Maryland Consumer Rights Coalition

Testimony to the Maryland Consumer Protection Commission
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Gary Gensler, Chair
Maryland Consumer Protection Commission
Senate Finance Committee
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Annapolis, MD
Cc: Members of the Committee

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Chair and Members of the Committee:

My name is Marceline White and I'm the Executive Director of the Maryland Consumer Rights Coalition (MCRC). MCRC advances economic justice and financial inclusion through research, advocacy, consumer education, organizing and direct service. Our 8,500 supporters across the state work with us to promote fairness and justice in the marketplace for Maryland consumers. Thank you for allowing me to testify today on the importance of the Consumer Financial Protection Bureau; its' impact in Maryland; and challenges facing both the Bureau and cherished and hard-won consumer protections at the federal level.

In June 2010, I was fortunate enough to watch history in the making. I had the great good fortune to introduce then-Professor Elizabeth Warren and Congressman Elijah Cummings at the Enoch Pratt Library in Baltimore City as they discussed why a Consumer Protection Agency was so necessary following in the wake of the financial crisis.

An Overview of the CFPB

The CFPB was formed from the crucible of the 2008-2009 financial crisis which was caused by financial institutions steering consumers into predatory, unsustainable loans; perverse incentives that enabled companies to profit when mortgage loans failed; slack rules; and little government oversight or enforcement. As a result of the Great Recession, the U.S. lost 8.7

million jobs, and 5 million people lost their homes to foreclosure .

The CFPB is part of the Dodd-Frank Act which was passed by Congress to better regulate financial products and services in the wake of the financial crisis. As the bureau that oversees this task, the CFPB has improved the financial lives of millions of Americans in seven short years.

The CFPB has provided $11.1 billion in relief to more than 27 million consumers, assisted more than 1 million consumers who reached out to the CFPB with complaints, conducted research on financial products, issued new rules on mortgage products and mortgage servicing, and provided consumer education materials to inform Americans how to build wealth by making wise financial choices and avoiding predatory products and services.

Their staff also investigates and takes actions against those companies that violate laws or regulations designed to protect consumers. Since Jan. 1, 2017, the CFPB has initiated more than a dozen actions against a variety of firms, including student loan servicing giant Navient, credit reporting service Equifax, medical debt collectors, mortgage lenders, banks and pawn shops.

The CFPB & Maryland

Baltimore City, and Maryland as a whole were still reeling from the fall-out from the financial crisis when a rapt audience heard about the idea of a consumer protection agency in 2010. Maryland had the tenth highest foreclosure rate in the country in 2010 and Prince Georges County, which is 65% African-American, foreclosures were 34% of the home sales in the county .

Since the CFPB was established, Marylanders have turned to the Bureau to resolve complaints. Since 2011, the CFPB has handled 34,05 complaints from Maryland consumers . Of those complaints, 2,790 have come from older adults, and another 2,488have come from service members . Mortgage complaints comprise 29 % (10,010) of Maryland complaints-which exceeds the national average by 6 percent . Fifty percent of the mortgage complaints (4991) related to issues when homeowners have problems paying their mortgages . Twenty-four percent of complaints related to debt collection (8,316)-particularly when a debt collector continues to pursue an individual for a debt not owed (3,406) . Credit reporting disputes was the third highest complaint for Marylanders (5,132 complaints) with incorrect information on an individual's credit report as the greatest (74%) issue . Although student loan complaints were not in the top five issues in Maryland, these complaints did show the greatest increase-growing by 162% between 2016 and 2017 .

Financial CHOICE ACT and new director nomination

The success of the CFPB may prove to be its undoing under the current Administration. The Administration has targeted the Bureau as well as a many regulations put into place to regulate Wall Street's financial services and products as part of Dodd-Frank as priorities to revise or rescind.

The Financial CHOICE Act, which was passed by the House along party lines is emblematic of the efforts to roll back essential consumer protections and reduce the effectiveness of the CFPB. The CHOICE ACT strips the CFPB of its authority to supervise and bring enforcement actions against large banks, enforce actions against payday and car title lenders, and maintain a public complaint database. The CHOICE Act would also revise the structure and funding of the CFPB-shifting the Bureau from one that is independently funded with a director to a commission which is subject to Congressional appropriations. It would also repeal CFPB's auto lending guidance and its ability to ban products that it deems abusive .

Although the CHOICE Act is likely to fail in the Senate, many pieces of the CHOICE Act could still pass if Senate Republicans introduce the pieces as part of the budget reconciliation process where they could pass it along party lines.

Appointment of New CFPB Director

Director Cordray's term ends in July 2018 and it is very likely that he will leave his position early to run for public office. In either case, the Trump Administration will nominate a new Director to helm the CFPB. Given the Administration's past appointments, it is critical to engage the Maryland Congressional Delegation around the nomination selection.

Recommendations:

1. Urge Maryland Senate delegation to play leadership role in defeating the Financial CHOICE Act and any attempts to introduce elements of the act through the budget

reconciliation process.
2. Provide recommendations to the Maryland delegation of the key requirements for the nominee to the CFPB.

Critical Consumer Concerns Endangered at the Federal Level

CFPB Payday Lending Rule

On October 5, 2017, the CFPB issued its final rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans, 12 C.F.R. pt. 1041 . For certain short-term and balloon loans, the rule requires lenders to determine that borrowers are able repay the loans and limits loan refinancing. The rule also limits a lender's ability to repeatedly cash a check or debit a consumer's account after two unsuccessful attempts. This debit limit applies not only to all short term and balloon loans, but to longer-term installment loans and lines of credit with an APR under the Truth in Lending Act that exceeds 36%.

The rule's ability-to-pay provision applies to any loan that must be repaid within forty-five days of an advance, such as payday loans, auto title loans, and "deposit advance" payday loans offered by banks. It also applies to balloon loans—any loan where one payment is more than twice as large as any other payment—without regard to the length of the repayment period. The rule thus sweeps in long-term installment loans if they have large balloon payments. See 12 C.F.R. § 1041.3(b) (at p.1509).

The ability-to-repay provisions do not apply to high-cost installment loans without a large balloon payment, as the proposed rule would have. Rather, the Bureau has stated that it will address harms and risks associated with those loans through a future rulemaking, and in the meantime, scrutinize them using its supervision and enforcement authority.
The rule's provision limiting repeat attempts to cash the borrower's check or debit the borrower's bank account applies to these same short-term loans and balloon loans, and that provision also applies to any loan with an APR under the Truth in Lending Act over 36%. See 12 C.F.R. § 1041.3(b)(iii) (at p.1510).

There are significant exclusions from the rule's scope. It does not apply to loans secured by a dwelling, purchase money loans, credit cards extensions, private education loans, non-recourse pawn loans, or overdraft lines of credit. 12 C.F.R. § 1041.3(d) (at p.1511). Lenders who make no more than 2500 covered loans per year and derive no more than 10% of their revenues from such loans are also exempt. Certain loans with terms like the payday alternative loans currently made by many credit unions are also excluded. 12 C.F.R. § 1041.3(e) (at p.1512).

Overview of Payday Loans in Maryland

Maryland has a long history of keeping loans affordable by capping small-loan interest rates at 28-33 percent. As a result, payday lenders do not operate on the ground in Maryland and many Maryland families are protected from falling into long-term debt-traps. Yet, according to a study from Pew Charitable Trusts, at least 3 percent of Marylanders take out a payday loan online– despite the fact that these businesses are unlicensed in the state These online lenders charge borrowers interest rates of 400 percent on average. In four years, Maryland received 404 complaints about payday lending-a practice that is illegal in the state. In 2014-2015, 154 Maryland consumers complained to the Commissioner of Financial Regulation's office about the high-cost, unsustainable loans they had taken out . In 2011-2013, the office received 250 complaints about payday lenders and approximately 200 more on the businesses collecting on these illegal loans .

Fortunately, Maryland's Commissioner of Financial Regulation has aggressively pursued payday lenders who illegally issued loans in our state. Actions of Maryland state regulators, coupled with strong usury rate caps, means that far fewer consumers are harmed by these high-cost loans and working families have saved more wealth than in states with payday lenders.

Despite our state usury laws, payday and title-lenders offered high-cost, short-term loans to Maryland residents. Loans made to Maryland consumers have exceeded 400 percent interest rates and some cases were as high as 1216 percent. Oftentimes, consumers were told the APR was lower than it actually was. In vehicle-title loans cases, several consumers had their vehicles repossessed but did not received the required discretionary notice nor the notice of repossession. Even after paying to redeem the vehicle, many consumers lost their personal belongings which were never returned

In the past seven years, Maryland regulators, legislators, and consumer advocates have thwarted four attempts by payday providers to lend in our state. In 2010, payday lenders attempted to circumvent Maryland's usury rate caps by providing online loans that met the usury rate caps but also charged a broker's fee of $20 per $100 borrowed. Factoring in the fees, Marylanders were paying an average of 640 percent per loan . In 2013, Maryland's Commissioner of Financial Regulation pursued banks that are helping process payday loans in Maryland despite the rate cap. In 2014, Maryland's Commissioner of Financial Regulation reached a $2 million settlement from Western Sky and Cash Call for usurious payday loans with 1825 percent interest rates to more than 1,200 Maryland consumers . Western Sky, which is based on the Cheyenne Sioux Reservation, claimed tribal sovereignty and argued that state usury rates would not apply to them. In 2014, Commissioner Kaufman noted that "They (Western Sky) sought to structure around long-standing statutory prohibitions and to deny borrowers' protections to which they are legally entitled" .

Most recently, in 2017 consumer advocates closed another loophole that online payday lenders used to provide predatory, high-cost loans to cash-strapped Maryland consumers.
Payday lenders were offering these payday-type loans as open-end lines of credit. While the loans carry 24% APR, high fees put the annual rates on these predatory loans above 300%, more than 10 times the highest rate permitted for Maryland's other consumer loans. In addition to packing excessive fees into the loan cost, the lender can seize money directly from borrowers' bank accounts.

Three conservatively-calculated example loans based on one lender's advertised terms:

- $300 loan with bi-weekly payments, with fees, has an effective APR is 499%.
- $400 loan with monthly payments, with fees, has an effective APR of 306%. Borrower pays $1,305 in fees and interest, more than three times as much as originally borrowed.
- Borrower takes a $500 loan with monthly payments. Making the minimum payment every month, after two years, the borrower has paid $2,891.46 in fees and interest, and still owes $300.33. Of that $2891.46, only $166 is due to the disclosed 24% APR interest

Rather than providing a lifeline for consumers, these products are a debt trap. MCRC examined a portion of the complaints that the Commissioner of Financial Regulation and the Attorney

General received. Marylanders across the state contacted regulators to express how this high-cost line of credit has damaged their economic lives. A few of these consumers' experiences and comments are summarized below:

- "I took out a loan and was advanced $14,975 –to date, I've paid $38, 893 and still owes $1,897." (Woman, Maryland resident)
- "CashNet took money out of my account each week, when it was supposed to be every other week. I've had to file bankruptcy" (Woman, Baltimore County).
- "They have caused my account to be overdrawn and left me "unable to pay [my] household obligations." My balance at the time of complaint for the $1,000 loan had reached $2,582.66" (Woman, Baltimore City).
- "The debt is crippling. I have paid my advance off three times but am making no progress on paying off the debt – I pay $225 per month but principal goes down by $18" (Man, Anne Arundel).

Challenges to CFPB Payday Rule

The payday lending rule is set to take effect in July 2019, unless it is rolled back by Congress. The Congressional Review Act gives Congress 60 days from the time a new regulation is published in the Federal Register to rescind it.

A recent rule reversal by Office of the Comptroller of the Currency also could lead the way for additional small-dollar lending by the nation's 1,356 nationally chartered banks and federal savings associations it regulates. By rolling back a 2013 rule, or "guidance," the OCC paved the way for many more lenders to make small-dollar, "advance deposit" loans to customers.
An OCC-regulated lender could, for instance, allow a regular customer who direct deposits a paycheck to get an advance on the amount of the paycheck, at a reasonable interest rate. (The decision doesn't cover banks overseen by the Federal Reserve or by state regulators.)

Recommendations

1. Research-commission a review of COMAR to assess whether any loopholes remain that payday lenders might try to exploit by designing a high-cost payday product to exploit the gap in the law.
2. Legislation-if gaps are identified, develop legislation that will clarify and codify Maryland's

33% rate cap and eliminate the loopholes in our regulations.
3. Legislation-if banks begin to offer advance deposit products ensure that the products meet MD rate caps (inclusive of fees and other costs).
4. Federal Advocacy-Consider having the MCPC meet with Senators Cardin and Van Hollen and ask them to lead opposition to any CRA of the CFPB payday rule

Fintech

OCC Charter

Fintech and State Protections
We have concerns that the OCC's plans to provide charters to "fintech" firms could, at least with respect to lenders, undermine strong state interest rate caps and other critical consumer protections. Procedurally, we believe that this system would lead to a scenario where firms choose an OCC Charter only if they feel they can evade a stronger regulatory framework elsewhere. Hypothetically, fintech firms would effectively shop for their preferred regulator. Firms might perceive a national charter as a means to gain a regulatory advantage against competitors who remain inside a more restrictive state-level regulatory regime. Inevitably, this would lead to a "race-to-the-bottom" scenario.

Definitional Problems: As the OCC White paper notes "fintech companies vary widely in their business models and product offerings." This variety makes it extremely difficult to develop appropriately rigorous regulations and policies that encompass the dynamism within this financial sector. Consequently, because of the widerange of products and services within the sector, some laws would apply to certain actors and not others. As the white paper noted, firms that lend to consumers would be subject to the Equal Credit Opportunity Act while others wouldn't. Similarly, only those firms with insured depositories would be subject to the Federal Deposit Insurance Act. The very nature of the industry would require the OCC to develop rigorous definitions, oversight, and standards both to foster financial inclusion and promote consumer protection as well as to ensure a level-playing field with traditional financial institutions that abide by stronger regulations so that fintech firms do not engage in charter-shopping.

An alternate charter would allow fintech companies exemptions from state regulatory and consumer protection requirements. Maryland has a usury rate cap of 33% for small dollar loans. It is possible that a fintech company could skirt longstanding rate caps because of the way the current law is written. The charter may thwart state regulators efforts to examine or investigate fintech firms and would make it difficult to expand consumer protections. It is important that any federal regulations are clearly defined as the floor not the ceiling and that federal authority does not preempt state authority.

Other challenges with a fintech charter include:

Safety and Soundness-
We cannot assume that fintech firms have the same degree of safety and soundness as we have come to expect from FDIC-insured depositories. Non-depository lenders present challenges to meeting standards for safety and soundness. Whereas banks can accept deposits, most non-banks are financed through a combination of equity and debt. Whereas deposits are insured, equity and debt are not. The capital costs associated with private equity are very high. Moreover, both equity and debt can be recalled.

Faster Payments-At What Cost
Fintech payment solutions can enhance access for the unbanked. The Faster Payments Task Force has received proposals from several non-banks which would allow individuals to make payments without having a bank account. These kinds of services can provide consumers with the benefits they need which might otherwise be unattainable in the context of exclusionary policies at traditional banks. However, providing access is not enough. Unbanked consumers need access that is affordable and sustainable to enable them to both build assets and develop pathways to return to traditional banking. We believe that it is also important to verify that fintech providers can create solutions that reduce consumer cost and enhance capacity. There are current non-fintech solutions that enable access but do so at high costs. Check cashing services may give consumers the ability to access their wages – and in a timely fashion – but they do so at considerable consumer expense.

The opportunity for innovation in faster payments can and should reduce the number of unbanked households. Faster payments can reduce settlement risk. If banks can verify good funds in real time, then overdrafts should not occur - except for cases where consumers use overdraft as a form of credit. Consumer surveys repeatedly report that the most common reason for leaving the banking system is because of overdraft. The fintech revolution should herald the demise of this problem. Regulatory activity should strengthen the momentum behind these changes. Although faster payments will reduce settlement risks, without adequate protections, risks remain for consumers who were persuaded by a scam artist to make a payment. Countless examples of internet fraud, particularly preying upon older adults, exist. It is critical that appropriate consumer protections are in place to allow chargebacks when a credit push request is made by a payee through messaging channels that are outside of the formal payment system (i.e. over the phone, social media, or text). Lending: Fintech lenders do not use traditional underwriting techniques. In some instances, their models use inputs that most banks would be prevented from utilizing because of regulatory restrictions. Elevate's Elastic Line of Credit, for example, is underwritten with algorithms that use tens of thousands of inputs. Those inputs are dynamic (they interact with each other), and they change regularly. In its 2015 S-1 filing to investors, Elevate reported that it has a team of 35 data scientists who cull information from scores of third-party vendors and that they just finished the 11th update of their model.

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Future of Fintech-OCC and ILCs

While former Comptroller Curry seemed keen to move ahead with a fintech charter, Acting Comptroller Noreika has indicated that the OCC may not pursue a charter at this time.
At the same time, fintechs are pursuing other strategies in order to To date Online lender SoFi, which is short for SocialFinance, and payment processor Square have applied for industrial loan company (ILC) charters in Utah backed by the Federal Deposit Insurance Corp.

ILCs or industrial banks are financial institutions that may be owned by nonbank holding companies. State-charted institutions that obtain deposit insurance from the FDIC are exempt from extensive regulations of the Bank Holding Company Act (BHCA), including supervision by the Federal Reserve.

Student loans, student loan servicing and for-profit schools DoE

Nationally, student loan debt has been skyrocketing over the past two decades. Today, student loan borrowers are carrying $1.3 trillion dollars in debt. This debt load and the repayments required to service the debt thwart

Student Loan Servicing in Maryland

Well over half of Maryland's students take out student loans in order to complete an education. On average, our students borrow approximately $27,000. And as noted earlier, complaints about student loan servicing are growing exponentially. According to the CFPB complaint database, Maryland student loan borrowers logged 858 complaints with complaints about servicing comprising 54% of all complaints. Moreover, of the servicing complaints, 53% were with Navient.

For Profit Schools

Nationally, by 2011, 2.3 million Americans were enrolled in for-profit schools – a dramatic increase from 200,000 students in the late 1980s. For-profit schools receive 86 percent of their revenue from federal and state funds. Many students attending for-profit schools rely on Title IV federal grant aid and federal loan assistance to pay their tuition and fees. Low-income students qualify for the maximum amount of Title IV assistance, which provides a strong incentive for for-profit schools to focus recruitment and outreach in hard-hit communities, particularly in communities of color.

Students at for-profit schools carry a high debt burden. Sixty-six percent of students at all for-profit schools nationally take out federal loans while only 29 percent of students enrolled in public institutions do so. The greatest difference is between 2-year for-profit institutions, where 73 percent of students take out loans, and public 2-year or less schools, where only 15 percent of students do so.

At the federal level, the Obama Administration had implemented several regulations designed to increase regulations and oversight of for-profit institutions. The Gainful employment rule was designed to cut off access to federal financial aid at career training programs where the debt level held by graduates is too high in relation to income. In other words, schools had to demonstrate that students were able to become gainfully employed following graduation In June 2017, there were about 803 programs that were doing really badly, another1,200 are doing pretty badly. These programs produced around 360,000 graduates.

The Borrower Defense rule which protects students who attend schools with deceptive practices was set to take effect July 1, 2017.

The Department of Education's Secretary DeVos announced her intention to reset both the Gainful Employment and Borrower Defense rules. Furthermore DeVos set in motion regulations to revamp the appeal process for schools when their programs fail to meet the Gainful Employment standards.

For Profit Schools in Maryland

In 2012, 29,677 students were enrolled in 314 programs offered by for-profit and career schools in Maryland. In Maryland, for-profit schools cost at least twice as much as public colleges and universities.

Some degrees at for-profit schools cost between three and five times as much as those at public colleges and universities. For example, a for-profit college in Maryland charges $52,737 for a degree in dental hygiene. An associate's degree in dental hygiene at Maryland public colleges costs roughly one-sixth that price, at an average cost of $8,704.48, with the most expensive degree at $10,068.86. The average income of a dental hygienist in Maryland is $38,740, which means that a student studying for that degree at a for-profit school pays more than one year's salary for his/her degree, a degree which would cost far less at a public college.

The average amount of debt for students at for-profit schools is three times higher than for those at public institutions. Our research found that the average median debt for students at Maryland for-profit schools is $18,083 compared to $5,610 for students at comparable public institutions.

Only 33 percent of students pursuing a bachelor's degree at for-profit schools complete their degree, compared to 51 percent of students at a public institution. Sixty-seven percent of cosmetologists/barbers who completed their degree found employment, but for health programs, which had the greatest enrollment, only 51 percent of program graduates found employment. Overall, in 2012, private career schools had 29,667 students enrolled and of those who completed coursework 11, 877 (58 percent) found jobs.

In Maryland, of the total number of African Americans enrolled in post-secondary education, 62 percent were enrolled at for-profit and private career schools, even though African-Americans only comprise 30 percent of the population in Maryland. Consequently, for-profit schools in Maryland have a disparate effect on African-Americans. The high costs, large loans, and large debt burdens associated with for-profit schools are particularly troubling since one in five African-Americans in Maryland live below the federal poverty line.

Recommendations

Legislation

1.The Maryland General Assembly passed legislation in 2016 to create a For-Profit Guaranty Fund and increase regulation of for-profit schools. In Spring 2017, MHEC issued regulations to implement the law. MHEC is currently revising their proposed regulations. The Commission may want to support any new legislation that might emerge related to the 2016 legislation.

2. Currently the Administration is considering whether or not the For Profit Guaranty Fund should apply to Maryland students who attended ITT Tech which closed abruptly in September 2016. Approximately 700 Maryland students attended the school-nearly 370 took a teach-out but it's unclear what the other 325 former ITT students are doing now-although they are without a doubt paying off their student loans for a degree which they never received.

3. One simple way to promote cost transparency would be to require all for-profit and career schools to use the Consumer Financial Protection Bureau's Financial Aid Shopping sheet. While a number of for-profit and public schools already use this form (see Appendix E), all schools should be required to do so, making costs comparisons simpler for students and their families.

4. Require all for-profit and private career schools in Maryland to use EFIP (Electronic Financial Impact Platform) to better understand the costs and potential repayment schedule of enrolling at a for-profit versus a public school.

5. Student Borrowers Bill of Rights-based on CT model.

Internet privacy data
In April 2017, the President rescinded a Federal Communications Commission (FCC) rule limiting Internet Service Providers (ISPs) ability to geolocation, browsing history, and other data to third-party parties. Unlike using Facebook or Google, consumers often have little choice about their ISP provider so these providers need to provider greater consumer notice and opt-ins than a browser or social media site.

Legislation to require that a Maryland consumer provide express and affirmative permission for an Internet providers to sell or share a consumer's personally identifying information was introduced in Maryland last session and died on Sine Die.

Recommendation
Legislation-the Open Technology Institute released a new model law to protect consumers' right to internet privacy. Maryland should consider adapting the model law to extend these privacy protections to Maryland internet users.