders with comment letters to and oversight of the financial and consumer regulators, and to maintain critical financial consumer protections at the federal level as well as preserve the State's authority to protect its citizens locally through, for instance, opposition to the OCC special Fintech charter.

(2) **Vigorous Enforcement by and Funding of the Office of the Attorney General and the Office of the Commissioner of Financial Regulation** – The commission recommends that OAG and OCFR take steps to further fill any gaps in federal consumer protection enforcement, enhanced by additional dedicated enforcement and investigative efforts.

(a) The State should provide additional State budget resources within the Consumer Protection Division of OAG and to OCFR, dedicated to support enforcement and investigation of consumer protection statutes and licensing and regulatory statutes. (Pennsylvania recently announced the creation of a dedicated consumer finance unit.)

(b) OAG and OCFR should be supported in bringing consumer protection enforcement actions under Dodd-Frank Section 1042, when federal regulators do not step in.

(c) The General Assembly should expand violations of the Maryland Consumer Protection Act (MCPA) to include "abusive" practices (in addition to the current "unfair" or "deceptive" practices) so that these actions can be brought in Maryland courts. OCFR should be given enhanced authority to investigate and bring enforcement action for unfair, deceptive, and/or abusive acts or practices in consumer transactions involving licensed persons similar to the prohibitions contained in Title 5, Subtitle 8 of the Financial Institutions Article.

(d) The General Assembly should expand violations of MCPA to include violations of the Military Lending Act and the Servicemembers Civil Relief Act to enable OAG to bring these actions in Maryland courts.

(e) The General Assembly should increase the maximum amount of the civil penalty for violations of Maryland consumer protection and licensed financial services provider regulatory laws to $10,000 for any violation of the laws and to $25,000 for subsequent violations. Under the MCPA, maximum penalties are now $1,000 for an initial violation and $5,000 for a subsequent violation and, under various financial service provider regulatory laws, maximum fines currently range from $100 to $5,000 per violation.

(3) **State Legislative Actions to Backfill Where Federal Protections Stepped Back** – The commission recommends adopting legislation to fill gaps and

eliminate loopholes opening up in consumer financial protections, including:

(a) Extending the fiduciary duty, where feasible, to all financial professionals who provide investment advice, regardless of whether they are advising clients about retirement assets;

(b) Adopting the Model State Consumer and Employee Justice Enforcement Act: Titles I-VIII to address the use of forced arbitration clauses by providing a number of possible avenues for State action that do not conflict with or obstruct federal law;

(c) Amending the definition of "mortgage loan originator" in State law to specify that a "mortgage loan originator" includes a retailer of a manufactured home; and

(d) Filling possible gaps and eliminating loopholes in Maryland's current payday and consumer lending statute, particularly related to online lending and advance deposit products.

(4) **State Legislative Action to Address Recent Developments** – The commission recommends legislation to address developments that have come forward in recent years, including:

(a) Adopting a student loan bill of rights, creating a student loan ombudsman office, and considering licensing and regulatory supervision of servicers of student loans operating in the State;

(b) Ensuring that Fintech firms are covered by Maryland consumer and regulatory protections;

(c) Subject to further study, adopting protections for investors and merchants transacting in cryptocurrencies, such as Bitcoin. (OCFR also should ensure that companies transmitting virtual currencies comply with Maryland money transmitter regulations, regardless of whether they deal in traditional fiat currencies); and

(d) Requiring credit reporting agencies, such as Equifax, to promptly (or within 30 days) alert the public after a breach is discovered and expand the ability for all consumers to request free security freezes on their credit reports at any time; and consider requiring other businesses handling consumer financial data to report breaches within 30 days. Further, where feasible under federal preemption law, strengthening the process for credit reporting agencies to correct data errors.

Chapter 1. The Great Recession, Passage of Federal Reform Legislation, and Establishment of State Watchdog Commission

- Summary of the Great Recession
- Overview and Importance of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Maryland Financial Consumer Protection Commission

Summary of the Great Recession

Financial services are crucial to a modern, thriving economy. They help get the most out of savings and investments; provide loans for citizens in their daily lives; allocate capital for businesses to innovate and grow; insure the public against the bad times in life; and help make payments for everything from monthly utility bills to purchasing on the Internet.

History has often shown, though, that the business of money also bears significant risks and conflicts of interest. Just 10 years ago, these risks and conflicts burst upon the scene devastating the American public and the U.S. economy. The financial system and financial regulatory system dramatically failed the public, sending the U.S. economy into a free fall. Millions of Americans paid for it with their jobs, their pensions, and their homes.

The financial crisis of 2008 led to the most significant recession since the Great Depression of the 1930s. Now known as the Great Recession, it was the longest and most severe recession since World War II. Real gross domestic product fell 4.3%; the unemployment rate rose above 10%; home prices fell approximately 30%; the S&P 500 index fell 57%; and the net worth of U.S. households and nonprofit organizations fell from a peak of about $69 trillion in 2007 to a trough of $55 trillion in 2009.[1]

A number of factors contributed to such a severe crisis. Throughout the financial system, weak risk management, conflicts of interest, inadequate consumer protections, and a culture of incentive bonus compensation had contributed to low underwriting standards and some dubious ethical behavior. Regulations and public policy also had not kept up with the rapidly changing nature of global finance.

For many years prior to the crisis, a climate grew where mortgage brokers were incentivized to push borrowers into costly and risky mortgages without disclosure of the higher compensation and risk. Lenders encouraged unsophisticated borrowers to obtain subprime loans without adequate disclosure of the risks and assessment of their ability to repay, leading many to believe rising housing prices would allow them to refinance their subprime mortgages into ones they could afford. Financial firms found ways to avert the spirit of capital rules by taking on significant leverage and risks, often well beyond their abilities to withstand unexpected downturns. By the time 2008 rolled around, the crisis hit hard as housing prices declined from record inflated levels, and many homeowners defaulted on their loans, resulting in the mortgage and related foreclosure crises. The over-the-counter derivatives, or swaps, market further contributed to the accumulation of excessive risk and hidden leverage in the financial system.

Then, the failure or near collapse of many of the largest financial institutions led to a spiraling drop in confidence and the ability of financial firms to fund themselves. United States

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[1] "The Great Recession," Federal Reserve History, https://www.federalreservehistory.org/essays/great_recession_of_200709.

financial industry casualties included investment banking firms Bear Stearns, Lehman Brothers, and Merrill Lynch (which was sold to Bank of America); the large insurance company, American International Group; the two government-sponsored enterprises facilitating mortgage lending, Fannie Mae and Freddie Mac; a large mortgage lender, Countrywide Financial Corp. (which was purchased by Bank of America); a large savings and loan company, Washington Mutual; and the large commercial bank, Wachovia Corp., purchased by Wells Fargo Bank. Citigroup, then the nation's largest bank, needed two separate multibillion dollar government bailouts to survive. Lenders froze their lending activities to businesses and others. There was also an impending run on money market funds, before the U.S. Department of the Treasury (U.S. Treasury) stepped in to guarantee such funds.

As the congressionally mandated study by the Financial Crisis Inquiry Commission concluded, there had been "widespread failures in financial regulation; dramatic breakdowns in corporate governance; excessive borrowing and risk-taking by households and Wall Street; policy makers who were ill prepared for the crisis; and systemic breaches in accountability and ethics at all levels."[2]

Overview and Importance of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

The 2008 crisis was years in the making. When it erupted, it exposed the deficiencies in prior public policies and regulatory structures and clearly showed that policies and practices that fostered and, in some cases, encouraged excessive risk-taking were detrimental to the economy in general and particularly to the American consumer who were, in many cases, victimized by bad financial practices. The 111th Congress of the United States (2009-2011) and President Barack Obama, recalling the lessons of earlier financial crises, came together to pass the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank).[3]

The Act brought significant changes to the financial regulatory environment. As described by Amias Moore Gerety in his written testimony submitted on October 26, 2017, the following summarizes the Dodd-Frank reforms.

Consumer Protections

The heart of the financial system are consumers trying to navigate banks, auto lenders, financial advisors, and other financial institutions to meet their financial needs. In response, Dodd-Frank created a new dedicated regulator, the Consumer Financial Protection Bureau (CFPB), to set clear rules for how financial institutions compete for customers and made clear that

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[2] "Financial Crisis Inquiry Commission," Stanford University Rock Center for Corporate Governance and Stanford Law School, https://fcic.law.stanford.edu .

[3] "Dodd-Frank Wall Street Reform and Consumer Protection Act," U.S. Government Publishing Office, https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

nonbank lenders would also be subject to the same set of enforcement, rules, and oversight. As an independent watchdog for the public, CFPB is dedicated to overseeing consumer credit, mortgage and financial products, and addressing widespread deceptive, fraudulent, and predatory lending practices that take advantage of consumers. It promotes greater confidence in the financial system and lays a foundation for sustainable economic growth by protecting consumers from predatory practices, which is good for both consumers and banks as well as other lenders that do not engage in these practices.

Safety and Soundness

At the heart of the financial crisis, caused by a toxic mix of excessive risk-taking, weak consumer protections, and regulatory shortcomings, were the failures, forced mergers, and bailouts of the largest, most complex financial institutions in the world. While a number of these firms were banks, some of the hardest cases were of large, mostly unregulated nonbank firms. In response, Dodd-Frank put in place a system where the toughest standards would apply to the riskiest firms (whether they are banks, investment banks, insurance companies, or specialty finance firms). Dodd-Frank established new capital, liquidity, leverage, and stress testing requirements to fortify the banking system against stresses that could trigger another financial crisis. The Volcker Rule was adopted prohibiting banks from proprietary trading.

For the largest firms, the Federal Reserve was tasked with creating uniform standards for the management of risks through enhanced supervision of systemically important financial institutions. And to better protect the U.S. economy when financial firms do fail in the future, the largest were required to produce plans for when they fail in so-called “living wills.”

The crisis also revealed how dangerous it was when the government lacked adequate tools to handle the failure of nonbank firms, such as an insurance company, investment bank, or finance company. In response, Dodd-Frank created a tool that requires any financial firm whose failure could threaten financial stability to be liquidated by the Federal Deposit Insurance Corporation. Dodd-Frank established the Financial Stability Oversight Council (FSOC), so that federal regulators might better coordinate and identify threats to financial stability among nonbank financial institutions or in general. In addition, the Office of Financial Research was established within the U.S. Treasury to collect, analyze, and report on financial data to FSOC.

Markets

In the midst of the financial crisis, investors across the country and globe began to confront the fact that complex, opaque, and highly engineered financial instruments were not only central to the losses in the crisis, but served to accelerate contagion and panic. In response, Dodd-Frank brought the over-the-counter derivatives market, which had been statutorily exempt from direct oversight, into an entirely new and comprehensive regulatory framework. Bright lights of transparency and central clearing now shine on and lower risk in the over $300 trillion market.

Dodd-Frank authorized the U.S. Securities and Exchange Commission to enhance investor protections with a fiduciary standard for advisers, limits on mandatory arbitration, and better incentives and anti-retaliation protections for whistleblowers. Regulators have taken significant steps to address the risks of potential runs on money market funds and created registration and reporting requirements for hedge funds. With that data in hand, FSOC identified the hedge fund industry as a subsector worthy of further review, though the Trump Administration appears to have removed this project from its agenda.[4] Dodd-Frank also sought to bring more accountability and transparency to financial executives, their compensation, and to empower shareholders to impose market discipline.

While Dodd-Frank was at the center of the move toward re-regulation of finance, it is not the only element. Another important step was action by the U.S. Department of Labor to clarify and enforce the fiduciary responsibilities owed to investors by professionals offering financial advice to retirement savers.

Maryland Financial Consumer Protection Commission

While the reforms have helped bring greater consumer protections along with better stability and sustainability to the U.S. financial system, the Trump Administration has indicated that they plan to roll back some of these reforms.

The commission is charged with assessing the impact of potential changes to federal financial industry laws and regulations, budgets, and policies, including changes to specified federal financial regulations as well as Dodd-Frank provisions. The commission also is charged with issuing recommendations for federal and State actions that are intended to protect residents of the State when conducting financial transactions and receiving financial services.

In its two public meetings (October 26, 2017 and December 5, 2017), the commission heard from 11 speakers with knowledge about the impact of the financial crisis, the implementation of Dodd-Frank, and efforts of the Trump Administration to roll back reforms. The speakers were asked to speak about financial consumer protection issues, federal activity that occurred during 2017, and make recommendations for State actions to ensure that adequate consumer protections remain in place. The commission benefited greatly from information provided in writing and at the hearings from the witnesses.

On October 26, the commission heard the federal perspective from two speakers (Stephen Hall and Amias Gerety) which included an overview of the financial crisis, reform efforts

[4] "Hedge Funds and Systemic Risk Missing from the FSOC's Agenda," Center for American Progress, https://www.americanprogress.org/issues/economy/reports/2017/09/21/437726/hedge-funds-systemic-risk-missing-fsocs-agenda/.

to address the failures of the crisis (Dodd-Frank), avenues and core strategies to change the financial regulatory system, myths underlying the deregulation movement, current efforts to undermine the reforms, and recommendations to defend financial reform. The commission heard the banking industry perspective from three speakers (Mindy Lehman, Rod Alba, and John Bratsakis) who stressed that Dodd-Frank is "not an unfixable creation that needs to be repealed, but rather one that has implementation issues and that needs review and modification." Topics of interest to the banking industry speakers related to qualified mortgage rules, new CFPB "Know Before You Owe" mortgage disclosure rules[5], and the regulatory burden on community banks. The credit union representative stressed the unintended consequences of regulations that adversely affect smaller financial institutions, such as credit unions. Consumer advocates (Marceline White and Rebecca Bowman) summarized concerns relating to congressional actions on payday lending, financial technology (Fintech) chartering, student loan servicing, binding arbitration, security breaches, debt collection, and credit repair.

On December 5, the commission heard the federal perspective from two speakers (Mary Miller and Michael Barr) which included current efforts to undermine the reforms, recent reports issued by the U.S. Treasury, and recommendations to defend financial reform. Topics included the Volcker Rule, the fiduciary duty rule, and Fintech. One consumer advocate (Marcus Stanley) made the following points: Dodd-Frank is less radical and less disruptive to the financial sector than often portrayed; and the financial sector has done well under it. Though it is unlikely that the Trump Administration or the U.S. Congress will completely eliminate significant elements in Dodd-Frank, there are very real efforts to roll back important protections within it. And states have a number of important tools with which to respond to this stealth deregulation. Another consumer advocate (Ed Mierzwinski) outlined a series of recommendations, including encouraging the federal delegation to oppose efforts to overturn or weaken Dodd-Frank, ensure full powers of the Office of the Attorney General, and protecting college students by enacting a student loan ombudsman's office.

Commission meeting information and testimony may be found at the commission's website: http://dls.maryland.gov/policy-areas/maryland-financial-consumer-protection-commission. The website also provides links to videos of the hearings. **Appendix 1** of this report contains the charge of the commission. **Appendix 2** has biographies of commission members, and **Appendix 3** has the meeting agendas.

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[5] "CFPB Finalizes Updates to 'Know Before You Owe' Mortgage Disclosure," Consumer Financial Protection Bureau, https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-updates-know-you-owe-mortgage-disclosure/.

Chapter 2. Overall State of Finance and Banking in the U.S. Economy

Overall State of Finance and Banking in the U.S. Economy

The financial sector is a crucial part of any healthy, well-functioning economy. Banks and related institutions enable the economy to operate at its full potential by providing a variety of financial services for businesses, households, and governments. According to a Brookings Institution report, the financial sector serves three major purposes:

(1) **Credit access:** Financial markets provide credit for businesses, consumers, and governments.

(2) **Liquidity:** Banks provide businesses and households with access to cash, both through demand deposits (*i.e.*, deposits that can be withdrawn without advance notice), as well as lines of credit. In addition, banks and other financial institutions buy and sell large volumes of securities, which is particularly important given the role of the stock market in the U.S. economy.

(3) **Risk management:** The financial sector allows businesses and households to pool their risks (generally through insurance and "derivative" transactions).[1]

With sufficient access to credit and other financial tools, businesses are better able to obtain the necessary capital to invest in innovation and jobs. Economic activity and employment relies upon a healthy financial sector. In the aftermath of the 2008 financial crisis, though, lending to businesses and households slowed dramatically. By the end of 2008, approximately 85% of U.S. banks reported tightening lending standards for commercial and industrial loans since the preceding quarter.[2] Similarly, large fractions of U.S. banks reported tightening lending standards – and reducing credit limits – for credit cards and other types of consumer loans.

According to Federal Reserve data, the total amount of commercial and industrial loans decreased by about 6.5% from 2008 to 2009 and by about 15.1% from 2009 to 2010.[3] Consumer credit also decreased over the 2008 to 2009 time period. For example, the total outstanding amount of revolving credit (*e.g.*, credit card debt) decreased by about 5.3% from 2008 to 2009 and again from 2009 to 2010 by about 8.9%.[4]

Some opponents of Dodd-Frank cautioned that the law would curtail the economy and restrict access to credit due to increased regulation of the financial system. While compliance costs for companies may have increased, Federal Reserve data show that total consumer credit (revolving and nonrevolving credit combined) has increased every year since 2010.[5] Likewise,

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[1] Martin Neil Baily and Douglas J. Elliott, "The Role of Finance in the Economy: Implications for Structural Reform of the Financial Sector," The Brookings Institution, https://www.brookings.edu/research/the-role-of-finance-in-the-economy-implications-for-structural-reform-of-the-financial-sector/.

[2] "The October 2008 Senior Loan Officer Opinion Survey on Bank Lending Practices," Federal Reserve Board, https://www.federalreserve.gov/boarddocs/SnLoanSurvey/200811/default.htm.

[3] "Commercial and Industrial Loans, All Commercial Banks," St. Louis Federal Reserve, https://fred.stlouisfed.org/graph/?g=gRAt.

[4] Ibid., https://fred.stlouisfed.org/graph/?g=gRFW.

[5] Ibid., https://fred.stlouisfed.org/graph/?g=gRGj.

the financial sector has generally grown as a share of the economy since passage of Dodd-Frank. The unemployment rate of 4.1%[6] is at a 17-year low, and the stock market just recorded record highs.[7]

Though it is possible that consumer credit and the financial sector might have grown even faster *in the absence of* Dodd-Frank, the amount of credit and size of the sector have grown significantly beyond the levels existing before the crisis. Commercial and industrial loans for all commercial banks have grown 35% in the last nine years, reaching $2.1 trillion in November 2017, compared to the pre-crisis peak of $1.6 trillion in November 2008.[8] Total loans and leases in bank credit grew 31% over the similar period to $9.5 trillion from a $7.3 trillion peak pre-crisis.[9]

Furthermore, bank profits reached record levels in 2016 and, in the third quarter of 2017, the banking industry's average return on assets was at a 10-year high.[10] The recently enacted federal tax cut legislation has also provided a significant boost to the finance and insurance industries; it is estimated to provide a 35% tax cut for the industry or a total of $249 billion over the next 10 years.[11] In comparison, through the Troubled Asset Relieve Program, the U.S. Treasury injected $245 billion in the banks[12] and along with the Federal Reserve, provided about $182 billion in support to American International Group, the aggregate of which has been returned to the government.[13]

Two decades ago, the finance and insurance sectors contributed about 6.7% to the nation's gross domestic product (GDP). The share grew over the following decade, reaching 7.2% of GDP before declining sharply in 2008 to 6.2% of GDP. By 2016, however, the finance and insurance sectors returned to pre-crisis levels, comprising 7.5 % of GDP, a level consistent with some other developed nations.[14] **Exhibit 1** shows the value added to GDP by the finance and insurance sectors from 1997 to 2016.

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[6] "Labor Force Statistics from the Current Population Survey," U.S. Bureau of Labor Statistics, https://data.bls.gov/timeseries/LNS14000000

[7] Joseph Woelfel, "Dow Jumps 220 Points to Score New Record; S&P 500 and Nasdaq Also Hit New Highs," *The Street*, https://www.thestreet.com/story/14438940/1/dow-jumps-220-points-to-score-new-record-s-p-and-nasdaq-also-hit-new-highs.html.

[8] "Commercial and Industrial Loans, All Commercial Banks," St. Louis Federal Reserve, https://fred.stlouisfed.org/series/BUSLOANS.

[9] "Loans and Leases in Bank Credit, All Commercial Banks," St. Louis Federal Reserve, https://fred.stlouisfed.org/series/TOTLL.

[10] https://fred.stlouisfed.org/series/USROA.

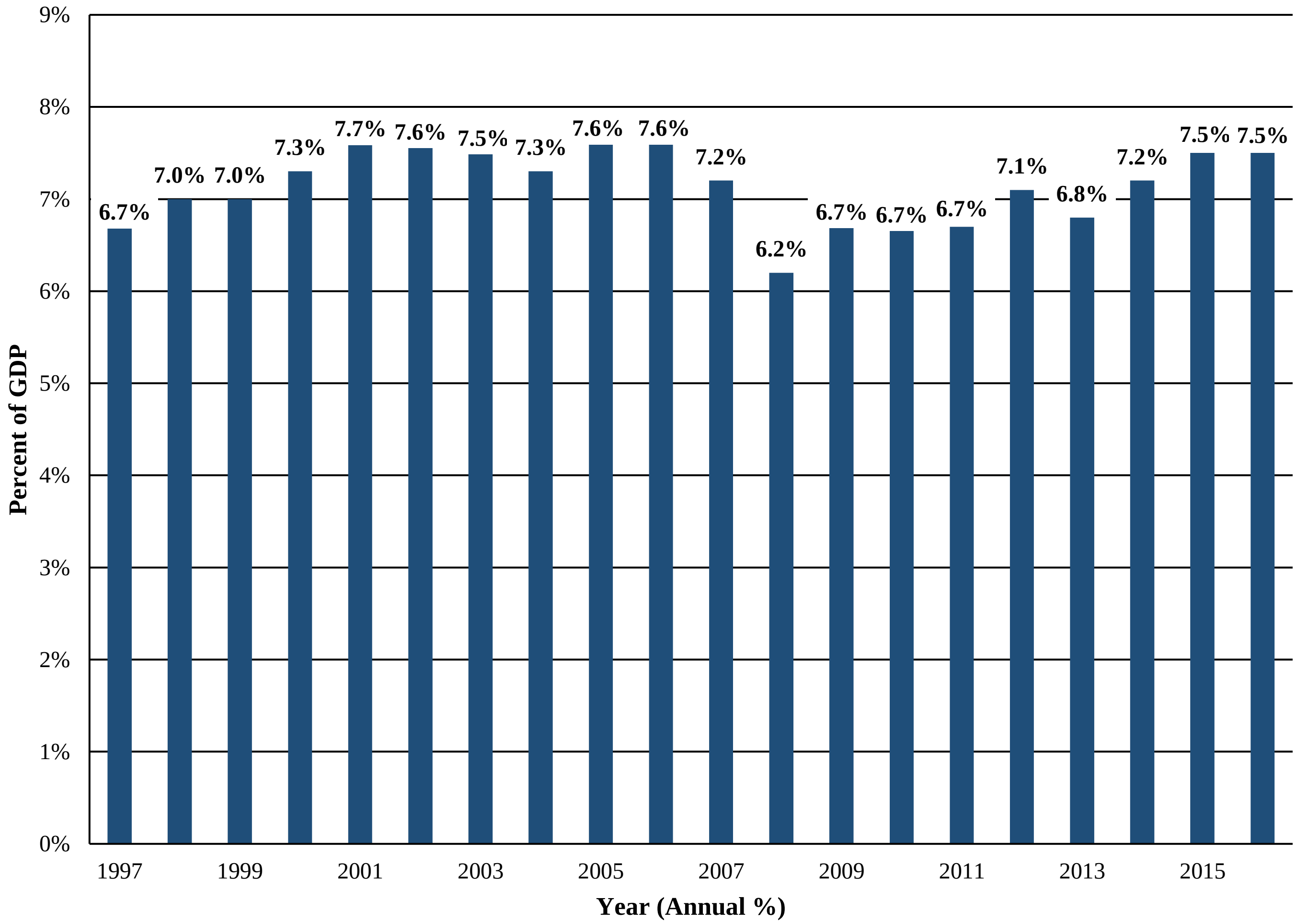
[11]. "The Tax Cuts and Jobs Act, As Reported by Conference Committee: Tax Effects by Industry," Penn Wharton Budget Model, University of Pennsylvania, http://budgetmodel.wharton.upenn.edu/issues/2017/12/15/effective-tax-rates-by-industry

[12] "Bank Investment Programs," U.S. Department of the Treasury, https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/bank-investment-programs/Pages/default.aspx.

[13] "Investment in American International Group (AIG)," U.S. Department of the Treasury, https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Pages/default.aspx.

[14] "Value Added by Industry as a Percentage of Gross Domestic Product: 2000-2016 (Annual)," U.S. Department of Commerce, Bureau of Economic Analysis, https://www.bea.gov/iTable/iTableHtml.cfm?reqid=51&step=51&isuri=1&5101=1&5114=a&5113=22r&5112=1&5111=1997&5102=5.

Exhibit 1
Value Added to Gross Domestic Product: Finance and Insurance Sectors
1997-2016 (Annual)



Source: Bureau of Economic Analysis; Department of Legislative Services

Chapter 3. Maryland Law and Enforcement

- Maryland Laws
- Office of the Commissioner of Financial Regulation
- Consumer Protection Division of the Office of the Attorney General

Maryland's laws and regulations provide strong consumer protections for its citizens. The financial services industry in Maryland is regulated by the Office of the Commissioner of Financial Regulation (OCFR) within the Department of Labor, Licensing, and Regulation. Maryland's consumer protection laws are enforced by the Office of the Attorney General's (OAG) Consumer Protection Division (CPD). OCFR maintains supervisory authority over depository and nondepository financial services providers and pursues violations of consumer protection statutes and other licensing and regulatory statutes within its jurisdiction. CPD pursues unfair or deceptive trade practices in a variety of consumer transactions, including consumer financing.

Maryland Laws

The statutes relating to financial consumer protections may be found in:

- Commercial Law Article: Titles 8 (Investment Securities), 9 (Secured Transactions), 12 (Credit Regulation), 13 (Maryland Consumer Protection Act – MCPA), and 14 (Miscellaneous Consumer Protection Provisions);
- Financial Institutions Article: Titles 1 (General Provision), 2 (Commissioner and Boards), 3 (Commercial Banks), 4 (Savings Banks), 5 (Banking General), 6 (Credit Unions), 7 (Credit Union Share Insurance), 11 (Consumer Credit), and 12 (Miscellaneous Institutions); and
- Business Regulation Article: Title 7 (Collection Agencies)

The National Consumer Law Center, Inc.'s 2009 *A 50-State Report on Unfair and Deceptive Acts and Practices Statutes* indicates that Maryland's laws have a strong prohibition on unfairness and deception, strong State authority in that enforcement is allowed without proof of intent or knowledge, and generally strong remedies for consumers. The report identifies, as a weakness, Maryland's low civil penalties. More recently, a study of consumer protection enforcement by states identified Maryland as one of the "heavies" when it comes to enforcement based on volume of cases, size of defendants pursued, amount of recoveries, and leadership of multi-enforcer cases.[1]

The regulation of payday lending in Maryland is as an example of the State's strong consumer protections. Maryland, as a model State, is one of about a dozen states that require lenders to comply with interest rate caps on consumer loans. The Pew Charitable Trusts recommends that states like Maryland, which set interest rate limits designed to prevent payday lending, though, maintain those limits. Payday lenders have attempted to circumvent these limits through different avenues dating back to 2001 and most recently in 2017. In five different instances, the General Assembly has closed the reported loopholes.

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[1] Prentiss Cox, Amy Widman, and Mark Totten. "Strategies of Public UDAP Enforcement." *Harvard Journal on Legislation, Forthcoming*, https://ssrn.com/abstract=2942406

Office of the Commissioner of Financial Regulation

OCFR is Maryland's financial services regulator. It supervises the activities of the financial services industry in Maryland through periodic on-site examinations and investigations and off-site monitoring programs. OCFR also promulgates regulations regarding the laws under its supervision. To ensure compliance with the laws and regulations, OCFR charters and supervises depository financial institutions (Maryland State-chartered banks, credit unions, and trust companies); licenses and supervises nondepository financial institutions (mortgage lenders, mortgage brokers, mortgage servicers, mortgage loan originators, affiliated insurance producer-originators, check cashers, money transmitters, consumer debt collection agencies, consumer lenders, installment lenders, sales finance businesses, credit services businesses, debt management companies); and registers and supervises credit reporting agencies and debt settlement companies. The office provides assistance to consumers by investigating complaints of questionable business practices involving financial institutions under its supervision and authority.

For depository supervision, the Depository Corporate Activities Unit reviews and processes applications filed by Maryland-chartered depository financial institutions for new charters, mergers, acquisitions, affiliates, stock conversions, changes in control, branches, foreign bank offices, field of membership changes, and all other approvals required under Maryland law. The Depository Supervision Unit supervises and examines all Maryland-chartered depository financial institutions. *For nondepository supervision*, the Non-Depository Licensing Unit licenses and registers nondepository financial services providers. The Non-Depository Compliance Unit supervises, examines, and/or investigates the business activities of licensees and registrants. There are approximately 17,000 licensees and registrants. OCFR is a member of the Conference of State Bank Supervisors and often coordinates its activities with regulatory authorities from other states and the federal government.

The Consumer Services Unit investigates consumer inquiries and complaints involving financial services providers. The Outreach Unit conducts outreach to a variety of audiences including consumers, industry, government partners, and other stakeholders with regard to issue areas impacting the jurisdiction of OCFR. Consumer financial education includes connecting consumers to effective financial education opportunities, including proactively educating consumers on the basics of making sound financial decisions, informing consumers of their rights under State law, and providing consumers with referral information about local financial services providers. OCFR also maintains the State's Notices of Intent to Foreclose and Foreclosed Property registries. Whenever a notice of intent to foreclose is filed with OCFR, the borrower is provided with information on the foreclosure process and foreclosure prevention. Filings handled by OCFR ranged from a high of 178,518 in fiscal 2012 to 79,498 in fiscal 2017. Upon foreclosure, information on the property is registered with OCFR. In fiscal 2017, OCFR received information on 11,416 properties. Currently, and in response to increased demands for use of the data generated by the registries, OCFR is working to upgrade the computer applications supporting both registries.

The Enforcement Unit, as a dedicated investigatory and enforcement arm of the commissioner, investigates fraud-related issues, and conducts specialized investigations/examinations involving depository and nondepository financial institutions and services providers, registrants, individuals, and unlicensed business entities, to uncover improper business practices and violations of law subject to the jurisdiction of the commissioner. *(Note: During the 2000 legislative session, the General Assembly expanded the OCFR's investigative and enforcement powers over both licensed and unlicensed financial services activity in the State. Recognizing the harm misconduct in the financial services arena could pose to the general welfare of the State, the General Assembly provided the commissioner with a broad range of investigatory and enforcement tools to better combat illicit and deficient business practices in the financial services sector. In order to fulfill the mandate of the legislation, OCFR established the Enforcement Unit.)* The Enforcement Unit also coordinates the enforcement activities brought by the commissioner, including determining whether action is warranted, referring matters to litigation counsel, and managing the enforcement process should action be taken. As the primary line of defense in regulating and supervising key segments of financial services, OCFR is best positioned to address problems before they emerge and to deter actions before they harm consumers, as well as to redress misconduct and establish corrective action activity to ensure safe and sound business practices.

Recently, OCFR has brought actions against usurious lenders (*e.g.*, Cash Call and Western Sky) seeking to evade the State's lending statutes, fraudulent loan modification companies, companies engaged in fraudulent foreclosure rescue schemes, unlicensed and predatory car title lenders, and a variety of other financial scams within its jurisdiction. OCFR has also joined other state regulatory authorities in bringing actions and receiving settlements with national mortgage servicing companies. OCFR currently has various ongoing investigations and actions and has reached settlements with a number of companies, such as in the recent case of PHH Mortgage Corp., where the company agreed to follow certain servicing standards, provide consumer relief (with $31 million in cash payments to impact borrowers), and pay an administrative penalty of $8.8 million to state regulators, of which $159,967 was paid to the State of Maryland.

Consumer Protection Division of the Office of the Attorney General

OAG represents the State in all matters of interest to the State, including civil litigation and criminal appeals in all State and federal courts. Thirteen divisions support the office: Legal Counsel and Advice; Securities; Consumer Protection; Anti-trust; Medicaid Fraud Control; Civil Litigation; Criminal Appeals; Criminal Investigation; Educational Affairs; Correctional Litigation; Contract Litigation; People's Insurance Counsel; and the Juvenile Justice Monitoring Unit.

CPD enforces the Maryland Consumer Protection Act (MCPA) and other laws designed to protect Maryland consumers against unfair or deceptive practices. MCPA was enacted in 1967, which lead to the creation of the division. Since that time, both the responsibilities of the division, as well as the challenges facing the division in protecting Maryland consumers, have increased greatly. CPD assists individual consumers with their consumer complaints, helps identity theft victims, educates consumers to help them avoid scams and make good financial decisions, and conducts investigations and brings enforcement actions based on patterns of unfair or deceptive trade practices. In fiscal 2017, CPD received approximately 11,000 consumer complaints and more than 40,000 telephone or email inquiries. CPD was able to obtain refunds or debt forgiveness of more than $23 million for Maryland consumers in fiscal 2017, in addition to millions of dollars in payments to the State.

The Mediation Unit (MU) helps individual consumers resolve complaints that they have concerning their experiences in the marketplace. These complaints relate to a wide variety of consumer transactions and range from consumers facing large financial losses or foreclosure to consumers who are reporting suspicious advertisements to which they did not respond. MU is staffed by a director, who is an assistant Attorney General; paid supervisors; and a dedicated cadre of volunteers and interns who work to resolve consumer complaints through mediation, seeking to find a resolution satisfactory to both the business and the consumer. CPD's volunteer program, which was the first of its kind in the country, recently celebrated its thirtieth anniversary and currently has about 50 volunteers.

In addition to its main office in Baltimore City, CPD has satellite offices in Hagerstown, which helps to resolve complaints against businesses in Western Maryland; Salisbury, which helps to resolve complaints against businesses on the Eastern Shore; and most recently in Prince George's County. Additionally, CPD has part-time offices in Hughesville in Southern Maryland, Frederick, and Cumberland. CPD also offers consumers and businesses a no-cost, binding arbitration program to resolve complaints that cannot be resolved through mediation. Both the business and the consumer must agree that they wish to have the division's arbitrator resolve their complaint.

The Health Education and Advocacy Unit (HEAU) assists consumers with health care-related complaints which may involve insurance companies that deny coverage for medical services that the consumer believes should be covered under their plan, medical billing disputes, complaints about charges for obtaining medical records, or problems with medical equipment such as wheelchairs and hearing aids. HEAU's complaints include health insurers improperly denying essential medical procedures, providers who are billing consumers thousands of dollars for procedures that should have been covered by insurance, and durable medical equipment suppliers who fail to provide the products for which they have been paid. Since the passage of the Affordable Care Act, HEAU has also assisted consumers with obtaining insurance coverage through the Maryland Health Benefit Exchange (Exchange) and with issues regarding premium assistance from the Exchange.

The Enforcement Unit investigates and prosecutes cases regarding a particular business or practice that violate MCPA or related statutes. The unit identifies practices that seem to be particularly egregious and then makes those matters the subject of an enforcement action. While many of the actions are brought by CPD on its own, many others, particularly involving national companies, are brought jointly with other states. In an enforcement action, CPD may obtain injunctive relief to prohibit the company from continuing to engage in the deceptive conduct in the future, restitution for injured consumers, civil penalties, and the costs of investigation and prosecution of the action. CPD's actions cover a wide range of consumer transactions, including consumer financing. CPD has brought actions against usurious lenders, companies engaged in fraudulent foreclosure rescue schemes, companies engaged in loan modification scams, and a variety of other types of financial transactions.

Following the 2012 national settlement with five mortgage lenders, OAG established a Mortgage Foreclosure Unit (MFU) to ensure compliance with the settlement and examine practices by banks and mortgage servicers. Some of the enforcement actions brought to date by MFU include enforcement through civil contempt of a settlement reached, together with CFPB, against a mortgage broker; settlement, together with CFPB, of a kick-back case involving two national banks that resulted in more than $10 million in restitution to consumers; settlements with Ocwen and HSBC related to practices involving mortgage origination, servicing, and foreclosure abuses resulting in benefits to consumers; settlement with Safeguard, the nation's largest mortgage field services company, related to its procedures for securing properties, including allegations that consumers were improperly locked out of their homes; settlements with Bank of America and Deutsche Bank relating to their securitization of mortgages, providing restitution to State and local agencies that invested in residential mortgage-backed securities issued by Bank of America or Deutsche Bank, as well as other benefits to consumers; enforcement cases brought against companies that promise to help consumers modify their mortgages and save their homes; and enforcement cases against property management companies that provide services to home owners associations and condominiums.

Chapter 4. Federal Actions in 2017
Affecting Financial Services Climate and Regulation:
Broad Array of Tools May be Used to Make Changes at the Federal Level

- Agency Leaders: "Personnel is Policy"
- Congressional Actions under the Congressional Review Act
- Congressional Legislative Efforts
- Actions of Regulatory Agencies, the White House, and U.S. Treasury
- The Courts

The Trump Administration, working with the 115th Congress, has made efforts along four principal pathways to loosen the post-crisis reforms. Changes in policy have been seen in the Trump Administration's personnel decisions; in Congress's efforts to pass new deregulation legislation or overturn regulations through the Congressional Review Act; and in the actions of regulatory agencies, the White House, and the U.S. Department of the Treasury (U.S. Treasury). Congress and the Trump Administration also are using strategies to ensure that the budgets for the U.S. Securities and Exchange Commission (SEC)[1] and the U.S. Commodity Futures Trading Commission (CFTC) are being kept level or reduced.[2] Furthermore, efforts to roll back reform continues to occur in the courts.

Agency Leaders: "Personnel is Policy"

The Trump Administration has now replaced or nominated nearly all of the relevant officials who play critical roles setting the course of policy development, regulation, oversight, and enforcement. In reviewing the public statements of these new appointees, there is a consistent emphasis on rolling back many of the post-crisis reforms.

U.S. Treasury (steward of the U.S. economic and financial systems; promoter of economic prosperity and ensuring the financial security of the United States): In February 2017, Steven Mnuchin was confirmed as the Secretary of the Treasury, replacing Jack Lew. In November 2016, he indicated that one of the top priorities of the Trump Administration would be to "strip back parts of Dodd-Frank."[3] In his previous employment, Mr. Mnuchin was a banker and hedge fund manager.

Federal Reserve (central bank tasked with managing the nation's monetary policy, as well as being the primary regulator for bank holding companies, State member banks, and foreign banks): In November 2017, Jerome Powell was nominated to serve as the Federal Reserve chair, replacing Janet Yellen. Having served on the Federal Reserve for six years, he had previously voted along with all of the previous Dodd-Frank-related rules. During his confirmation hearings, though, he indicated some willingness to relax reforms. In his opening statement at his confirmation hearing, he said, "We will continue to consider appropriate ways to ease regulatory burdens, while preserving core reforms – strong levels of capital and liquidity, stress testing, and resolution planning – so that banks can provide the credit to families and businesses necessary to

[1] "Testimony on the Fiscal Year 2018 Budget Request," U.S. Securities and Exchange Commission, https://www.sec.gov/news/testimony/testimony-fiscal-year-2018-budget-request.

[2] Sarah N. Lynch, "U.S. derivatives regulator splits with White House over budget," *Reuters*, https://www.reuters.com/article/us-usa-budget-finreg/u-s-derivatives-regulator-splits-with-white-house-over-budget-idUSKBN18J2EK?il=0.

[3] Matthew Nussbaum, "Dodd-Frank will be targeted, Mnuchin says," *Politico*, https://www.politico.com/blogs/donald-trump-administration/2016/11/dodd-frank-targeted-mnuchin-231994.

sustain a prosperous economy."[4] In prior employment, Mr. Powell worked as an investment banker and in private equity investing.

In October 2017, Randal Quarles was confirmed to serve as the Federal Reserve Vice Chairman for Supervision. During his confirmation hearing, he indicated that some of the post-crisis reforms should be relaxed.[5] In November 2017, Marvin Goodfriend was nominated to serve as a governor on the Federal Reserve, replacing Sarah Bloom Raskin, who resigned in 2014. Currently, Mr. Goodfriend works as a professor of economics at Carnegie Mellon University and previously was Director of Research at the Federal Reserve Bank of Richmond.

Office of the Comptroller of the Currency (OCC) (primary regulator for national banks and federal thrifts): In November 2017, Joseph Otting was confirmed to serve as the Comptroller of the Currency, replacing Acting Comptroller Keith Noreika, who had served since April 2017. In prior employment, Mr. Otting worked as a bank executive and former CEO of OneWest Bank and later President of CIT Bank and Co-President of CIT Group.

Federal Deposit Insurance Company (FDIC) (primary regulator for State nonmember banks and State thrifts): In December 2017, Jelena McWilliams was nominated to serve as the next head of FDIC, replacing Martin Gruenberg. Currently, Ms. McWilliams works as the chief legal officer for the Fifth Third Bancorp. If approved, she would serve as an FDIC board member for the remainder of a six-year term expiring July 15, 2019, and as chairperson for five years.

Consumer Financial Protection Bureau (CFPB) (supervisory authority to enforce consumer protection laws on depository institutions and regulator for mortgage lenders, payday lenders, and offerers of financial services): In November 2017, Mike Mulvaney was appointed to serve as the interim leader of CFPB, replacing Richard Cordray. Currently, Mr. Mulvaney serves as the Director of the Office of Management and Budget, a position he will concurrently hold while serving as acting director of CFPB. As quoted by ABC News on November 27, 2017, Mr. Mulvaney, at an initial news conference upon taking the post, said, "the way we go about it, the way we interpret it, the way we enforce it will be dramatically different under the [Trump] Administration than it was under the [Obama]."[6] During the same news conference, he also said, "I still think it is an awful example of a bureaucracy that has gone wrong. It is almost entirely unaccountable to the people who are supposed to oversee it or pay for it."[7]

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[4] "Statement by Jerome H. Powell, Member, Board of Governors of the Federal Reserve System, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate," U.S. Federal Reserve, https://www.federalreserve.gov/newsevents/testimony/files/powell20171128a.pdf.

[5] Binyamin Appelbaum, "Randal Quarles Confirmed as Federal Reserve Governor," *New York Times*, https://www.nytimes.com/2017/10/05/us/politics/randal-quarles-confirmed-as-federal-reserve-governor.html.

[6] Avery Miller, "Defiant Mulvaney pledges to run CFPB 'differently' amid leadership fight," *ABC News*, http://abcnews.go.com/Politics/defiant-mulvaney-pledges-run-cfpb-differently-amid-leadership/story?id=51418108

[7] Bre Payton, "Mick Mulvaney Just Savaged The CFPB In His First Press Conference As Director," *The Federalist*, http://thefederalist.com/2017/11/27/mick-mulvaney-just-savaged-the-cfpb-in-his-first-press-conference-as-director/.

SEC (oversees equity, stock option, and bond markets): In May 2017, Jay Clayton was confirmed as the chair of SEC. During his confirmation process, there were news reports that stated that while Mr. Clayton said he had "no specific plans" to undo Dodd-Frank, he did want to scale back financial regulations.[8] In his prior employment, Mr. Clayton was a partner at Sullivan and Cromwell, LLP, as an advisor to public and private companies on securities offerings, mergers and acquisitions, corporate governance, and regulatory and enforcement proceedings.

CFTC (overseer of commodity futures, commodity options, and swaps): In June 2017, J. Christopher Giancarlo was confirmed to lead CFTC as its chair, replacing Timothy Massad. At his confirmation hearing, he discussed his project KISS initiative standing for "Keep it simple, stupid." While stressing that this was not an effort to repeal key principles of reform, he did say, "It is about taking our existing rules as they are and applying them in ways that are simpler, and less burdensome."[9] In his prior employment, he was chair of the Wholesale Markets Brokers' Association, Americas.

Federal Housing Finance Agency (primary regulator of the housing finance market): As director, Melvin Watt has led the agency since December 2013.

National Credit Union Administration (NCUA) (regulator of federal credit unions and operator of the National Credit Union Share Insurance Fund which insures deposits of account holders in federal credit unions and the majority of State-chartered credit unions): In June 2017, President Trump designated Acting Board Chair J. Mark McWatters as the chair of the board. Mr. McWatters joined the board in August 2014. Upon being designated chair, Mr. McWatters said, "As Chairman of the NCUA, I remain committed to providing regulatory relief for the credit union community, in compliance with the Federal Credit Union Act, and to streamlining the operations of NCUA as a prudential regulator."[10]

Financial Stability Oversight Council (FSOC) (counsel of regulators monitoring the stability of the financial system and has authority to designate SIFIs): Secretary of the Treasury Mnuchin is FSOC's chair. In November 2017, Thomas E. Workman was nominated to be the member of FSOC with insurance experience, replacing S. Roy Woodall, Jr. In prior employment, Mr. Workman served as President and CEO of the Life Insurance Council of New York, Inc.

Federal Trade Commission (FTC) (promoter of consumer protection and the elimination and prevention of anticompetitive business practices, such as coercive monopoly): In October 2017, Joseph Simons was nominated to lead FTC as chair. Chairman Maureen Ohlhausen is the current acting chair. Currently, Mr. Simons is an antitrust lawyer with the firm of

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[8] Donna Borak, "Senate OK's Jay Clayton, Trump's pick for SEC chairman," *CNN*, http://money.cnn.com/2017/05/02/news/economy/senate-clayton-sec-confirmation/index.html .

[9] "Statement of J. Christopher Giancarlo Acting Chairman, U.S. Commodity Futures Trading Commission before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry," U.S. Commodity Futures Trading Commission, http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-25.

[10] "McWatters Named NCUA Chairman," National Credit Union Administration, https://www.ncua.gov/newsroom/Pages/news-2017-june-mcwatters-named-ncua-chairman.aspx.

Paul, Weiss, Rifkind, Wharton, and Garrison. In prior employment, Mr. Simons served as director of the FTC's Bureau of Competition.

U.S. Department of Labor (DOL) (cabinet department that administers labor laws to guarantee workers' and retirees' rights): On April 28, 2017, R. Alexander Acosta was sworn in as Secretary of Labor. At his confirmation hearing, he said that the DOL Fiduciary Rule "goes far beyond simply addressing the standard of conduct" of investment advisors.[11] Mr. Acosta is an attorney and was dean of Florida International Law School. He previously served as the U.S. Attorney for the Southern District of Florida, as assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice, and as a member of the National Labor Relations Board.

Congressional Actions under the Congressional Review Act

The Congressional Review Act (CRA), enacted in 1996, authorizes Congress to pass a joint resolution on a simple majority vote, generally within 60 legislative days, that disapproves or nullifies any rule promulgated by an agency.[12] Once signed by the president, the resolution bars the agency from adopting the same or any substantially similar rule without further congressional authorization.

Prior to the 115th Congress (2017-2018), CRA was used only once, in 2001, to overturn an agency rule. Beginning in early 2017, Congress invoked CRA over a dozen times to overturn rules proposed by agencies under the Obama Administration.[13] Those rules that were overturned related to financial consumer protection are shown below. More recently, a bill was filed in December 2017 in the U.S. House of Representatives to overturn the CFPB's payday lending rule.[14]

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[11] Marianne Levine, "Labor nominee Acosta: Trump is the boss," *Politico*, https://www.politico.com/story/2017/03/alexander-acosta-donald-trump-labor-hearing-236377.

[12] "The Congressional Review Act (CRA)," Congressional Research Service, https://fas.org/sgp/crs/misc/IF10023.pdf.

[13] "Congressional Review Act Tracker," The George Washington University Regulatory Studies Center, https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/CRA%20Tracker%2011-01-2017.pdf.

[14] Jim Puzzanghera, "House lawmakers move to repeal new CFPB payday lending rules," *Los Angeles Times*, http://www.latimes.com/business/la-fi-cfpb-payday-loan-repeal-20171201-story.html.

Resolution	**Description**	**Effective**
S.J. Res. 34	Nullifies the rule submitted by FCC related to privacy protections for broadband and other telecommunications services customers.	4/3/17
H.J. Res. 41	Nullifies a rule from SEC that requires resource extraction issuers to disclose payments made to governments for the commercial development of oil, natural gas, or minerals.	2/14/17
H.J. Res. 66	Nullifies a rule from DOL regarding savings arrangements established by states for private-sector employees.	5/17/17
H.J. Res. 67	Nullifies a rule submitted by the DOL regarding savings arrangements established by State political subdivisions for private-sector employees.	4/13/17
H.J. Res. 111	Nullifies a rule submitted by CFPB regarding arbitration agreements that prevent a consumer from filing or participating in certain class action suits.	11/1/17

Congressional Legislative Efforts

During 2017, there were many deregulation bills considered in Congress, some repealing broad swaths of regulation and others targeting repeal of specific laws and regulations or imposing new requirements on regulatory agencies. The U.S. House passed the Financial CHOICE Act of 2017 (CHOICE Act 2.0), repealing or revising large parts of Dodd-Frank. The U.S. House also passed 25 targeted deregulation bills in 2017 out of over 60 approved by the House Financial Services Committee. In the U.S. Senate, the major focus has been on S.2155, a bill that passed the Senate Banking Committee in December 2017 with some bipartisan support.

Senate Action on S.2155: "Economic Growth, Regulatory Relief, and Consumer Protection Act"

A significant measure, which passed the Senate Banking Committee 16-7 in December 2017, is S.2155 "Economic Growth, Regulatory Relief, and Consumer Protection Act." Its stated goal is to "promote economic growth, provide tailored regulatory relief, and enhance consumer protections, and for other purposes." Key provisions ease certain bank requirements related to consumer access to mortgage credit; provide regulatory relief for community banks, mid-size banks, and large banks; and provide consumer protections related to credit reports, veterans' debts, exploited seniors, and foreclosures affecting tenants.

At the commission's December 5, 2017 meeting, Marcus Stanley described the legislation and indicated that he has concerns with the provisions that weaken protections against predatory lending, weaken protections against racial discrimination in credit markets, increase financial sector fragility by weakening risk controls at big banks, and provide inadequate consumer protection.

Provisions under S.2155 can be categorized in four groups: consumer access to mortgage credit; regulatory relief; regulation for bank holding companies; and consumer protections.

Consumer Access to Mortgage Credit

The bill would ease certain requirements on banks providing consumer access to mortgages. First, retailers of manufactured housing and their employees would be exempt from the definition of "mortgage originator." More specifically, the exemption applies when the retailer does not receive compensation from a residential mortgage loan application that is in excess of any compensation or gain received in a comparable cash transaction and does not directly negotiate with the consumer or lender on the loan terms. Second, community banks (with assets of $10 billion or less) would no longer be required to provide escrow account services for homebuyers with high-priced mortgage loans. Third, the three-day waiting period required for mortgage disclosures would be eliminated if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate. Fourth, a new statutory exemption from the Home Mortgage Disclosure Act reporting requirements would be created for depository institutions that have originated fewer than 500 closed-end mortgage loans or fewer than 500 open-end lines of credit in each of the last two years. Fifth, bank portfolio mortgages of $400,000 or under in rural areas would be exempt from appraisal requirements if the sellers find that no certified appraiser was available within a reasonable amount of time. Lastly, regulatory small lender exemptions would be expanded by creating a broad statutory exemption to qualified mortgage affordability requirements for loans held in portfolio by banks with $10 billon or less in assets.

Further Small Bank Regulatory Relief

Qualifying community banks (with assets of less than $10 billion) would be considered "well-capitalized" if they meet simplified risk-based capital requirements (using a Community Bank Leverage Ratio). Certain reciprocal deposits would not be considered funds obtained through a deposit broker. Banks with total trading assets and liabilities not exceeding 5% of total assets, and not more than $10 billion in assets, would be exempt from the Volcker Rule. Banks with less than $5 billion in assets would be allowed a reduced reporting requirement. Federal savings associations with assets of $15 billion or less would be allowed to elect to operate with national bank powers. For banks with assets of $3 billion or less, the asset threshold for the Federal Reserve's Small Bank Holding Company Policy Statement would be increased from $1 billion to $3 billion. The examination cycle for banks with assets of $3 billion or less (up from $1 billion) would be 18-months for well-managed, well-capitalized banks.

Regulatory Relief for Bank Holding Companies

Banks ranging in size from $50 billion to $250 billion would no longer be required to meet enhanced prudential standards, other than stress tests. The Federal Reserve, though, would still have discretionary authority to impose risk controls at banks from $100 billion to $250 billion in size. The requirement for self-administered stress tests at large banks would be reduced from biannual to periodic. The requirement for either self-administered or regulatory stress tests at large nonbanks would be reduced from biannual to periodic. Large custodial banks would be exempt from requirements to hold their own equity capital against potential losses in funds they have deposited with the Federal Reserve.

Consumer Protections

Consumers would be permitted one free freeze and unfreeze annually to their credit reports. Veterans' medical debt would be prohibited from being reported to credit bureaus for a year. Fully paid veterans' medical debt that has not been charged off must be removed from a credit report, in cases where the Department of Veterans Affairs is or was liable for the debt. Banks would be legally indemnified if in good faith they restrict access to the funds of a senior citizen who they suspect is being financially exploited (and inform law enforcement of any exploitation). A law put in place during the crisis, containing certain anti-foreclosure measures, The Protecting Tenants at Foreclosure Act, would be made permanent.

House Actions – CHOICE Act 2.0

On June 8, 2017, the House of Representatives passed an amended version of H.R. 10, the Financial CHOICE Act of 2017, often referred to as CHOICE Act 2.0. Key provisions include repeal of the Volcker Rule; repeal of the Fiduciary Duty Rule; repeal of the orderly liquidation authority (OLA); repeal of the FSOC's designation authority; mandatory cost-benefit analysis for all rules; mandatory congressional approval of all major rules; and reduction in CFPB's regulatory and enforcement authority.

In written testimony to the commission, Amias Moore Gerety notes that "regardless of the legislative odds of CHOICE Act's passage, its central goals, individually or collectively, remain a critical place to focus on the shape of the current debate."

Organized into 11 titles, CHOICE Act 2.0[15] makes numerous changes to the financial institutions market. Shearman & Sterling LLP, a global law firm that advises financial institutions, governments, and government organizations, summarizes each title as follows:

- Title I – Ending "Too Big to Fail";
- Title II – Demanding Accountability from Wall Street;
- Title III – Demanding Accountability from Financial Regulators;
- Title IV – Facilitating Capital Formation for Small Businesses, Innovators, and Job Creators;
- Title V – Relief from Regulatory Burden for Community Financial Institutions;
- Title VI – Regulatory "Off Ramp" for Strongly Capitalized, Well-Managed Banking Organizations;

[15] "The Financial CHOICE Act of 2017," U.S. Congress, https://www.congress.gov/bill/115th-congress/house-bill/10.

- Title VII – Consumer Financial Protection Bureau;
- Title VIII – Capital Markets Reform;
- Title IX – Repeal of Volcker Rule;
- Title X – Federal Reserve Reform and Emergency Lending Authority; and
- Title XI – Insurance Reform.

Title I would repeal OLA, which was created under Dodd-Frank, and instead would create a new subchapter of Chapter 11 for bankruptcy filings. OLA ensured that shareholders, management, and bondholders would face losses when a bank fails, rather than taxpayers. Dodd-Frank also provided that the financial industry would pay for any losses resulting from the failing company that exceeded the stakeholders of the company. In addition, Title I would limit federal agencies' abilities to assist large financial institutions facing financial distress. Title II would increase maximum penalties that regulators may impose under certain federal laws, while Title III would require federal financial regulatory agencies to conduct quantitative and qualitative cost-benefit analyses when proposing new regulations. Title III also would require Congress to approve each major rule by a joint resolution of Congress within 70 session days or legislative days of its submission to Congress before it could take effect.

Title IV focuses on relaxing regulations to allow companies to raise capital and more easily go public, and Title V would make numerous changes to provide regulatory relief for community banks. Title VI would exempt large, stable financial institutions maintaining an average leverage ratio of 10%, from various federal laws and regulations, including all capital and liquidity requirements. Title VII would reduce CFPB's regulatory and enforcement authority. Specifically, it would rename CFPB to be the "Consumer Law Enforcement Agency" and would limit the independence of CFPB by making the director serve at the discretion of the president and specifying that the president, rather than the director, would appoint the agency's deputy director. The Act also would subject CFPB to the congressional budget process, rather than being independently funded by the Federal Reserve System.

Title VIII would make a wide array of changes to capital market regulations, including changes limiting SEC funding and enforcement. Perhaps most notably, it would repeal DOL's Fiduciary Rule. Title VIII also would repeal a range of Dodd-Frank rulemaking mandates and directives to conduct studies and prepare reports. Title IX would repeal the Volcker Rule in its entirety, while Title X would make numerous changes to the Federal Reserve. Amongst those changes would be a narrowing of the Federal Reserve's emergency lending authority, including by further qualifying the emergency lending to unusual and exigent circumstances "that pose a threat to the financial stability of the United States." Title XI would abolish the Federal Insurance Office (FIO) and would replace it with the Office of Independent Insurance Advocate within the U.S. Treasury. The head of the new office would be designated as the independent member with insurance expertise on FSOC.

While witnesses testified that it is unlikely that the CHOICE Act 2.0 will pass the U.S. Senate, that legislation and the over 60 bills that have passed the House Financial Services

Committee in 2017 represent the various proposals that Congress is considering as it evaluates regulation of the financial services industry.

House Action – Targeted Deregulation Bills

Beyond passage of the Choice Act 2.0, the House Financial Services Committee in 2017 considered and passed out of committee over 60 targeted deregulation bills. The full U.S. House ultimately approved at least 25 of these bills. However, other than the CRA actions discussed earlier, only one technical piece of legislation, relating to the term of the FSOC's independent insurance expert, went on to become law.

While a summary of each of these bills is beyond the scope of this report, the following are the bills that passed the full U.S. House in 2017, in order of passage:

(1) SEC Regulatory Accountability Act;
(2) Helping Angels Lead our Startups Act;
(3) Commodity End-User Relief Act;
(4) Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017;
(5) Fair Access to Investment Research Act of 2017;
(6) Supporting America's Innovators Act of 2017;
(7) Small Business Capital Formation Enhancement Act;
(8) Encouraging Employee Ownership Act of 2017;
(9) U.S. Territories Investor Protection Act of 2017;
(10) Fair Investment Opportunities for Professional Experts Act;
(11) Municipal Finance Support Act of 2017;
(12) Preserving Access to Manufactured Housing Act of 2017;
(13) Clarifying Commercial Real Estate Loans;
(14) Micro Offering Safe Harbor Act;
(15) Privacy Notification Technical Clarification Act;
(16) Financial Institution Customer Protection Act of 2017;
(17) Improving Access to Capital Act;
(18) Investor Clarity and Bank Parity Act;
(19) Systemic Risk Designation Improvement Act of 2017;
(20) Emerging Public Offerings Act of 2017;
(21) Risk-Based Credit Examination Act;
(22) Community Institution Mortgage Relief Act of 2017;
(23) Family Office Technical Correction Act of 2017;
(24) Market Data Protection Act of 2017; and
(25) Corporate Governance Reform and Transparency Act of 2017.[16]

[16] "Legislative Search Results," U.S. Congress, https://www.congress.gov/search? q=%7B%22source%22%3A%22legislation%22%2C%22bill-status%22%3A%5B%22law%22%2C%22passed-one%22%5D%2C%22house-committee%22%3A%22Financial+Services%22%2C%22congress%22%3A%22115%22%7D.

If S.2155 or some other financial consumer deregulation bill passes the full U.S. Senate in 2018, it is likely that when representatives from the two chambers meet in conference to reconcile a bill, that the U.S. House members will ask their Senate conferees to consider any or all of the 25 deregulation bills which had passed the full House in the 115th Congress. Thus, it is important to continue to monitor developments in both the U.S. House and U.S. Senate related to the efforts to roll back Dodd-Frank provisions and other financial consumer protections.

Actions of Regulatory Agencies, the White House, and U.S. Treasury

The regulatory agencies have significant authority to revise, interpret, and enforce rules. The basic rulemaking process under the Administrative Procedure Act may be used both to repeal existing rules and to promulgate new ones that align with the Trump Administration's view of regulation. Interpretive guidance and statements of policy also may be used to effect deregulation. These are generally issued by agencies without the rulemaking oversight mechanism and with fewer procedural requirements. One of the least transparent ways to effectuate deregulation is to implement a weak enforcement program that fails to deter violations of consumer financial protection laws and regulations.

Starting in February 2017, a series of executive orders and executive memoranda have been issued by President Trump to call for the review of specific rules or impose new, general rulemaking requirements on agencies. President Trump has also ordered a number of studies about financial regulation, some targeted and some very broad in scope. The U.S. Treasury has now issued three of its four required reports, with a total of nearly 250 specific recommendations, of which 80% can be implemented by agencies without congressional actions.

Agency Actions

Significant agency changes have occurred or are pending further action. Amongst those taken or proposed to date are:

(a) U.S. Treasury has called on bank regulators to loosen key requirements on the largest banks, in particular with regard to stress testing, capital requirements, resolution planning, liquidity tests, and the Volcker Rule;
(b) DOL has delayed implementation of the "Conflicts of Interests" rule related to the fiduciary duty of advisors for retirement savings;
(c) FSOC has de-designated SIFIs;
(d) SEC is soliciting input on a new Fiduciary Duty Rule as well as financial disclosure simplification and has removed executive compensation rules from their agenda;
(e) U.S. Treasury has called on CFTC to weaken derivatives trading requirements as well as restrict the cross-border applications of their reforms;

(f) U.S. Treasury and OCC have indicated the intent to propose changes to the Community Reinvestment Act and related enforcement efforts that could diminish capital and services available to low-income and underserved communities[17]; and

(g) CFPB recently announced that they will conduct a review of inherited regulations.

Three of these agency actions are reviewed in more detail below as they relate to the Volcker Rule, the Fiduciary Duty Rule, and SIFIs.

Volcker Rule

The Volcker Rule amended the Bank Holding Company Act of 1956 to restrict bank investing, limit speculative trading, and eliminate proprietary trading. Five federal agencies – the Federal Reserve, FDIC, OCC, CFTC, and SEC – approved the final regulations that make up the Volcker Rule in December 2013. The rules went into effect April 1, 2014, with banking entities' full compliance required by July 21, 2015. Based on requests by large banks, full compliance with the rule was delayed through July 21, 2017, for the banks to exit illiquid investments. In early August 2017, OCC announced its intention to revise the Volcker Rule and requested comments from the public on potential changes. In May 2017, the Treasury Secretary directed the five key agencies to reexamine what is permitted under the Volcker Rule.

Mary Miller states in her December 5, 2017 written testimony that there is a clear statement of support for the rule's intent to prohibit large institutions that benefit from federal deposit insurance from proprietary trading for their own account in ways that can put taxpayers at risk. Amias Moore Gerety states in his October 26, 2017 written testimony that banks and their affiliates, who benefit significantly from the presence of deposit insurance and the availability of the Federal Reserve as a lender of last resort, should not use those advantages to engage in speculative trading in the financial markets. Stephen Hall states in his October 26, 2017 written testimony that the threat to financial stability from proprietary trading at large banks has been widely recognized since the crisis.

The Volcker Rule, named after the former chairman of the Federal Reserve, Paul Volcker, curtails a bank's ability to employ speculative trading techniques and strategies when also servicing clients as a depository. A banking entity is prohibited from engaging in proprietary trading or acquiring or retaining any equity, partnership or other ownership interest in or sponsoring a hedge fund or private equity fund. With the aim of reducing the amount of speculative investments on large banks' balance sheets (that contributed, in part, to the 2008 financial crisis), the rule limits banks to owning no more in a hedge fund or private equity fund than 3% of the total ownership interest.

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[17] Rachel Louise Ensign and Ryan Tracy, "Trump Administration Seeks to Change Rules on Bank Lending to the Poor," *Wall Street Journal*, https://www.wsj.com/articles/trump-administration-seeks-to-change-rules-on-bank-lending-to-the-poor-1515624418.

Both small and large banks say that the Volcker Rule has led to significant compliance costs. Some small banks have also argued that the rule limits their investments in financial technology due to the rule's limitation on banks' investment in private equity and hedge funds. Larger banks contend that it puts unnecessary limits on their ability to support liquid markets. While banks are supposed to have leeway to assist customers through market making, they claim the definition of the rule is too vague, making it difficult to sort out what investments are allowed or prohibited. Some larger banks also say the rule bars them from prudently making investments with their own capital. The Volcker Rule, however, was meant to prevent lenders with federally backed deposit insurance from making market bets that could lead to outsized losses.

Amias Moore Gerety indicated in his October 26, 2017 written testimony that some changes to the rule to clarify the status of community banks, which are already functionally exempt, would be welcome. He suggested that this could be accomplished by tying the application of the rule to existing demarcations in the capital rules that exempt any bank with less than $1 billion in trading activity from rules governing market risk.

Fiduciary Duty Rule

In April 2016, DOL finalized its Fiduciary Duty Rule under the Employee Retirement Income Security Act of 1974. The rule requires all financial advisers to give advice about retirement assets that is in their clients' best interest. On February 3, 2017, President Trump ordered a review of the rule. In November 2017, DOL issued a final rule delaying important provisions of the rule for 18 months. Separately, in June 2017, SEC began soliciting input from the public on a possible Fiduciary Duty Rule that the SEC might promulgate under the securities laws.

At the commission's October 26, 2017 meeting, Stephen Hall described the issues and indicated that SEC's actions appear to be part of a strategy to delay or weaken the DOL rule, which, after lengthy, data-driven, and open rulemaking, effectively and appropriately addresses conflicts of interest by broker-dealers, insurance agents, and other advisors. Mary Miller's testimony at the December 5, 2017 meeting, states that it is time to level the playing field between asset managers who are fiduciaries under the Investment Company Act and broker-dealers who have historically worked under a lighter standard of suitability in making investment recommendations for their clients.

Developed over six years, the DOL Fiduciary Duty Rule, published on April 8, 2016, modernizes rules affecting retirement savings to protect consumers against conflicts of interest among broker-dealers, insurance agents, and other financial advisors. As more fully described in the DOL final rule, financial institutions and advisors must always act in the best interests of their clients. Furthermore, those advisors who wish to continue receiving inherently conflicted forms of compensation, such as commissions, must comply with other requirements, including standards of impartial conduct and disclosure obligations. And, with respect to IRA owners, advisors must enter into an enforceable contract with those clients that sets forth these duties.[18]

The rule recognizes several important marketplace developments over the past 40 years – the growth of self-directed retirement accounts, such as IRA and 401(k) accounts (alongside the sharp reduction in company sponsored pension plans), as well as the transition of traditional broker-dealers into the financial advisory role of client accounts. The DOL rule defines who is a fiduciary by virtue of rendering advice about retirement assets, and it replaces an outdated rule originating in 1975 under the Employee Retirement Income Security Act of 1974.

In April, June, and further in November of 2017, DOL acted to delay until July 1, 2019, key regulatory and enforcement provisions of the finalized fiduciary rule.[19] While the requirement that brokers and others handling retirement accounts put client interests ahead of their own is nominally intact, the delay makes a number of key aspects of the original rule unenforceable until 2019.

DOL stated that one of their principal reasons for the delay was to allow for "potential input from and action by" SEC on the development of adviser duties under the securities laws. The U.S. Treasury's report on asset management and insurance calls for collaboration between SEC, DOL, and the states in developing fiduciary standards.

Subsequently, SEC announced that it will develop its own fiduciary standard for brokers and other advisers, which would apply to all securities investments whether or not held in a retirement account. Unlike the DOL rule, however, any SEC standard would not address conflicts of interest among advisers who recommend any nonsecurities investments, including some insurance products, commodities, and others. SEC Chair Jay Clayton has said that: "We are working on a fiduciary rule and exploring it for brokers and investment advisers." and "It's a priority for me to address this space in light of the action that the Department of Labor took to step into this space."[20]

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[18] "Definition of the Term 'Fiduciary'; Conflict of Interest Rule-Retirement Investment Advice," Federal Register, https://www.federalregister.gov/documents/2016/04/08/2016-07924/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice.

[19] "18-Month Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24)," Federal Register, https://www.federalregister.gov/documents/2017/11/29/2017-25760/18-month-extension-of-transition-period-and-delay-of-applicability-dates-best-interest-contract.

[20] Bruce Kelly, "Day after DOL delay, SEC's Jay Clayton calls a fiduciary rule a priority," *InvestmentNews*, http://www.investmentnews.com/article/20171128/FREE/171129935/day-after-dol-delay-secs-jay-clayton-calls-a-fiduciary-rule-a.

Proponents of the DOL Fiduciary Rule have raised concerns that President Trump's decision to reexamine the rule, coupled with the DOL delay and some statements from SEC that the DOL rule could harm the broker-client relationship, all may indicate that DOL and SEC will roll back some of the new protections for retirement savers.

Several states, including Connecticut, Massachusetts, Nevada, and New York,[21] are taking steps to adopt their own fiduciary standards for advisors, though opponents to such efforts have raised concerns that this may run afoul of federal preemption of a state requiring broker-dealers to hold certain documents or lead to a complex patchwork of state regulations.

Systemically Important Financial Institutions

FSOC is comprised of federal and state financial regulators and chaired by the Secretary of the Treasury. Its mission is to identify and respond to risks that threaten the financial stability of the United States. An important tool is the authority to designate systemically significant nonbanks, such as insurance companies and other financial institutions, for heightened regulation since their failure might trigger a financial crisis. They are referred to as SIFIs. And these institutions also are sometimes colloquially referred to as "too big to fail." President Trump's executive order (February 2017) required the U.S. Treasury to review FSOC's designation process. Of the four original SIFI designees, only one currently holds this label.

Stephen Hall's October 26, 2017 written testimony, indicates that de-designating AIG makes another costly financial crash more likely. Amias Moore Gerety's October 26, 2017 written testimony, states that the ability of the financial regulatory system to remain flexible and to supervise firms that become central to the financial system and that take outsize risk is essential to reducing the risk of another financial crisis and fashioning effective responses should one occur.

In response to the financial crisis, Dodd-Frank provisions authorized the Federal Reserve to place enhanced prudential standards on large financial firms that would not normally fall under the oversight of bank regulators. During the crisis, many of the largest firms that failed or were on the brink of collapse were not regulated as banks. Recognizing this systemic risk, Congress gave authority to FSOC to designate firms as SIFIs to come under enhanced supervision by the Federal Reserve. Dodd-Frank automatically deemed banks with assets exceeding $50 billion to come under similar enhanced prudential standards as those for SIFIs designated by FSOC.

FSOC, in 2013 and 2014, designated four nonbank SIFIs: Met Life, Inc. (a global insurance company), AIG (a global insurance firm), General Electric Capital (GE Capital, the financing arm of General Electric), and Prudential Financial (a global insurance company). AIG was designated as SIFI after its near-collapse and taxpayer bailout during the financial crisis. Since

[21] Lisa Beilfuss, "More Twists Ahead for Fiduciary Rule," *Wall Street Journal*, http://ereader.wsj.net/publink.php?shareid=066c4a049.

the crisis, AIG has undergone significant restructuring, including reducing its size and revamping internal controls. In September 2017, the FSOC released AIG from the special government oversight. In 2016, the U.S. Court of Appeals for the D.C. Circuit struck down the FSOC designation of Met Life as a SIFI. Separately, in June 2016, General Electric shed the label after selling off most of its GE Capital finance businesses.

Executive Orders and Executive Memoranda

Starting in January 2017, President Trump issued a number of executive orders and memoranda with a call for less regulation of the financial sector. He called for a U.S. Treasury review of all regulations and for regulators to repeal two rules for every new rule that might be promulgated.

President Trump's three executive orders were:

- Reducing Regulation and Controlling Regulatory Costs, Executive Order No. 13,771, 82 Fed. Reg. 9339 (January 30, 2017): This order requires the repeal of two regulations for every new regulation that is promulgated and that any cost to the industry be balanced by the repeal of other regulations, regardless of the benefits of the new or rescinded rules.
- Core Principles for Regulating the United States Financial System, Executive Order No. 13772, 82 Fed. Reg. 9965 (February 3, 2017): This order enumerated the Trump Administration's "core principles" of federal financial regulations and called upon the U.S. Treasury to issue a number of reports on financial regulations.
- Enforcing the Regulatory Reform Agenda, Executive Order No. 13,777, 82 Fed. Reg. 12285 (February 24, 2017): This order requires agencies to appoint regulatory reform officers and task forces to oversee implementation of regulatory reform initiatives.

The Trump Administration's "core principles" of federal financial regulations are to:

- empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
- prevent taxpayer-funded bailouts;
- foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
- enable American companies to be competitive with foreign firms in domestic and foreign markets;
- advance American interests in international financial regulatory negotiations and meetings;
- make regulation efficient, effective, and appropriately tailored; and
- restore public accountability within federal financial regulatory agencies and rationalize the federal financial regulatory framework.

President Trump also issued two memoranda on April 21, 2017, to the Secretary of the Treasury, ordering the Treasury Secretary to review two key components of Dodd-Frank.

The first memorandum directed the Treasury Secretary to "conduct a thorough review of the orderly liquidation authority (OLA) and provide a report to the president within 180 days." According to the memorandum, the review must consider whether invoking OLA could result in a cost to the general fund of the U.S. Treasury; whether the availability or use of OLA leads or could lead to excessive risk taking on the part of market participants; and whether revisions to U.S. Bankruptcy Code, rather than the OLA provisions of Dodd-Frank, would be a superior method of resolution for financial companies.[22]

A second memorandum issued on April 21, 2017, concerned FSOC. President Trump ordered the Treasury Secretary to conduct a "thorough review of the FSOC determination and designation processes under Section 113 (12 U.S.C. 5323) and Section 804 (12 U.S.C. 5463) of Dodd-Frank and provide a written report to the president within 180 days of the date of the memorandum."[23]

A third memorandum was issued on February 3, 2017, to the Secretary of Labor on the Fiduciary Duty Rule.[24] The memorandum required the Secretary of Labor to examine the Fiduciary Duty Rule to determine if it may adversely affect the ability of Americans to gain access to advice.

U.S. Treasury Reports

Pursuant to Executive Order 13772, the U.S. Treasury in 2017 issued three of four reports due to President Trump. The first covered depository institutions. The latest two reports address capital markets and asset management and insurance companies, respectively. The next report (to be issued) will cover nonbank financial institutions, financial technology, and financial innovation.

In general, the U.S. Treasury called upon the financial regulators to roll back a broad range of reforms. As regulatory appointees have great power to change rules, adopting all of these recommendations would usher in significant deregulation without the need for additional statutory changes. In these three reports, according to the testimony of Mary Miller on December 5, 2017, the U.S. Treasury makes a total of nearly 250 specific recommendations, of which 80% can be implemented without congressional action.

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[22] "White House Releases Memorandum on Orderly Liquidation Authority," Harvard Law School, https://blogs.harvard.edu/bankruptcyroundtable/2017/04/25/white-house-releases-memorandum-on-orderly-liquidation-authority/.

[23] "Presidential Memorandum for the Secretary of the Treasury," White House, https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-treasury/.

[24] "Presidential Memorandum on Fiduciary Duty Rule," White House, https://www.whitehouse.gov/presidential-actions/presidential-memorandum-fiduciary-duty-rule/.

A Financial System that Creates Economic Opportunities: Banks and Credit Unions (June 2017)[25]

The report's fact sheet outlines the Executive Branch's plan to deliver swift relief to banks and credit unions through regulatory changes. Recommendations relate to "supporting community-focused banks, establishing an America First international policy, and deregulating to pave the way for options and investments." Recommendations include improving regulatory efficiency and effectiveness by critically evaluating mandates and regulatory fragmentation, overlap, and duplication across regulatory agencies; aligning the financial system to help support the U.S. economy; reducing regulatory burden by decreasing unnecessary complexity; tailoring the regulatory approach based on the size and complexity of regulated firms and requiring greater regulatory cooperation and coordination among financial regulators; and aligning regulations to support market liquidity, investment, and lending in the U.S. economy. The report indicates that there is a need for enhanced policy coordination among federal financial regulatory agencies; supervisory and enforcement policies and practices should be better coordinated for purposes of promoting both safety and soundness and financial stability; and financial laws, regulations, and supervisory practices must be harmonized and modernized for consistency.

A Financial System that Creates Economic Opportunities: Capital Markets (October 2017)[26]

The report's fact sheet outlines the Executive Branch's plan to streamline and reduce capital market regulation. Recommendations relate to rationalizing and modernizing the U.S. capital markets' regulatory structure and processes; promoting access to capital for all types of companies, including small and growing businesses, through reduction of regulatory burdens and improved market access to investment opportunities; fostering robust secondary markets in equity and debt for business and investors; safeguarding the treasury market; encouraging lending through appropriately tailored regulations on securitized products and promotion of quality securitization to encourage lending and risk transfer; recalibrating derivatives regulation to promote market efficiency and effective risk mitigation; ensuring proper risk management for central counterparties and other financial market utilities because of the critical role they play in the financial system; and promoting U.S. interests and promoting a level playing field abroad.

[25] "Treasury Releases First Report on Core Principles of Financial Regulation Stimulating Economic Growth, Increasing Access to Capital & Taxpayer Protection Are Top Priorities," U.S. Department of the Treasury, https://www.treasury.gov/press-center/press-releases/Pages/sm0106.aspx.

[26] "Treasury Releases Second Report On The Administration's Core Principles Of Financial Regulation," U.S. Department of the Treasury, https://www.treasury.gov/press-center/press-releases/Pages/sm0173.aspx.

A Financial System that Creates Economic Opportunities: Asset Management and Insurance (October 2017)[27]

The report's fact sheet outlines the Executive Branch's plan to promote vibrant and diverse investment and savings opportunities through asset management and insurance. Recommendations relate to supporting activities-based evaluations of systemic risk and solvency in the asset management and insurance industries; ensuring efficient regulation and government processes, including improving coordination between FIO and state insurance regulators; strengthening U.S. engagement in international forums to promote the U.S. asset management and insurance industries and the U.S. regulatory framework; promoting economic growth and informed choices; increasing transparency of the international standard-setting processes; promoting strong liquidity risk management programs for asset managers and insurance companies; modernizing fund shareholder reports to permit the use of implied consent for electronic disclosures; delaying the implementation of the DOL Fiduciary Rule pending further evaluation by DOL, SEC, and the states; and promoting infrastructure investment by insurers through appropriately calibrated capital requirements.

The Courts

Following passage of Dodd-Frank and the promulgation of many of its implementing rules, industry opponents increased their litigation efforts to thwart regulation by challenging rules or other agency actions in court. The legal theories advanced in these cases typically include allegations that the agency failed to provide adequate notice and an opportunity to comment; the rule or agency process was arbitrary and capricious because it ignored important considerations or adopted irrational approaches to the problem at hand; the agency failed to conduct an adequate cost-benefit analysis for the rule; or the agency's structure or process violated the Appointments Clause of the U.S. Constitution, the Due Process Clause, or the First Amendment guarantee of freedom of speech. Just as the financial services industry has sought to invalidate financial reform rules in court, litigation by public interest advocacy groups may increase with the repeal of existing rules.

While the most significant court challenges to financial and consumer protection laws came during the Obama Administration, there has been further litigation during 2017. One of the most notable examples is ongoing litigation related to both the constitutional status of[28] and leadership of[29] CFPB. During 2017, there was also litigation filed challenging CFPB's arbitration rule prior

[27] "Treasury Releases Third Report On The Administration's Core Principles For Financial Regulation," U.S. Department of the Treasury, https://www.treasury.gov/press-center/press-releases/Pages/sm0193.aspx.

[28] Ben Lane, "In major reversal, U.S. sides with PHH, calls CFPB structure unconstitutional," *HousingWire*, https://www.housingwire.com/articles/39615-in-major-reversal-us-sides-with-phh-calls-cfpb-structure-unconstitutional.

[29] Kate Berry, "Three things to watch as CFPB leadership case goes to court," *American Banker*, https://www.americanbanker.com/news/three-things-to-watch-as-cfpb-leadership-case-goes-to-court.

to Congress overturning the rule through use of CRA.[30] There have been news reports that a payday lending group plans to bring a suit against CFPB's October 2017 payday lending rule.[31] There are also a number of ongoing lawsuits challenging the DOL Fiduciary Rule.[32]

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[30] Mark J. Levin and Alan S. Kaplinsky, "Finance Industry Files Lawsuit to Overturn CFPB Arbitration Rule," *Consumer Finance Monitor*, https://www.consumerfinancemonitor.com/2017/09/29/finance-industry-files-lawsuit-to-overturn-cfpb-arbitration-rule/.

[31] Kevin McCoy, "Payday lending group plans to sue the Consumer Financial Protection Bureau," *USA Today*, https://www.usatoday.com/story/money/2017/11/30/payday-lending-group-plans-sue-consumer-financial-protection-bureau/905316001/.

[32] Mark Schoeff, Jr., "Industry opponents urge appeals court to rule on DOL fiduciary rule," *InvestmentNews*, http://www.investmentnews.com/article/20171211/FREE/171219994/industry-opponents-urge-appeals-court-to-rule-on-dol-fiduciary-rule.

Chapter 5. Developments in Finance: Student Loans, Fintech Firms, Virtual Currencies, and Cybersecurity Breaches

- Student Loans
- Fintech
- Virtual or Cryptocurrencies such as Bitcoin
- Cybersecurity Breaches

Student Loans

U.S. student loan debt totaled $1.48 trillion in the third quarter of 2017, with 44.2 million borrowers nationwide.[1] Student loan debt continues to rise and is now the second largest total debt balance after mortgage debt. Student loan debt has more than doubled since 2008.[2] According to a survey done by the Institute for College Access and Success, about 68% of 2015 college graduates had student debt, owing on average $30,100.[3]

The Federal Reserve has expressed concern that high levels of student debt and delinquency reduce borrowers' ability to acquire other types of credit, which may hamper the recovery of the housing market, a key driver of economic growth. The growth in outstanding student loan debt has also been accompanied by a marked increase in student loan delinquency. The Federal Reserve reported in 2017 that 10.3% of borrowers are behind on their payments, and 38% of their loans are in deferment.[4]

According to the Project on Student Loan Debt, the average debt of 2015 college graduates from Maryland institutions was $27,672, the twenty-eighth highest in the nation. About 56% of Maryland graduates have student loan debt, which ranked thirty-sixth among all states. These estimates include only public and nonprofit four-year institutions. The Federal Reserve estimates that 16.7% of all Maryland individuals with a credit report have a student loan, compared with 16.2% nationwide.

There have been efforts underway in the 115th Congress to prevent states from protecting student loan borrowers. The U.S. House passed the "Promoting Real Opportunity through Education Reform Act" this past December, aimed at overhauling higher education and student loan programs. This bill, in section 494D, included a broad preemption from state laws for student loan originators, servicers, or collectors.[5]

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[1] "A Look at the Shocking Student Loan Debt Statistics for 2018," Student Loan Hero, https://studentloanhero.com/student-loan-debt-statistics/.

[2] "Student Debt's Grip on the Economy," *New York Times*, https://www.nytimes.com/2017/05/20/opinion/sunday/student-debts-economy-loans.html.

[3] "Student Debt and the Class of 2015," The Institute for College Access and Success, https://ticas.org/sites/default/files/pub_files/classof2015.pdf.

[4] "Report on the Economic Well-Being of U.S. Households in 2016 - May 2017," U.S. Federal Reserve, https://www.federalreserve.gov/publications/2017-economic-well-being-of-us-households-in-2016-education-debt-loans.htm.

[5] Jillian Berman, "House Republicans seek to roll back state laws protecting student loan borrowers," *MarketWatch*, https://www.marketwatch.com/story/house-republicans-seek-to-roll-back-state-laws-protecting-student-loan-borrowers-2017-12-07.

Fintech

The commission also heard from witnesses regarding developments of new technologies and innovations that compete with traditional methods in the delivery of financial services. These so-called Fintech developments provide services such as mobile banking and investing services that make financial services more accessible to the general public.

According to the Office of the Comptroller of the Currency (OCC), thousands of technology-driven nonbank companies now offer financial products and services to the public. In response to these changes, OCC issued a white paper on the possible issuance of special purpose national bank charters to Fintech companies, including online lenders.[6] The Office of the Commissioner of Financial Regulation (OCFR) is a member of the Conference of State Bank Supervisors, which, acting on behalf of all its member-state supervisory agencies, opposed OCC's actions. In April 2017, the Conference of State Bank Supervisors filed a lawsuit in the U.S. District Court of the District of Columbia challenging OCC's authority to issue such special purpose bank charters.[7] Subsequently, OCC indicated in late 2017 that it is not ready to accept applications from Fintech companies seeking a special purpose federal charter.

The commission was cautioned by witnesses about such special purpose charters, as Fintech firms may seek to use them in efforts to preempt state consumer protection laws. Specifically, in Ed Mierzwinski's December 5, 2017 written testimony, Mr. Mierzwinski expressed concern that firms may partner with traditional banks facilitated by "special nonbank 'bank charters,' designed to avoid or evade state level consumer protections." While Fintech has the potential to bring benefits to the unbanked and to help firms offer competition forcing banks to do a better job serving all customers, oversight of these firms is necessary to prevent predatory lending of consumers and small businesses.

Virtual or Cryptocurrencies such as Bitcoin

The commission additionally heard concerns about the recent developments related to cryptocurrencies such as Bitcoin, Ripple, and Ethereum. A recent innovation, cryptocurrencies are based upon blockchain technology, which was introduced during the 2008 financial crisis as a payment system based upon a secure verifiable distributed ledger for a new nongovernment backed currency, Bitcoin. It has been referred to as a cryptocurrency, as the blockchain technology relies upon cryptography for its security. Such currencies also are referred to as virtual currencies, as they are not reliant on any central national authorities such as the Federal Reserve or other central banks. Blockchain technology is now also being explored for many other applications, both within

[6] "Exploring Special Purpose National Bank Charters for Fintech Companies," Office of the Comptroller of the Currency, U.S. Department of the Treasury, https://www.occ.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf.

[7] See *Conf. of State Bank Supervisors v. Office of the Comptroller of the Currency*, Case 1:17-cv-00763-JEB (D.D.C. Jul. 28, 2017). https://www.fintechupdate.com/2017/05/conference-of-state-bank-supervisors-files-lawsuit-against-occ-to-stop-special-purpose-fintech-charter/

finance (such as for payment processing, currency, derivatives, and securities clearing) and outside of finance (such as for land registries and music publishing rights).

Leading up to and during 2017, the global public interest in Bitcoin and other cryptocurrencies led to them increasingly being viewed as an asset and to a raging bull market in their values. Many commenters have written about this possibly being an asset bubble yet to come tumbling down. Comparisons are being made to the dotcom bubble of the late 1990s and that of Dutch tulip bulb mania of the 1630s. Cryptocurrency market values, up a total of 4,620%, or 47-fold in just one year, were $818 billion[8] as of January 7, 2018, compared to just $17.7 billion on January 1, 2017.[9] By January 19, 2018, just 12 days later, the aggregate market dropped 30% to $567 billion. There are at least 1,450 cryptocurrencies, with Bitcoin's $194 billion in value representing just 34% of total market capitalization as of January 19, 2018. Others have taken off this past year as well. Ripple, which is used on a payment network, RippleNet, had a total value of $60 billion as of January 19, 2018, down from $126 billion just 12 days earlier. Ethereum, which is a decentralized platform that runs smart contracts, had a total value of $100 billion. There are three other virtual currencies with market values of greater than $10 billion each and another 27 with values of over $1 billion each.[10] Per a global benchmarking study published in April 2017, the majority of all cryptocurrency participants and exchanges are in Europe and the Far East, with the United States accounting for 27% of the participants and 18% of the exchanges.[11]

OCFR published an advisory to consumers and investors regarding virtual currencies in April 2014.[12] Maryland law does not currently require the licensing or registration of companies dealing with virtual currencies, though it does require the licensing of virtual currency companies whose activities are covered by the Maryland Money Transmission Act, an Act passed well before virtual currencies were even conceived.[13] A number of other states, however, do require virtual currency dealers to comply with state money transfer laws, similar to dealers in fiat currencies backed by central banks.

The North American Securities Administration Association (NASAA) issued a media alert on January 4, 2018, to remind investors to approach cryptocurrencies and related initial coin offerings (ICOs) with caution. In the alert, they reference a NASAA survey of their members which showed that "94% believe there is a 'high risk of fraud' involving cryptocurrencies," and

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[8] "Cryptocurrency Market Capitalizations," CoinMarketCap, https://coinmarketcap.com/.

[9] "Historical Snapshot – January 01, 2017," CoinMarketCap, https://coinmarketcap.com/historical/20170101/.

[10] "Cryptocurrency Market Capitalizations," CoinMarketCap, https://coinmarketcap.com/.

[11] "Global Cryptocurrency Benchmarking Study," Cambridge Centre for Alternative Finance, University of Cambridge, https://www.jbs.cam.ac.uk/fileadmin/user_upload/research/centres/alternative-finance/downloads/2017-04-20-global-cryptocurrency-benchmarking-study.pdf

[12] "Virtual Currencies: Risks for Buying, Selling, Transacting, and Investing - Advisory Notice 14-01 - ATTENTION MARYLAND RESIDENTS," Office of the Commissioner of Financial Regulation, Maryland Department of Labor, Licensing, and Regulation, http://www.dllr.state.md.us/finance/advisories/advisoryvirtual.shtml.

[13] "Maryland Money Transmitter License," NMLS, https://nationwidelicensingsystem.org/slr/PublishedStateDocuments/MD-Money-Transmitter-Company-New-App-Checklist.pdf.

that they are "unanimous in their view that more regulation is needed for cryptocurrencies to provide greater investor protection."[14]

Federal regulators, such as the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC), have also released policy statements with regard to cryptocurrencies and ICOs, and more policy and regulatory work is likely to come. CFTC in 2014 said that cryptocurrencies are commodities under their jurisdiction. CFTC, in December 2017, allowed the self-certification of trading for Bitcoin futures on the Chicago Mercantile Exchange (CME) as well as on the CBOE Futures Exchange. Recognizing the significant risks and volatility in trading, the market clearinghouses required significant levels of margin to be placed with the clearinghouses by market participants (47% and 44% of nominal value at each of the exchanges, which is 10 times the minimum margin for a CME corn futures contract).[15] CFTC issued a consumer advisory in December 2017 cautioning those investing in virtual currency derivatives.[16]

SEC has said that ICOs may need to comply with securities laws if they meet established tests for securities offerings. At the state level, many states are considering whether and how to update consumer and investor protection laws for these new developments. In 2015, the New York state Department of Financial Services was one of the first state regulators to establish a new licensing and registration regime for virtual currency activities within its state.[17] Though the licensing regime has been challenged in New York state courts, three Bitcoin licenses have been granted to date.

Cybersecurity Breaches

Lastly, the commission heard concerns relating to the data breaches at Equifax, Uber, and overall challenges relating to cybersecurity. Equifax, one of the United States' main credit reporting agencies, experienced a significant data breach in spring 2017. According to the Federal Trade Commission (FTC), 143 million American consumers' sensitive personal information was exposed in the data breach. FTC reports that "hackers accessed people's names, social security numbers, birth dates, addresses and, in some instances, driver's license numbers.

[14] "NASAA Reminds Investors to Approach Cryptocurrencies, Initial Coin Offerings and Other Cryptocurrency-Related Investment Products with Caution," North American Securities Administrators Association, http://www.nasaa.org/44073/nasaa-reminds-investors-approach-cryptocurrencies-initial-coin-offerings-cryptocurrency-related-investment-products-caution/.

[15] "CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets," U.S. Commodity Futures Trading Commission, http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf.

[16] "Customer Advisory: Understand the Risks of Virtual Currency Trading," U.S. Commodity Futures Trading Commission, http://www.cftc.gov/idc/groups/public/@customerprotection/documents/file/customeradvisory_urvct121517.pdf.

[17] "Regulations of the Superintendent of Financial Services, Virtual Currencies," New York State Department of Financial Services, http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp200t.pdf.

They also stole credit card numbers for about 209,000 people and dispute documents with personal identifying information for about 182,000."[18]

Uber disclosed in November 2017 that in 2016 hackers stole 57 million driver and rider accounts. Further, Uber paid a $100,000 ransom and then withheld this information from the public for over a year.[19]

[18] "The Equifax Data Breach: What to Do," Federal Trade Commission, https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-do.

[19] Mike Isaac, Katie Benner, and Sheera Frenkel, "Uber Hid 2016 Breach, Paying Hackers to Delete Stolen Data," *New York Times*, https://www.nytimes.com/2017/11/21/technology/uber-hack.html.

Chapter 6. Recommendations

- Recommendations for Maryland's Congressional Delegation
- Recommendations for the Office of the State Attorney General and Office of the Commissioner of Financial Regulation
- State Legislative Actions to Backfill Where Federal Protections Stepped Back
- State Legislative Action to Address Recent Developments
- Further Considerations

While many of these federal efforts to roll back financial consumer protection reforms may not be able to be addressed at the state level, the commission has a series of recommendations to better protect consumers.

Recommendations for the Maryland Congressional Delegation

The commission recommends continued advocacy and opposition, when appropriate, by the Maryland Congressional Delegation to legislative and regulatory efforts to lessen consumer and financial reforms.

Recognizing that many consumer protection and financial-sector issues must be addressed at the federal level, the commission recommends that Maryland's delegation remain focused on the need to maintain strong and balanced financial consumer protection laws and regulations at the federal level – and adequately enforced by federal regulators. The commission acknowledges that some revisions to current law may be necessary in order to stay abreast of an ever-changing world of finance and technology, or to lessen some of the compliance costs for community banks and credit unions, but cautions against any significant rolling back of reforms. In particular, the commission urges the federal delegation to oppose wholesale repeal efforts such as the CHOICE Act 2.0, which the U.S. House passed in June 2016, and many of its component parts that have passed the U.S. House in at least 25 separate bills in 2017. The commission commends the federal delegation's general approach in opposition to the legislative and the Congressional Review Act initiatives to date.

The commission also recommends that the delegation continue to support the independence of the Consumer Financial Protection Bureau (CFPB). In recent years, opponents of CFPB have challenged the agency's structure, recommended changing how CFPB is funded, and had various other recommendations to limit CFPB's regulatory authorities.[1]

In addition, the commission recommends that the delegation support full funding for crucial market regulators, including the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC). President Trump's proposed 2018 budget, for instance, suggests cutting SEC's reserve fund, which was established in the aftermath of the financial crisis. In recent years, SEC has used the reserve fund to modernize its information technology systems in order to better monitor financial markets. Eliminating funding or reducing SEC's budget could, therefore, threaten its ability to keep pace with industries and markets that it is tasked with regulating.[2]

Finally, the commission asks that the delegation regularly weigh in on behalf of Marylanders by all available means. Specifically, delegation members are urged to provide

[1] "2018 Major Savings and Reforms," U.S. Office of Management and Budget, https://www.whitehouse.gov/wp-content/uploads/2017/11/msar.pdf, p. 158.

[2] Kara Scannell, "Trump budget threatens SEC's technology spending," *Financial Times*, https://www.ft.com/content/89925bd0-4232-11e7-82b6-896b95f30f58.

comments during the rulemaking process on significant changes pursued by the Trump Administration, as well as to preserve the State's authority to protect its citizens locally through, for instance, opposition to the Office of the Comptroller of the Currency special financial technology (Fintech) charter. The commission also urges the delegation to engage in vigorous oversight of those agencies responsible for ensuring that financial-sector actors are operating within the boundaries of federal law. Members who sit on committees responsible for overseeing federal financial regulators should continue to ensure that the leaders of those agencies are regularly questioned regarding the enforcement changes likely to occur in the following years.

Recommendations for the Office of the State Attorney General and Office of the Commissioner of Financial Regulation

Enhanced Enforcement and Investigative Resources

Given the retrenchment at the federal level, rapid changes in Fintech, and the ever-present needs to protect consumers, the commission recommends vigorous enforcement by and funding of the Office of the Attorney General (OAG) and the Office of the Commissioner of Financial Regulation (OCFR), including additional dedicated State budget resources to increase staff levels within OAG and OCFR.

Having a more robustly staffed unit within OAG's Consumer Protection Division (CPD) and OCFR will ensure that the State can pursue violations of State and federal law in consumer finance transactions and provide greater protection to Maryland consumers.

Many of the companies that OAG and OCFR have pursued prey upon the most vulnerable consumers and seek to extract money unlawfully from people who are already struggling financially. Though, as discussed above, both agencies have been pursuing many enforcement actions, both are faced with limited resources and broad missions. CPD's broad mandate extends far beyond financial services, with no dedicated unit within CPD for financial consumer protection, thus limiting the resources and attention that it can devote to the sector. With most of its resources focused on licensing, supervision, and complaint response, OCFR also is limited in its ability to take actions based on its staffing and resource levels. At the same time, OAG and OCFR's challenges will be growing due to the retrenchment at the federal level and advancements in technology.

To assist with meeting the commission's recommendation for robust enforcement, the commission recommends that the State should appropriate $1.2 million to the agencies for up to an additional 10 employee positions comprised of attorneys, investigators, and administrative support staff. This may include a unit within CPD with staff dedicated to consumer financial enforcement and providing additional staffing for OCFR. Working collectively and in a coordinated fashion, CPD and OCFR would be able to choose the legal avenue that would best address violations of the consumer protection laws. In July 2017, Pennsylvania announced the establishment of a dedicated consumer finance enforcement and investigation unit within its Attorney General's Consumer Protection Division.[3]

Continued Use of Dodd-Frank 1042 Authorities

Section 1042 of Dodd-Frank authorizes state attorneys general and regulators to bring civil actions for violations of Dodd-Frank's prohibition of unfair, deceptive, or abusive acts or practices, including actions against financial institutions that are not state-chartered, such as national banks or federal savings associations. A state attorney general or regulator has to notify CFPB before filing a suit and CFPB has a right to intervene.

Maryland's Attorney General has already filed suits together with CFPB under such 1042 Dodd-Frank authorities and last month joined a letter of support for CFPB signed by 15 state attorneys general which noted that "State attorneys general have express statutory authority to enforce federal consumer protection laws, as well as the consumer protection laws of our respective States."[4]

The commission recommends that OAG and OCFR continue to use their authority under Section 1042 of Dodd-Frank to bring enforcement actions or other appropriate proceedings to enforce provisions of Dodd-Frank, particularly when federal regulators are not enforcing consumer protections.

Expand Violations of Consumer Protection Laws to Include "Abusive" Practices

The commission recommends expanding the Maryland Consumer Protection Act (MCPA) to prohibit engagement in any "unfair, deceptive, or abusive trade practice," to close a possible loophole, and strengthen the enforcement authority of OAG. OAG often relies on MCPA to protect Maryland's citizens from predatory business actions. MCPA prohibits a person from engaging in any unfair or deceptive trade practice. An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer. The prohibition under MCPA, however, does not include any specific prohibition against "abusive"

[3] "Attorney General Josh Shapiro Announces Consumer Financial Protection Unit," Office of the Attorney General, Commonwealth of Pennsylvania, https://www.attorneygeneral.gov/Media_and_Resources/Press_Releases/Press_Release/?pid=3757.

[4] Letter to President Trump Regarding Enforcement of Consumer Protection Laws, https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2017/12/sign_on_letter_re_cfpb.pdf

trade practices. As a result, OAG may not be able to bring actions in State court against entities that engage in abusive trade practices.

Consistent with strengthening the enforcement authority of OAG, the commission recommends OCFR should be given enhanced authority to investigate and bring enforcement action for unfair, deceptive, and/or abusive acts or practices in consumer transactions involving licensed persons, similar to the prohibitions contained in Title 5, Subtitle 8, of the Financial Institutions Article that apply to banking institutions.

In addition, the commission recommends that OAG and OCFR apply the provisions of MCPA broadly, when appropriate, to reach unfair and deceptive conduct by members of the financial services industry that might otherwise go undeterred. For example, they may wish to evaluate whether brokers who hold themselves out in marketing materials as trusted sources of investment advice for retail consumers but then disavow any fiduciary duty of loyalty to their clients have engaged in unlawful conduct under MCPA or Maryland's Securities Act.

Expand Violations of MCPA to Include Violations of the Military Lending Act and Servicemembers Civil Relief Act

The commission recommends expanding MCPA to include violations of the Military Lending Act (MLA) and the Servicemembers Civil Relief Act (SCRA) to enable OAG to investigate and enforce all complaints by members of the armed forces about financial consumer protection violations. MLA protects active duty servicemembers who initiate financial transactions while they are on active duty. MLA prohibits lenders from charging an interest rate higher than 33% on most types of consumer loans, including fees and other types of finance charges, and provides other consumer protections. SCRA offers financial and civil protections to active duty members of the U.S. Armed Forces and members of the National Guard to provide financial relief from existing debts and allow members to focus on their service. The Act covers a variety of issues, including issues related to rental agreements, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, and automobile leases. SCRA reduces the rate of interest for debts incurred before entering active duty to 6%, allows servicemembers to terminate residential and automobile leases, and protects servicemembers from certain actions such as foreclosures and automobile repossessions. According to the U.S. Department of Defense December 2016 workforce report, 28,703 active-duty military members are domiciled in Maryland. Each of those servicemembers should be afforded the same protections under State law and able to seek recourse for any violations of their rights under MLA and SCRA by contacting OAG.

Increase Civil Penalties for Violations of Maryland Consumer Protection Laws and Financial Licensing and Regulatory Laws

MCPA and Maryland's statutes for licensing and regulating nondepository financial services also establish civil and criminal penalties for violating the Act. For example, a merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation.

A 2009 National Consumer Law Center report on consumer protection laws throughout the country characterized Maryland's $1,000 maximum civil penalty as "weak." Maryland's current civil penalty maximums for violations of MCPA and other financial and regulatory laws relating to nondepository financial services providers were set decades ago. Forty-five states now have higher civil penalty amounts for consumer protection violations. The most common civil penalty is $10,000, with the average civil penalty for an initial violation being a little less than $10,000.

The small civil penalty provides little deterrence to deceptions that may be lucrative for the violator but inflict serious harm on consumers. In the sale of a vehicle, a medical device, or a home, a $1,000 civil penalty is small in comparison to the harm that could be inflicted on the consumer. Similarly, a scam artist who inflicts serious harm through a misrepresentation that is made to only a few consumers would only be subject to a small penalty.

In the 2015 settlement that OAG and CFPB entered into with Wells Fargo for kickbacks paid to a Maryland title company, CFPB received civil penalties of $21 million, while the State received penalties of $3 million. The disproportionately small amount received by the State was based in large part on the low civil penalty cap set by Maryland law.

<u>In order to give OAG and OCFR more discretion in determining the appropriate civil penalty for violations of law and regulatory orders, the commission recommends increasing the level of civil penalty amount for any initial violation of MCPA and other financial and regulatory laws relating to nondepository financial services providers from up to $1,000 to up to $10,000 and to up to $25,000 for subsequent violations</u>. Increasing the maximum amount of the civil penalties will bring Maryland in line with other states and allow the State to achieve greater deterrence, particularly if the federal regulator becomes less aggressive in its enforcement efforts.

State Legislative Actions to Backfill Where Federal Protections Stepped Back

Fiduciary Duty

<u>The commission recommends, consistent with federal preemption issues, extending fiduciary duty in Maryland statute to all financial professionals who provide investment advice.</u> Generally, a fiduciary is a person having a duty, created by an undertaking, to act primarily for another's benefit in matters connected with the undertaking. The fiduciary duty also requires one to subordinate one's personal interests to that of the person to whom the duty is owed. According

to a recent study by the Consumer Federation of America and Americans for Financial Reform,[5] major brokerage firms and insurance companies may mislead investors as trustworthy financial advisors but will deny this role and represent that they are merely salespeople when confronted by a court. Responding to these issues in April 2016, the U.S. Department of Labor finalized the fiduciary rule addressing conflicts of interest in the offering of retirement advice. Under the securities laws, SEC has long had the authority to raise the standards that apply to broker-dealers offering investment advice. In Dodd-Frank, Congress further authorized the SEC through rulemaking (after first issuing a report) to align the standard of care for broker-dealers with that of the fiduciary duty of investment advisors.[6] Though SEC conducted the required report, they have yet to address the standard of conduct of broker-dealers.

Although Maryland law provides some protections for consumers who rely on the advice of securities professionals, it does not explicitly extend fiduciary duty to broker-dealers or their agents. In contrast, under Regulation 02.02.05.03, an investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. In addition, under Chapters 837 and 838 of 2017, a person who engages in the business of effecting transactions in securities for the account of others, for the person's own account, or who acts as a broker-dealer or agent, may not engage in dishonest or unethical practices in the securities or investment advisory business. Extending fiduciary duty to all financial professionals who provide investment advice, however, would better align the duties of all financial advisors, ensuring that they all give advice in the best interests of investors. Such a fiduciary duty would further protect investors from possible predatory practices and provide recourse to investors who may be ill-advised by a financial professional.

Forced Arbitration Clauses

According to the National Consumer Law Center, "forced arbitration" clauses are fine-print terms included in contracts of adhesion that require the consumer or employee to give up their constitutional right to assert claims against the merchant or employer in court as a condition of obtaining or keeping their job or using the consumer good or service. The clauses appear in a variety of types of contracts, including credit agreements, cell phone contracts, nonunion employment agreements, and auto loans. Although advocates represent that arbitration clauses provide consumers with direct access to a private forum, in practice, many consumers are unable to use arbitration to resolve complaints for three reasons: (1) many clauses require consumers to pursue claims individually, without the benefit of a class or group; (2) arbitration can be extraordinarily expensive because of mandatory fees and requirements to use arbitration in another geographic location; and (3) businesses have greater familiarity with the process and may use that familiarity to prolong the duration of arbitration.

[5] "Financial Advisor or Investment Salesperson: Brokers and Insurers Want to Have it Both Ways," Consumer Federation of America and Americans for Financial Reform, http://bit.ly/2AyIyuy.

[6] "A Fiduciary Duty for Broker Dealers? How Dodd-Frank May Change the Way Broker Dealers Conduct Business," Morrison Foerster, http://media.mofo.com/files/uploads/Images/100719DoddFrank.pdf.

In 2015, the *New York Times* conducted an investigation about forced arbitration clauses and class actions because no government agency tracks class actions.[7] According to the article, of 1,179 class actions between 2010 and 2014 that companies sought to push into arbitration, judges ruled in the companies' favor in four out of every five cases. Further, the *New York Times* found that between 2010 and 2014, only 505 consumers went to arbitration over a dispute of $2,500 or less. Overall, consumers were not likely to go to arbitration if they were not able to participate in a class action or the amount of alleged damages was nominal.

Acknowledging the harm of forced arbitration clauses that prohibit class action suits, CFPB issued the Arbitrations Agreements Rule, which allowed consumers to bring class actions challenging abuses in the financial services sector. On November 1, 2017, however, President Trump signed a joint resolution passed by Congress disapproving the Arbitration Agreements Rule under the Congressional Review Act. On November 22, 2017, CFPB published a notice removing the Arbitration Agreements Rule from the Code of Federal Regulations.

To address the harms that have resulted from the use of forced arbitration clauses, the commission recommends the State adopt the Model State Consumer and Employee Justice Enforcement Act: Titles I-VIII.[8] The Act includes eight separate titles that protect against different harms related to forced arbitration of consumer and employment disputes: (1) Delegation of State Public Enforcement Authority; (2) Conditions on Persons Doing Business with the State; (3) Clear Notice and Single Document Rule; (4) Unconscionable Terms in Standard Form Contracts; (5) Prohibition of Forced Arbitration Clauses under State Law; (6) Data Disclosure Requirements for Arbitration Providers; (7) Appellate Jurisdiction; and (8) Preventing Respondents from Improperly Delaying the Arbitration Proceeding. It was written to provide solutions that likely would not be preempted by the Federal Arbitration Act.

Manufacturer Housing Retailers

As passed by the Senate Banking Committee, S.2155 would exempt retailers of manufactured homes from the definition of "mortgage originator," thus also exempting those retailers from rules that limit conflict of interest and prohibit steering homebuyers into exploitative or predatory loans. The commission recommends amending the definition of "mortgage loan originator" in State law, to specify that a "mortgage loan originator" includes a retailer of a manufactured home. Clarifying the definition will make sure that Maryland buyers of manufactured homes are protected in their homebuying transaction if Congress passes S.2155.

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[7] Jessica Silver-Greenberg and Robert Gebeloff, "Arbitration Everywhere, Stacking the Deck of Justice," *New York Times*, http://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html.

[8] "The Model State Consumer & Employee Justice Enforcement Act," National Consumer Law Center, https://www.nclc.org/images/pdf/arbitration/model-state-arb-act-2015.pdf.

Payday and Consumer Lending

Maryland has been at the forefront of payday lending consumer protection laws. Generally, traditional payday loans that do not exceed $6,000 have a maximum annual percentage rate (APR) of 33%. Lending practices continue to evolve, however, and in some instances, financial institutions have found ways to avert the law to charge interest rates that exceed the intended 33% APR for small loans. For example, many lenders are now structuring payday loans not as loans, but rather as unsecured, open-end credit plans. Such changes in loan classification and structure may have been structured by lenders to circumvent caps on interest rates and fees. To prevent that from happening, the General Assembly passed legislation in 2017 to close possible loopholes in payday lending. Chapters 723 and 724 of 2017 limit the interest and fees on unsecured, open-end credit plans to 33% APR. However, other loopholes in the State's consumer lending laws may exist, particularly regarding lenders that operate nearly exclusively on the Internet or use advance deposit products. Further, there are congressional efforts to overturn the recent CFPB Payday Lending Rule which ensures that products are reasonable, and consumers are protected from payday debt traps.[9]

<u>The commission recommends filling possible gaps and eliminating loopholes in Maryland's current payday lending statute, particularly related to online lending and advance deposit products</u>. Several areas that may be able to be addressed include (1) for consistency, reviewing the remedies under the unsecured consumer law ($6,000 loans or less) for usurious violations by licensees or by lenders who are exempt from licensing *as compared to* the remedies for usurious violations by unlicensed nonexempt lenders; (2) increasing the amount considered as a small loan and considered as a retail installment loan, particularly as these amounts have not been increased in State law since 1975 and 1977, respectively; and (3) specifying in the consumer law that contracts would be expressly void for certain violations (CFPB uses this language).

State Legislative Action to Address Recent Developments

Student Loans

In order to address the growing concerns of student loan borrowers in Maryland, <u>the commission recommends (1) the General Assembly adopt a student loan bill of rights; (2) the State designate a student loan ombudsman; and (3) the State consider licensing student loan servicers.</u>

The Maryland Financial Education and Capability Commission (MFECC) in its 2017 annual report made a series of recommendations, including creating a student loan bill of rights with a student loan ombudsman in OCFR to monitor complaints and serve as an advocate for those impacted by student loan fraud or predatory practices. MFECC monitors public and private initiatives to improve the financial education and capabilities of Marylanders and

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[9] "CFPB Finalizes Rule To Stop Payday Debt Traps," Consumer Financial Protection Bureau, https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/.

recommends how State agencies can coordinate financial education and capability efforts. To support this recommendation, the report indicates that student loan borrowing complaints increased 153% in Maryland, from 2015 to 2016, and that over 800 complaints have been filed against their student loan servicers.[10]

The General Assembly should adopt a student loan bill of rights. Illinois, Washington, and Connecticut each have adopted student loan bill of rights in the last few years. The student loan bill of rights should be drafted to prevent borrowers from being misled or ignored by the companies that service their loans.

OCFR should designate a student loan ombudsman to receive, review, and attempt to resolve any complaints from student loan borrowers and to assist student loan borrowers in understanding their rights and responsibilities under the terms of student education loans. The ombudsman should collect and analyze data regarding complaints received and should report each year to the Governor and General Assembly.

To enhance the effectiveness of the student loan bill of rights, the State should also consider licensing student loan servicers, also as recommend by MFECC. Student loan servicers collect and receive any principal, interest, or other money owed under a student education loan, and perform other administrative services that relate to a student education loan. Licensing requirements should include recordkeeping and examination requirements, as well as specific provisions regarding servicing student loans, such as properly processing payments. Licensure of the student loan servicers will allow OCFR to know each servicer doing business in the State and to take enforcement actions against the servicers. The State may use other jurisdictions that have begun regulating student loan servicers as a model, such as the District of Columbia.

Fintech

As Fintech expands and transforms the financial marketplace, consumers must continue to be protected from any possible misleading or predatory practices or unforeseen consequences, regardless of the medium or form from which they get those services. Though already subject to Maryland law if acting as a lender in the State, Fintech firms have the unique ability to evolve quickly and take on other roles in the marketplace. Thus, the commission recommends that the General Assembly and OCFR ensure that Fintech firms are covered by Maryland consumer laws and regulatory protections.

[10] "Financial Education and Capability Commission 2017: Annual Report to the Maryland General Assembly," Maryland State Department of Education,http://cashmd.org/wp-content/uploads/2017/12/2017-Financial-Education-and-Capability-Commission-Report.pdf.

Virtual or Cryptocurrencies

The commission recommends that the General Assembly should, upon further study, update current Maryland law including provisions for licensing dealers in cryptocurrencies by OCFR, the protections for investors and merchants transacting in cryptocurrencies such as Bitcoin, and related enforcement authority. In addition, the commission recommends companies that deal in virtual currencies should be required to comply with regulations for money transmitters. While CFTC and SEC are addressing certain federal issues related to derivatives and ICOs, there may be a need for the State to ensure that the public is better protected from sales and other abuses. New York state has adopted a licensing regime. Other states require companies dealing in virtual currencies to comply with their respective money transfer laws. While Maryland should monitor closely the cryptocurrency market as it continues to develop to determine possible modifications to existing laws, at a minimum, dealers in virtual currencies should comply with requirements for other dealers in fiat currencies. Otherwise, there would be a regulatory gap leaving the public less protected when dealing with virtual currency money transmitters than when dealing with traditional currency transmitters. With cryptocurrencies valued over $560 billion as of January 19, 2018, it is now too large of a market to continue to leave transmitters of virtual currencies outside of the regulatory protections for the public when dealing with transmitters of traditional fiat currencies.

Consumer Reporting Agencies

In light of increasing challenges of cybersecurity and data breaches such as at Equifax and at Uber, the commission recommends prohibiting consumer reporting agencies from charging for the placement, temporary lift, or removal of a security freeze, as these are often an important remedy for identity theft.

The commission further recommends the State strengthen, as appropriate, statutory procedures for correcting inaccurate information contained within a consumer report and require consumer reporting agencies to notify the public promptly (or within 30 days) after a breach is discovered. The commission also thinks it is worth considering requiring other businesses handling consumer financial data to report breaches (such as was reported by Uber last year) within 30 days.

State law defines a “security freeze” as a restriction placed on a consumer report at the request of the consumer which prohibits credit reporting agencies from releasing the report (or any information derived from the report) without the authorization of the consumer. Credit reporting agencies may charge a reasonable fee (of up to $5) for each placement, temporary lift, or removal of a security freeze. Credit reporting agencies may not charge a fee for a security freeze to a consumer who has obtained a report of alleged identity fraud or for a minor for whom a consumer report already exists. Chapters 827 and 828 of 2017 prohibit credit reporting agencies from charging a fee for a placement of a security freeze if the consumer has not previously requested the placement of a security freeze from the credit reporting agency.

Maryland ranks seventh in the nation in the number of identity theft complaints (8,251) reported to the Federal Trade Commission.[11] A security freeze is a tool that victims of identity theft often use to limit the damage that may be caused; it restricts access to a consumer report, thereby making it more difficult for an identity thief to open new financial accounts in another person's name. Despite the enactment of Chapters 827 and 828, consumers still have to pay $5 to each credit reporting agency for removal of a security freeze or for each subsequent placement, temporary lift, or removal.

In addition to managing the placement of security freezes, credit reporting agencies are also responsible for managing the information contained in a consumer report. Lenders use the information contained in a consumer report to determine whether or not to approve a loan application or extend a line of credit. Regardless of whether the information contained in a consumer report is current, false, or incomplete, lenders base their decisions on the information contained in those reports. Unfortunately, consumers can be denied credit on erroneous information, and then be forced to go through an onerous process to correct the information. Even when corrected, the same information can reappear on a consumer report some months or years later. Giving the consumer notice of the breach will allow the consumer to take the steps needed to prevent identity fraud.

Further Considerations

Two other areas brought to the attention of the commission deserving further study relate to the current foreclosure process and the prudential standards and fees applicable for nonbank financial institutions.

The testimony of Marceline White, Executive Director of the Maryland Consumer Rights Coalition, included the following comments on the foreclosure process in her testimony: (1) homeowners are unable to assert a counter complaint against the mortgage lender/servicer; (2) homeowners in Prince George's County are being denied any opportunity for a hearing on any motion as the court rules on every matter without a hearing by order; (3) the courts do not publish quarterly reports comparing how many hearings were requested by homeowners versus how many were actually held; and (4) Maryland should repeal the current foreclosure process and change to a full-blown judicial foreclosure process.

Commission member Anne Balcer recommends that OCFR should have authority to implement prudential standards for licensed nonbank financial institutions, particularly mortgage loan servicers and mortgage loan lenders. The Federal Reserve has prudential standards for large U.S. bank holding companies to help increase the resiliency of their operations, but generally does not regulate nonbank mortgage loan servicers and mortgage loan lenders. OCFR would require capital requirements for nonbank entities that pose market and consumer risk. Further, OCFR

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[11] "2016 Annual Report," Federal Trade Commission, Consumer Sentinel Network, https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf.

would have the authority to establish annual assessments of nonbank licensed entities based on volume and other criteria determined by the commission, in line with the assessment process for banks and credit unions.

Another commission member recommends asking OAG to consider when it may be appropriate to draft consumer protection laws that do not preempt local jurisdictions from enacting more stringent consumer protection laws.

Finally, another commission member, while generally supporting the report, suggests that some of the issues and recommendations in the report, such as the recommendation to amend the definition of "mortgage loan originator" to include manufactured housing retailers, would benefit from further study.

Conclusion

Conclusion

The Maryland Financial Consumer Protection Commission was established in 2017 to monitor changes in Washington and on Wall Street and make recommendations for action to the Governor, the General Assembly, and the Maryland Congressional Delegation as necessary to safeguard Maryland consumers. In this report, the commission has reviewed the background and history of the 2008 financial crisis, the devastating effects it had on the public and the economy, the general success of the resulting Dodd-Frank reforms, and the efforts by the Trump Administration and the 115th Congress to roll back some of these financial and consumer protections.

In light of the retrenchment on the federal level, the commission recommends that Maryland take steps to further protect consumers and investors.

The commission recommends continued advocacy and opposition, when appropriate, by the Maryland Congressional Delegation to legislative and regulatory efforts to lessen consumer and financial reforms.

The commission recommends vigorous enforcement by and funding of the Office of the Attorney General and the Office of the Commissioner of Financial Regulation, enhanced by additional dedicated enforcement and investigative staff and higher penalties that may be imposed.

The commission recommends that the General Assembly adopt additional new consumer protection laws to backfill where federal regulators may be stepping back, including actions relating to fiduciary duty of financial professionals, forced arbitration clauses, manufacturer housing retailers, and payday lending.

The commission recommends that the General Assembly adopt additional new consumer protection laws where new developments have revealed new risks, including relating to student loans, financial technology, virtual currencies such as Bitcoin, and cybersecurity-related data breaches such as what occurred at Equifax.

The commission wishes to thank members of the public who submitted testimony as well as the members of the Department of Legislative Services' staff who generously gave their time to support the work of the commission and produce this report.

The commission stands ready to continue to assist the Governor, the General Assembly, and the Maryland Congressional Delegation in their ongoing efforts to protect Maryland consumers.

Appendix 1: The Maryland Financial Consumer Protection's Charge

Chapter 18 of 2017 (Senate Bill 884) established the Maryland Financial Consumer Protection Commission. The commission must:

(1) assess the impact of potential changes to federal financial industry laws and regulations, budgets, and policies, including changes to specified federal financial regulators as well as the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(2) issue recommendations for federal and State actions that are intended to protect residents of the State when conducting financial transactions and receiving financial services.

The commission may provide periodic reports and recommendations to the Governor, the General Assembly, and the Maryland Congressional Delegation, as it deems appropriate.

The commission must submit two reports with its findings and recommendations to the Governor and General Assembly by December 31, 2017, and December 31, 2018.

The commission consists of legislators, the Maryland Attorney General (or the Attorney General's designee), the Commissioner of Financial Regulation (or the commissioner's designee), and representatives of relevant interest groups. The commission is staffed by the Department of Legislative Services. See page v for the membership roster.

Appendix 2: Biographies of Commission Members

Gary Gensler, Chair
Senior Advisor to the Director, MIT Media Lab and Senior Lecturer, MIT Sloan School of Management, Former Chairman of the U.S. Commodity Futures Trading Commission, Undersecretary of the U.S. Treasury for Domestic Finance, and Assistant Secretary of the Treasury

Gary Gensler also had been Senior Advisor to U.S. Senator Paul Sarbanes in writing the Sarbanes-Oxley Act and co-authored 'The Great Mutual Fund Trap' a book on personal finance. Mr. Gensler worked on various political campaigns, most recently as CFO for Hillary Clinton's 2016 presidential campaign. Prior to his public service career, Mr. Gensler worked at Goldman Sachs for 18 years, having become a partner in the Mergers & Acquisition department, headed up fixed income and currency trading in Asia, and lastly was Co-head of Finance worldwide. He earned his undergraduate degree in economics, summa cum laude, and his MBA from the Wharton School, University of Pennsylvania. He is a recipient of the 2014 Tamar Frankel Fiduciary Prize.

Brian E. Frosh
Attorney General of Maryland

Prior to his current office, Attorney General Brian E. Frosh served in the Maryland General Assembly for 28 years, including 12 as chairman of the Senate Judicial Proceedings Committee. He has received awards from the Sierra Club, American Lung Association, Maryland State Bar Association, and the Maryland League of Conservation Voters. He was recognized by *The Daily Record* in 2010 with the Leadership in Law Award and was honored by his Senate peers with the First Citizen Award, presented to Marylanders who have been dedicated and effective participants in the process of making government work for the benefit of all. Prior to being elected Attorney General, he was an attorney in private practice since 1976.

Senator James Rosapepe
District 21, Prince George's and Anne Arundel counties
Member of the Senate Finance Committee

In his 22 years in the Maryland legislature, Senator James Rosapepe of College Park has specialized in financial and economic policy. He was Vice Chair of the House Ways and Means Committee and now is a member of the Senate Finance Committee. He has worked in the investment industry for more than 30 years, including serving on the boards of private equity funds and publicly traded companies. He sponsored the law creating the Maryland Financial Consumer Protection Commission and serves as a member. He also served as the U.S. Ambassador to Romania from 1998 to 2001.

Senator Joanne C. Benson
District 24, Prince George's County
Member of the Senate Finance Committee

Joanne C. Benson was elected in 1991 to the House of Delegates of the Maryland General Assembly to represent Prince George's County's 24th Legislative District. In 2011, she was elected to serve as the 24th District's first female senator and is currently the only female senator in the Prince George's County Senate Delegation. Senator Benson currently serves as Assistant Deputy Majority Leader of the Senate, a member of the Senate Finance Committee, and several joint committees. She also is a member of the Women Legislators of Maryland and serves as Chaplain of the Legislative Black Caucus of Maryland. Joanne C. Benson was born in Roanoke, Virginia. Senator Benson takes great pride in her 40-year career as an educator in Prince George's County Public Schools. Senator Benson is an activist and vigorous advocate for children, seniors, families, the disabled, and veterans.

Delegate C. William Frick
District 16, Montgomery County
Member of the House Economic Matters Committee

Delegate C. William Frick has served in the House of Delegates since 2007. He serves in House leadership as the Majority Leader. Born and raised in Montgomery County, he graduated from Montgomery County schools, Northwestern University, and Harvard Law School, and currently is an attorney in private practice. Delegate Frick sits on the Economic Matters Committee, and his interests include consumer protection, education, the environment, and constituent service.

Delegate Susan L. M. Aumann
District 42B, Baltimore County
Member of the House Economic Matters Committee

Susan L. M. Aumann grew up in the Hunt Valley community of Greencroft. A graduate of Notre Dame Preparatory School, she received a degree in Business Administration and Finance from the College of Notre Dame and later received a degree in Accounting. She has worked as an accountant and auditor for private and publicly held companies. Active in the Republican Party for more than 16 years, Delegate Aumann has been part of Governor Robert L. Ehrlich, Jr.'s campaign team since he first ran for House of Delegates in 1986. She was treasurer of the Bob Ehrlich for Maryland Committee until winning the primary. She has also been involved in a wide variety of community activities including: 42nd District Republican Club; Optimist Board Member; Friends of Loch Raven Reservoir; Member Elected to Republican Central Committee (1994-1998); Alternate to the Republican National Convention in San Diego (1996); Past Treasurer and Vice President of the North Central Republican Club; member of the Historic Hampton, Inc.; member of the Women's Committee of Hampton; and Board Member of Scenic Maryland.

Antonio P. "Tony" Salazar
Maryland Commissioner of Financial Regulation

Antonio P. Salazar was named as the new Commissioner of Financial Regulation at the Office of the Commissioner Financial Regulation effective July 5, 2017. Mr. Salazar led the Banking and Financial Institutions practice at the law firm of Davis, Agnor, Rapaport, & Skalny, LLC from 2009 until joining the office. Prior to joining the firm, he served as Deputy General Counsel of Provident Bank, a large regional mid-Atlantic bank based in Baltimore. Mr. Salazar started his banking career as an enforcement attorney with the Office of the Comptroller of the Currency. He holds a law degree from The George Washington University Law School and a Bachelor's degree from Georgetown University. Mr. Salazar is a graduate of Leadership Howard County, Class of 1999, has served on a number of local nonprofit boards, and is fluent in Spanish.

Anne Balcer
Executive Vice President of Congressional Bank
Former Maryland Deputy Commissioner of Financial Regulation

Anne Balcer is the Executive Vice President, General Counsel, and Internal Auditor for Congressional Bank, a Maryland chartered community bank. Prior to joining Congressional Bank in April 2013, she served as Maryland's Deputy Commissioner of Financial Regulation as an appointee of the O'Malley-Brown Administration. Before her career in public service, Ms. Balcer was the Director of the Foreclosure Prevention Division of St. Ambrose Housing Aid Center, Inc., in Baltimore City. She has testified before Congress, the TARP Oversight Committee, and in state and local legislatures on consumer protection, foreclosure, and fair housing. She was honored with the American Association of Residential Mortgage Regulators Distinguished Service Award in August 2012 and was named the Maryland Consumer Rights Coalition's 2012 Consumer Advocate of the Year. Ms. Balcer was also honored as one of *The Daily Record* 2012 Leadership in Law recipients.

Eric Friedman
Director, Montgomery County, Office of Consumer Protection

Eric Friedman is the Director of Montgomery County's Office of Consumer Protection. He has worked in Montgomery County's consumer protection office for the past 37 years, currently serves on Maryland's Collection Agency Licensing Board, and served on the Governor's Foreclosure Task Force. He received a law degree from George Mason University School of Law, a B.A. in Political Science from George Washington University, and is a member of the Maryland and D.C. Bars. Montgomery County's Office of Consumer Protection currently has a dedicated staff of 16, a $2 million budget, and collaborates with other government agencies and nonprofit organizations. The office strives to ensure integrity in our marketplace; and actively leverages resources to address consumer scams which target minority communities, seniors, and vulnerable consumers.

Mark Kaufman
President of City First Enterprises/Executive Vice President of City First Bank
Former Maryland Commissioner of Financial Regulation

Mark Kaufman is an Executive Vice President at City First Bank in Washington, DC, and President of City First Enterprises, an affiliated bank holding company. He previously served as Counselor to the Deputy Secretary of the U.S. Department of Treasury from 2014 to 2017, with responsibility for domestic finance issues. Previously, Mr. Kaufman served as Maryland's Commissioner of Financial Regulation from 2010 to 2014. He played a leadership role in the State's effort to respond to the foreclosure crisis and was named "Consumer Advocate of the Year" in 2014 by the Maryland Consumer Rights Coalition. Before his appointment in Maryland, he spent 15 years in investment banking, most recently as a Managing Director at CIBC World Markets in Baltimore and previously with Deutsche Bank, Alex. Brown & Sons, and J.P. Morgan. From 1992 to 1994, he served on the staff of the Senate Banking Committee. Mr. Kaufman holds MBA and MPA degrees from Columbia University and a BA from Brown University. He also serves on the Board of Directors of the Enoch Pratt Free Library and the Jacob K. Javits Foundation.

Karren Jo Pope-Onwukwe, Esquire
Law Office of Karren Pope-Onwukwe, LLC

Karren Pope-Onwukwe is a prominent elder law and disability rights attorney, bar leader, and community activist; her practice centers around helping clients plan for aging, disability, and wealth transfer. She is past president of the Elder Law and Disability Rights Section Council of the Maryland State Bar Association, co-founder and past co-chair of the Elder Law Section of the Prince George's County Bar Association. *The Daily Record* named Ms. Pope-Onwukwe as one of the 100 Top Women in Maryland for 2004. In 2007, Governor O'Malley appointed her to the Maryland State Advisory Council on Quality Care at the End of Life where she served until 2017. She also served as chair of the Prince George's County Executive's Aging Advisory Committee from 2003-2012. In 2009, Ms. Pope-Onwukwe was presented with the Distinguished Alumna Award from the University of Maryland University College (UMUC). She was the recipient of the 2012 Governor's Leadership in Aging Trailblazer Award and is the editor of *Practical Approaches to Maryland Guardianship*, which was published in 2010. Ms. Pope-Onwukwe earned a Bachelor of Arts from Eastern Kentucky University, a Bachelor of Science from UMUC, and a Juris Doctor from the Georgetown University Law Center.

Robin Barnes Shell
Attorney at Law

Robin Barnes Shell is an attorney in Maryland and currently investigates fraud, waste, abuse, and illegal acts in county government. She oversaw the startup of the Ombudsman and Constituent Services offices providing confidential, neutral, and independent assistance to constituents in Howard County Public School System and Prince George's County Public Schools System. Prior to her service in county government, she served as Deputy General Counsel to NeighborWorks America, a congressionally chartered community development and affordable housing nonprofit. In private practice, she provided legal counsel in complex real estate, banking and municipal finance transactions involving the construction of affordable housing, universities, and hospitals. Ms. Barnes Shell is a graduate of Georgetown University Law Center, Capital Bible Seminary, and Howard University.

Rodney H. Staatz
President and CEO, State Employees Credit Union (SECU)

Rodney H. Staatz has been President and CEO of SECU since 2003. With over 41 years of financial experience, Mr. Staatz has held various executive banking positions before joining the credit union movement in 1996. SECU is a $3.3 billion credit union headquartered in Linthicum, Maryland with over 250,000 members. Working in both the banking and credit union worlds has given Mr. Staatz a unique appreciation for what credit unions provide that for-profit financial institutions cannot provide. He recently served as Chairman of the Credit Union National Association and also sits on the boards of CSCU (Card Services for Credit Unions), OTS (Open Technology Solutions), S3 (Shared Services Solutions), and the Maryland/DC Credit Union Association.

Appendix 3: Meeting Agendas

Maryland Financial Consumer Protection Commission
Agenda
Thursday, October 26, 2017, 1:00 p.m.
3E Senate Office Building, Annapolis

- **Chair's Opening Remarks**
- **Introduction of Commission Members**
- **Organizational/Administrative Items**
- **Discussion of Financial Consumer Protection Issues and Changes to the Federal Financial Industry Laws and Regulations, Budgets, and Policies, including *Overview of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Recent Federal Activity***

  <u>Panel 1:</u>

  <u>Federal Perspective</u>

  Stephen Hall, Legal Director and Securities Specialist, Better Markets

  Amias Gerety, Special Advisor, QED Investors (former Acting Assistant Secretary, Department of the Treasury)

  <u>Panel 2:</u>

  <u>Banking Industry Perspective</u>

  Mindy Lehman, Senior Vice President, Government Relations and Communications, Maryland Bankers Association

  Rod Alba, Senior Vice President and Senior Regulatory Counsel, Mortgage Markets, Financial Management and Public Policy Department, American Bankers Association

  John Bratsakis, President and CEO, MD/DC Credit Union Association

  <u>Consumer Perspective</u>

  Marceline White, Executive Director, Maryland Consumer Rights Coalition

  Rebecca Bowman, Director, Howard County Maryland Office of Consumer Protection

- **Commission Discussion**

Maryland Financial Consumer Protection Commission
Agenda
Tuesday, December 5, 2017, 1:00 p.m.
3E Senate Office Building, Annapolis

- **Chair's Opening Remarks**

- **Discussion of Financial Consumer Protection Issues and Changes to the Federal Financial Industry Laws and Regulations, Budgets, and Policies, including *Overview of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Recent Federal Activity***

  Mary Miller, Senior Fellow, 21st Century Cities Initiative, Johns Hopkins University; Trustee, the Urban Institute and Cornell University; Director, Silicon Valley Bank Financial Group and ICE Benchmark Administration; former Under Secretary for Domestic Finance, Department of Treasury; and former Director of Fixed Income, T. Rowe Price Group

  Michael Barr, Joan and Sanford Weill Dean of Public Policy at the Gerald R. Ford School; the Frank Murphy Collegiate Professor of Public Policy; the Roy F. and Jean Humphrey Proffitt Professor of Law; the Faculty Director of the Center on Finance, Law, and Policy at the University of Michigan; and former Treasury Assistant Secretary, Department of Treasury

  Marcus Stanley, Policy Director, Americans for Financial Reform

  Edmund Mierzwinski, Consumer Program Director and Senior Fellow, U.S. Public Interest Research Groups

- **Commission Discussion**

Members of the public are invited to submit written testimony to this email: FCPC@mlis.state.md.us

More information on this Commission may be found on the Maryland Department of Legislative Services website: http://dls.maryland.gov/policy-areas/maryland-financial-consumer-protection-commission