2018 Legislative Session Review

Presentation to the
Maryland Financial Consumer Protection
Commission

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

June 5, 2018
Commission Charge

• Assess impact of potential changes to federal financial industry laws and regulations, budgets, and policies, including changes to:
  – the Dodd-Frank Wall Street Reform and Consumer Protection Act
  – the Consumer Financial Protection Bureau
  – the Securities and Exchange Commission
  – the Commodity Futures Trading Commission
  – the Pension Benefit Guaranty Corporation
  – the Department of Labor
  – the Federal Reserve Board

• Provide recommendations for federal and State actions that will protect residents of the State in financial transactions and when receiving financial services
Report Recommendations

- Interim report included several recommendations for federal, State, and local action
- Recommendations divided into four categories:
  - Maryland's Congressional Delegation actions
  - Vigorous enforcement by and funding of the Office of the Attorney General (OAG) and the Office of the Commissioner of Financial Regulation (OCFR)
  - State legislative actions to backfill where federal protections stepped back
  - State legislative actions to address recent developments
Recommendations – Congressional Delegation Actions

- Continue opposing most of the efforts to roll back Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) provisions and other financial consumer protections
- Continue supporting (1) independent Consumer Financial Protection Bureau (CFPB) and (2) full funding of U.S. Securities and Exchange Commission (SEC) and U.S. Commodity Futures Trading Commission (CFTC)
- Regularly weigh in on behalf of Marylanders by all available means
Recommendations – OAG and OCFR

• Enhance enforcement and investigative resources
  – $1.2 million to the agencies for up to an additional 10 employee positions
• Continue use of Dodd-Frank 1042 authorities
• Expand violations of the Maryland Consumer Protection Act (MCPA) to include “abusive” practices
• Expand violations of MCPA to include violations of the Military Lending Act (MLA) and Servicemembers Civil Relief Act (SCRA)
• Increase civil penalties for violations of State consumer protection laws and financial licensing and regulatory laws
  – $1,000 to $10,000 for initial violations
  – $25,000 for subsequent violations
Recommendations – State Actions Related to Federal Changes

• Extend fiduciary duty in Maryland statute to all financial professionals who provide investment advice
• Adopt Model State Consumer and Employee Justice Enforcement Act: Titles I – VIII (related to use of forced arbitration clauses)
• Amend “mortgage loan originator” definition in State law to include retailers of manufactured homes
• Fill possible gaps and eliminate loopholes in Maryland’s current payday lending statute
  – Review remedies under the unsecured consumer law ($6,000 loans or less) for usurious violations by exempt licensees or lenders and unlicensed nonexempt lenders
  – Increase amount considered small loan and considered retail installment loan
  – Specify in the consumer law that contracts would be expressly void for certain violations
Recommendations – State Actions Related to Recent Developments

• Create student loan ombudsman and require licensing of student loan servicers
• Ensure that Fintech firms are covered by Maryland consumer laws and regulatory protections
• Consider updating current State law to regulate issues regarding cryptocurrencies
• Require companies that deal in cryptocurrencies to comply with regulations for money transmitters
• Update State law regarding consumer reporting agencies
  – Prohibit consumer reporting agencies from charging for a security freeze
  – Strengthen procedures for correcting inaccurate information contained within a consumer report
  – Require data breach notifications
2018 Legislation

- Financial Consumer Protection Act of 2018 (Chapter 731 of 2018 (House Bill 1634) and Chapter 732 of 2018 (Senate Bill 1068)) implemented certain recommendations of the commission

- Related bills also implemented recommendations of commission
  - Chapter 480 of 2018 (House Bill 848) expanded regulation of consumer reporting agencies (CRAs) under the Maryland Credit Reporting Agencies Act (MCRAA)
  - Chapter 790 of 2018 (House Bill 1297) of 2018 established new protections for consumer borrowers
  - Chapter 677 of 2018 (Senate Bill 202)/Chapter 767 (House Bill 710) of 2018 prohibited a CRA from charging a fee for a security freeze
Financial Consumer Protection Act of 2018 (Chapter 731 and 732)

- Established new protections for consumer borrowers*
- Expanded definition of “unfair and deceptive trade practices” under MCPA to include “abusive” practices and violations of violations of MLA and SCRA
- Increased and made civil penalties for violations of MCPA and several other financial licensing and regulatory laws uniform
- Prohibited a person from engaging in specified debt collection activity without a license
  - Activity in violation of the Maryland Collection Agency Licensing Act
  - Conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act
- Prohibited CRAs from charging a fee for a security freeze*

*Indicates change only included in Senate version of bill
Financial Consumer Protection
Act of 2018 (cont.)

- Established mandatory funding for financial consumer protection enforcement activities
  - At least $700,000 for OAG
  - At least $300,000 for OCFR
- Required OAG and OCFR to use their authority under Section 1042 of Dodd-Frank, whenever considered appropriate, to bring civil actions or other appropriate proceedings authorized under Dodd-Frank
- Established a Student Loan Ombudsman within OCFR
  - Must receive and process complaints about student education loan servicing
  - Must disseminate information about student education loans and servicing
  - May refer any matter that is abusive, unfair, deceptive, or fraudulent to OAG for civil enforcement or criminal prosecution
  - Must report findings and recommendations each year
  - Must establish student loan education course
Financial Consumer Protection Act of 2018 (cont.)

• Required multiple studies to examine issues that were taken out of legislation as introduced

• Commissioner of Financial Regulation must conduct a study to assess whether the commissioner has enough statutory authority to regulate “Fintech” firms or technology driven nonbank companies and report by December 31, 2019

• Commission must study:
  – Cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and other blockchain technologies
  – CFPB arbitration rule and the Model Consumer and Employee Justice Enforcement Act
  – Possible exemption of retailers of manufactured homes from definition of “mortgage originator” in federal law
  – U.S. Department of Labor rule and actions of SEC in addressing conflicts of interest in broker-dealers offering investment advice
Chapter 480 of 2018 – Regulation of CRAs

- Codified existing regulatory requirement that CRAs must register with OCFR
- Established process for receiving and investigating complaints about CRAs
- Imposed surety bond requirement on CRAs
- Increased maximum civil monetary penalty to $1,000 for first violation of MCRAA and $2,500 for each subsequent violation of MCRAA
- Authorized imposition of civil penalty instead of or in addition to any other action that may be taken
Chapter 480 of 2018 and Chapters 677 and 767 of 2018 – Security Freezes

• Required CRAs to develop secure connections to process electronic requests for placing, lifting, or removing security freeze

• Expanded definition of “protected consumer” to include:
  – Elderly (age 85 or older)
  – Specified members of the military
  – Incarcerated persons

• Prohibited CRAs from charging a fee for placement, removal, or temporary lift of a security freeze
Chapter 790 of 2018

- Established new requirements within interest and usury sections of the Commercial Law Article for "covered loan" that prohibit unlicensed person from making such a loan
- Increased from $6,000 to $25,000 the threshold below which loan is subject to small lending requirements within the Maryland Consumer Loan Law (MCLL)
- Prohibited person from lending $25,000 or less if person not licensed under (or exempt from) requirements under MCLL
- Increased threshold for retail installment sales law to apply from cash price of $25,000 to cash price of $100,000
- Established that specified violations result in loan becoming void as well as unenforceable
Conclusion

• Productive legislative session
• In final report of commission, must include recommendations regarding:
  – Cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and other blockchain technologies
  – CFPB arbitration rule and the Model Consumer and Employee Justice Enforcement Act
  – Possible exemption of retailers of manufactured homes from definition of “mortgage originator” in federal law
  – U.S. Department of Labor rule and actions of SEC in addressing conflicts of interest in broker-dealers offering investment advice
Conclusion (cont.)

• Other areas of study:
  - Regulation of student loan servicers
  - Significant financial burden of consumer data breaches on credit unions and other financial institutions

• Commissioner of Financial Regulation study:
  - Regulation of “fintech” firms or technology driven nonbank companies that compete with traditional methods in the delivery of financial services