Testimony of Ed Mierzwinski,

U.S. PIRG Consumer Program Director
On behalf of

Maryland PIRG and U.S. PIRG

Before the

Maryland Financial Consumer Protection Commission

The Honorable Gary Gensler, Chair

5 December 2017

Chairman Gensler and Members of the Commission:

Thank you for the opportunity to testify today on the important matter of how Maryland can help prevent a recurrence of the 2007-2008 financial collapse that wreaked havoc on the nation's consumers, their families and communities and the economy. My name is Edmund Mierzwinski and I am Consumer Program Director of the U.S. Public Interest Research Group, which serves as the national association of the non-profit, non-partisan state PIRGs. My testimony is on behalf of both Maryland PIRG and U.S. PIRG.

I am also a founding and Steering Committee member of Americans for Financial Reform, the coalition established by leading consumer, community, civil rights, labor, small investor and other organizations to first support passage of and now defend from special interest attack a strong Dodd-Frank Wall Street Reform and Consumer Protection Act. I associate myself and concur with the testimony of Dr. Marcus Stanley, AFR's policy director, today.

The commission has heard detailed testimony on the many causes of the collapse and on the goals and structure of that Dodd-Frank Act enacted in 2010. I want to point out that Congress, within weeks of the extraordinary events of September 2008, first bailed out the banks, despite that many of the banks had been active agents of the collapse. While the banks – large and small -- had a soft landing courtesy of taxpayers, and are doing very, very well despite their complaining, the millions of consumers who lost jobs and/or homes and the millions more who lost trillions in retirement savings, had to wait; many are still waiting for a full recovery to reach them. Current threats to the future of the highly-successful Consumer Financial Protection Bureau established by Dodd-Frank make it imperative that states strengthen the consumer protections they provide their citizenry.

The current attacks on both the Consumer Bureau and the myriad investor and taxpayer protections also provided by Dodd-Frank are both well-funded and ill-founded. It makes no sense to eliminate or weaken reforms established just seven years ago and less than a decade after the nation's second-worst financial collapse in history.

Following a series of recommendations for the Commission to consider, I offer a defense of the highly-successful Consumer Financial Protection Bureau.

RECOMMENDATIONS
We make the following recommendations to the Commission:

1) Memorialize your federal delegation – House and Senate – to oppose all efforts to overturn or weaken the Dodd-Frank Act. Significant current threats – still under consideration this year – include the following:

-- Both the House and Senate Appropriations bills include language to make the Consumer Bureau subject to the Appropriations process, ignoring over 150 years of U.S. policy (since the Civil War) that bank regulators have funding independent from and protected from the highly-politicized appropriations process. Negotiations over the budget and the continuing resolution to fund the government are the vehicle for this attack on the bureau. The Bureau would become the only one of 4 bank regulators (the others are the Federal Reserve, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (the OCC was established in 1864) without independent funding.

-- The Financial Choice Act, HR10, as passed by the House, is a sweeping dismissal of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] **While it will not pass the Senate en bloc, it provides a blueprint for hundreds of possible Senate amendments**. Further, its worst provisions have been embedded into the House Financial Services and General Government Appropriations Act.

-- Today, December 5th, the U.S. Senate Banking Committee is voting on S2155, the so-called Economic Growth, Regulatory Relief and Consumer Protection Act." **You must urge your Senators to oppose this bill, which is being falsely sold as narrowly-tailored, modest and necessary.** The bill includes a few scraps thrown to consumers, but it is an insult to call it a Consumer Protection Act. The bill is designed to reduce prudential safeguards and risk controls on so-called super-regional banks. As you know, the failure of supervision and a culture of greed at similarly-sized banks such as Countrywide, Wachovia, IndyMac and Washington Mutual poured gas on the flames of a perhaps manageable mortgage crisis and turned it into an unmanageable financial crisis that resulted in a full-blown economic system collapse. S2155 would gut prudential regulator authority over 25 of the nation's 38 largest banks. It would also severely weaken mortgage protections for loans granted by many much smaller banks, including creating exceptions from standards for those making loans in rural areas and those providing manufactured housing loans. Dr. Stanley will have much more to say about this bill.

2) Ensure that your Attorney General has full powers and adequate staff under state law to enforce violations of the Consumer Financial Protection Act (Title 10 of the Dodd-Frank Act) and other consumer protection laws. Several states, and even cities, are taking actions to strengthen state consumer protection laws. Pennsylvania has even established a mini-Consumer

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[1] U.S. PIRG's letter to the House opposing passage that day, 8 June 2017, https://uspirg.org/sites/pirg/files/resources/USPIRG%20Oppose%20Choice%20Act%207June2017.pdf See also https://www.congress.gov/bill/115th-congress/house-bill/10/actions

Bureau in its Office of the Attorney General.[2] While the Dodd-Frank Act provides for states to enforce the federal law, a potential hostile Consumer Bureau could choose to block those efforts. Therefore any work you can do to ensure that your Attorney General has all the authorities and powers needed to protect consumers under state law is a critically important task for this Commission.

3) Protect college students by enacting a Student Loan Ombudsman's Office: In 2015, Connecticut became the first state to enact an Office of Student Loan Ombudsman. As ConnPIRG explained on passage:[3]

> "The General Assembly's action comes as the economic impact on families of the cost of higher education is larger than ever. Student loan debt is the second largest type of debt held by American households. The burden of student loan debt increased rapidly in recent years. From 2008 to 2012, the average debt level for graduating seniors who had student loans rose by 25 percent, from $23,450 to $29,400. Nationwide, Americans hold almost $1.2 trillion in student loan debt."

Washington, DC has made efforts to protect students. A new law requires licensing of student loan services.[4] A comprehensive bill establishing a Student Loan Ombudsman is before the New Jersey legislature.[5]

4) **Keep high-cost predatory payday and auto title lenders out of Maryland:** We concur with the analysis of the Maryland Consumer Rights Coalition previously presented to this Commission.[6] As they have in numerous states, payday and auto title lenders have attempted numerous subterfuges to evade Maryland's strong usury ceilings against predatory small dollar lending. While strong Maryland enforcement has generally held them back, including actions

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[2] Lisa Lambert, "U.S. states gird for fight as Trump targets consumer finance watchdog," Reuters, 1 December 2017, available at https://www.reuters.com/article/us-trump-effect-cfpb/u-s-states-gird-for-fight-as-trump-targets-consumer-finance-watchdog-idUSKBN1DV5LQ

[3] Release, "ConnPIRG Hails General Assembly's Passage of First-in-the-Nation Student Loan Bill of Rights, Open Source Pilot Program" 5 June 2015, available at https://connpirg.org/news/ctp/connpirg-hails-general-assembly%E2%80%99s-passage-first-nation-student-loan-bill-rights-open-source

[4] See "D.C. accepting student loan servicer license applications; CT adopts student loan servicing standards," 22 August 2017, available at https://www.jdsupra.com/legalnews/d-c-accepting-student-loan-servicer-17152/

[5] See http://www.njleg.state.nj.us/2016/Bills/S3500/3198_I1.PDF

[6] See Marceline White, Executive Director, "Testimony to the Maryland Consumer Protection Commission, Maryland Consumer Rights Coalition" 26 October 2017.

against an egregious "rent-a-tribe" scheme by online lenders, continued state vigilance is required. While the Consumer Bureau has recently completed a rule requiring short term payday and auto title lenders to restrict loans based on a customer's ability to repay, that rule – intended to buttress the efforts of states, but not to circumvent stronger usury-ceiling based protections as in Maryland -- is under attack under the Congressional Review Act used to veto regulations. **Commission members should urge your Senators, in particular, to block the payday rule CRA.**

4) Protect consumers from mistake-ridden credit bureaus and abusive uses of credit reports and expand identity theft protections. The U.S. Fair Credit Reporting Act allows states to go further in many areas, as Maryland has already done in both use of credit reports to price homeowners' insurance and identity theft protections (credit freezes).[7] Maryland should consider restricting the use of credit reports for employment purposes and should restrict the use of credit reports to assess auto insurance risks. These are fundamental ways to help consumer economic and employment opportunity. Maryland should also extend its recent free credit freeze rights expansion to include all consumers at any time.[8] The PIRGs have been active leaders in promoting state action to prevent identity theft.[9] We also commend Attorney General Brian Frosh for his efforts to prevent Equifax from profiting on its recent epic data breach.[10] I recently discussed this Equifax profiteering – no consumer should ever pay for credit report monitoring. It only tells you after the horse has already left the barn. In particular, in Maryland, a state that provides an annual free credit report on request by state law, a consumer can choose to stagger her request for each of her 6 federally-mandated and state-mandated credit reports (2 from each of the Big 3 bureaus) every two months to have a free annual credit monitoring service. I have a

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[7] For a detailed discussion of how the 2003 Fair and Accurate Credit Transactions Act, the most recent FCRA amendment, left the states room to innovate, see Gail Hillebrand, "After the FACT Act: What States Can Still Do to Prevent Identity Theft," 13 January 2004, available at http://consumersunion.org/research/after-the-fact-act-what-states-can-still-do-to-prevent-identity-theft/

[8] Op-ed By State Senator Susan Lee explaining new protections, "Freeze your credit before you get burned," 7 October 2017, http://www.baltimoresun.com/news/opinion/oped/bs-ed-op-1009-credit-freeze-20171005-story.html

[9] See U.S. PIRG and Consumers Union, "The Clean Credit and Identity Theft Protection Act: Model State Laws - A Project of the State Public Interest Research Groups and Consumers Union of U.S., Inc." Version of November 2005, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=846505 Also, see testimony of Mike Litt, U.S. PIRG on credit freezes before the House Financial Services Committee's "Continuation of the Equifax Hearing," 25 October 2017, available at https://financialservices.house.gov/uploadedfiles/hhrg-115-ba00-wstate-mlitt-20171025.pdf

[10] Chris Dinsmore, "Maryland attorney general calls on Equifax to stop trying to profit from data breach," 13 September 2017 available at http://www.baltimoresun.com/business/bs-bz-frosh-equifax-20170913-story.html

broad overview of the problems of credit bureaus and also the need for real solutions to consumer identification and authentication problems in hearings before two Congressional committees.[11]

5) Regulate fintech, including online lending, to consumers and small businesses and oppose the OCC's efforts to license fintech firms or create loopholes for "rent-a-bank" partnerships: Just as Uber and AirBnb represent Silicon Valley efforts to disrupt various economic sectors, similar firms seek to disrupt the financial sector. Much, although not all, of the current thinking is that the firms will eventually partner with traditional banks. A particular problem is that those partnerships might be most easily facilitated through federal regulatory action to create special non-bank "bank charters" designed to avoid or evade state level consumer protections. A proposal from the U.S. OCC has been vigorously opposed by consumer, civil rights and community groups and by the Conference of State Bank Supervisors. Here is an excerpt from a January consumer group letter to then-Comptroller Thomas Curry.[12]

> "The undersigned consumer, civil rights, and community groups write to express our strong opposition to the proposed new federal nonbank lending charters that would enable lenders to avoid state interest rate caps, other state protections, and state oversight. State laws often operate as the primary line of defense for consumers and small businesses; thus, the proposal puts them at great risk."

We do not doubt that fintech has the potential to bring benefits to the unbanked and to help firms offer competition that forces banks to do a better job servicing all customers, including small businesses that are generally treated even more poorly than consumers (small business are not protected by consumer protection laws). Yet, so far, most fintech firms seem to be skimming the prime credit scoring sector, not offering products to sub-prime or marginal consumers. The industry deserves greater scrutiny and oversight.

One year ago, U.S. PIRG Education Fund held a roundtable on the growing influence of fintech firms in Washington. The archive page for that event includes our detailed backgrounder on

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[11] Hearing before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, "Data Security: Vulnerabilities and Opportunities for Improvement," 1 November 2017, available at https://financialservices.house.gov/UploadedFiles/HHRG-115-BA15-WState-EMierzwinski-20171101.pdf and Hearing before the House Energy and Commerce Committee, Subcommittee on Oversight and Investigations, "Identity Verification in a Post-Breach World, 30 November 2017, available at http://docs.house.gov/meetings/IF/IF02/20171130/106662/HHRG-115-IF02-Wstate-MierzwinskiE-20171130.pdf

[12] Letter of 250 consumer groups to OCC Comptroller Thomas Curry, 13 January 2017, available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_occ_nationalbank_fintech_jan2017.pdf

fintech issues, other resources and links to detailed comments from leading groups opposing the OCC proposals.[13] Here is an excerpt from our U.S PIRG Education Fund backgrounder:

> "The financial system is highly regulated for a variety of reasons and FinTech challenges some of the important safeguards that address privacy, consumer protection and the safety and soundness of the economy. There are a growing number of policy initiatives designed to foster the growth of FinTech services. But many critical questions regarding consumer protection must be raised. Is the start-up culture of many of these FinTech companies equipped to not only innovate but to safeguard consumer rights at the same time? Are new consumer protections, especially for the most vulnerable needed or are existing laws adequate?"

Many of these fintech firms in the Business-2-Consumer (B2C) space operate as online lenders. In recent testimony to a joint hearing of several committees of the NY Assembly and Senate, Charles Bell of Consumer Reports urged the committees to "strengthen licensing requirements for online lenders. It is not unfair or unreasonable for New York to require licensure for online lenders, just as the state does for other lenders and depository." He also urged the committees to reject various "pilot" proposals that carve out usury limit exceptions or allow check cashers to partner with out-of-state banks for so called "conduit services."[14] New York, like Maryland, bans predatory small dollar lending by usury ceiling, but faces ongoing efforts by high-cost lenders to evade its strong laws and regulations.

6) Consider regulation and license cryptocurrencies: I also wanted to take this opportunity to point out that two leading consumer groups, Consumers Union and the National Consumer Law Center, joined by a leading consumer law professor, have suggested to the Conference of State Bank Supervisors some necessary elements of state-based regulation of cryptocurrencies.[15]

Further Discussion on the Need for a Strong Consumer Bureau

In conclusion, I would also like to provide the Commission with additional background on the CFPB, or Consumer Bureau, which has faced relentless and unjustified special interest attacks.

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[13] See "Big Data and Fintech Resources" page available at https://uspirgedfund.org/issues/usf/big-data-and-fintech-resources

[14] Mr. Bell appears first (after some opening remarks between the chair and another panelist), in this online video of a 22 May 2017 public hearing in Albany http://nystateassembly.granicus.com/MediaPlayer.php?view_id=8&clip_id=4262 His written testimony is available from me on request.

[15] Consumers Union, National Consumer Law Center and Professor Mark Budnitz, "Comments on Draft Model Regulatory Framework ("Draft Framework") for State Virtual Currency Regulatory Regimes," 6 February 2015, https://www.csbs.org/sites/default/files/2017-11/Consumers%20Union%20and%20NCLC%20Framework%20Comment.pdf

The PIRGs maintain a detailed page explaining its many accomplishments and its special offices to aid students, servicemembers and veterans, older Americans and consumers who may face difficulty obtaining financial opportunity, often due to their race or class. Our Consumer Bureau page links to many other helpful Bureau products.[16]

The Bureau was established by the Dodd-Frank Act's Title X to give consumers an agency with only one job, protecting consumers.[17] Four separate bank regulators had engaged for years in a race to the bottom to attract more banks to be regulated under their charters, in the process ignoring their responsibility to enforce consumer laws and even preempting state (and city) efforts to do the job that they weren't doing. Further, while the Federal Trade Commission has valiantly attempted to enforce consumer laws against non-banks, it was never given the tools – importantly, examination or supervisory authority and the ability to impose civil penalties for a first offense – that bank regulators have. In most cases, the FTC is also hobbled by a lack of rulemaking authority.

- In just six years, the CFPB has been a huge success for consumers, returning nearly $12 billion to more than 29 million people who were ripped off by companies that broke the law. To be clear, the Bureau's efforts, in all circumstances, are to return money wrongly taken from consumers as restitution or to provide relief from unfair future interest payments, for example, loans owed to for-profit schools that made false promises to students.
- In addition, when wrongdoer conduct is particularly egregious, the Bureau imposes additional civil penalties. Until now, the Bureau has primarily used those funds to compensate victims of presumably destitute wrongdoers. This enterprise is doubly important because these sorts of bottom-feeder wrongdoers have usually trapped consumers in "last-dollar" scams. Last week, the presumptive acting director of the Bureau, Mick Mulvaney, took steps to freeze that activity.[18]

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[16] See "Defend the Consumer Bureau, undated, available at https://uspirg.org/sites/pirg/files/cpn/USN-072417-A1-ISSUE/defend-consumer-bureau3.html

[17] To give us both an opportunity to answer committee questions, I jointly presented comprehensive testimony on the need for the Consumer Bureau, with Travis Plunkett of the Consumer Federation of America, at a hearing entitled "Regulatory Restructuring: Enhancing Consumer Financial Products Regulation," before the U.S. House Financial Services Committee, on behalf of over a dozen consumer and community organizations, 24 June 2009, available at http://archives.financialservices.house.gov/media/file/hearings/111/mierzwinski_-_submitted_with_plunkett.pdf

[18] See blog post by Jim Lardner, Americans for Financial Reform, "What's at Risk at CFPB: Ability to Deliver Relief to Victims of Financial Flimflams," 1 December 2017, available at http://blog.ourfinancialsecurity.org/2017/12/whats-at-risk-at-cfpb-ability-to-deliver-relief-to-victims-of-financial-flimflams/

- The CFPB holds firms ranging from big banks to debt collectors, credit bureaus and payday lenders accountable. Here are a few examples of some of the cases the CFPB has taken on to protect consumers:

  - In 2015, the Department of Justice and 47 states joined the CFPB in a $216 million action against JP Morgan Chase Bank for illegal debt collection practices affecting more than half a million Americans.

  - When Wells Fargo employees were caught opening unauthorized debit and credit accounts using their customer's information, the CFPB fined Wells Fargo $100 million for fraud.

  - This year, the CFPB fined Equifax and TransUnion — two of the three largest credit reporting agencies — $5 million for selling inflated credit scores to consumers that were different from ones actually used by lenders, and returned $17 million to those consumers harmed by the deception.

- The Consumer Bureau maintains a public, searchable database of nearly all of the over 1.1 million consumer complaints it has received so far. U.S. PIRG Education Fund is among the research organizations that have drilled down into the database for greater insights into consumer complaints and the problems in the marketplace that may cause them. Our 11th report, on the financial problems that older consumers face, was released in October.[19] Our 10th report, on servicemember and veterans' complaints, was released in June.[20] We maintain an archive of all complaint reports as well.[21]

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[19] See "Older Consumers in the Financial Marketplace," 12 October 2017, the report and a two-page fact sheet are available at https://uspirg.org/reports/usp/older-consumers-financial-marketplace

[20] See "Protecting Those Who Serve," 6 June 2017, the report and a two page fact sheet are available at https://uspirg.org/reports/usp/protecting-those-who-serve

[21] See "Reports: CFPB Complaints Get Results," undated archive available at https://uspirg.org/page/usp/reports-cfpb-gets-results-consumers

Yet today, we are engaged in a defense of the successful Consumer Bureau. We value any assistance that the Commission or Maryland legislature can provide to defend the CFPB. You should also replicate its various powers and authorities in Maryland law, as it is likely that the Bureau's actions to protect consumers may diminish under the current administration.

The idea of the Consumer Bureau needs no defense, only more defenders.

Following the committee's questions today, I am happy to submit additional information for the hearing record.

Sincerely,

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