

Maryland Financial Consumer Protection Commission

Chapter 18 and Chapter 781 of 2017 established the Maryland Financial Consumer Protection Commission to 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 (Dodd-Frank); and to provide recommendations for federal and State actions that will protect the residents of the State in financial transactions and when receiving financial services.

Recommendations

In January 2018, the commission issued its interim report, which included numerous recommendations regarding strengthening financial consumer protection laws for Marylanders.

Recommendations for Maryland's Congressional Delegation

- The commission recommends continued advocacy and opposition, when appropriate, by Maryland's Congressional Delegation to legislative and regulatory efforts to lessen consumer and financial reforms.
- 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. The commission also recommends that the delegation continue to support the independence of CFPB.
- In addition, the commission recommends that Maryland's representatives 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).
- Finally, the commission asks that the delegation regularly weigh in on behalf of Marylanders by all available means.

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

Enhanced Enforcement and Investigative Resources

- 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.

- 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.

Continued Use of Dodd-Frank 1042 Authorities

- 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 the Maryland Consumer Protection Act 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 loop-hole and strengthen the enforcement authority of OAG.

Expand Violations of Maryland Consumer Protection Act 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.

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

- 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 \$1,000 to \$10,000 and to \$25,000 for subsequent violations.

Recommendations for State Legislative Actions to Backfill Where Federal Protections Stepped Back

Fiduciary Duty

- The commission recommends, consistent with federal pre-emption issues, extending fiduciary duty in Maryland statute to all financial professionals who provide investment advice.

Forced Arbitration Clauses

- 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.

Manufacturer Housing Retailers

- 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.

Payday and Consumer Lending

- 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.
- The commission recommends (1) 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 (2) specifying in the consumer law that contracts would be expressly void for specified violations. Loans made under the Maryland Consumer Loan Law (MCLL) provide more protections for consumers.

State Legislative Actions to Address Recent Developments

Student Loans

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

Fintech

- The commission recommends that the General Assembly and OCFR ensure that Fintech firms are covered by Maryland consumer laws and regulatory protections.

Virtual or Cryptocurrencies

- The commission recommends that the General Assembly should, upon further study, consider updating 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.

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.

Further Considerations Suggested by a Witness and Commission Members

Current Foreclosure Process

- Marceline White, Executive Director of the Maryland Consumer Rights Coalition, recommends that Maryland should repeal the current foreclosure process and change to a full-blown judicial foreclosure process.

Current Prudential Standards and Fees Applicable for Nonbank Financial Institutions

- 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.

When Can Consumer Protection Laws be Drafted so That They Do Not Preempt Local Jurisdiction

- 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.

Issues Included in the Final Legislation

The General Assembly passed several bills related to the commission recommendations.

Financial Consumer Protection

Financial Consumer Protection Act of 2018 (*Chapter 732 – Senate Bill 1068 and Chapter 731 – House Bill 1634 of 2018*) generally implement the recommendations in the commission’s interim report.

Consumer Lending

- *Chapter 732 and Chapter 790* establish new requirements within the interest and usury sections of the Commercial Law Article for a “covered loan” that prohibit an unlicensed person from making such a loan. In addition, the bills increase from \$6,000 to \$25,000 the threshold below which a loan is subject to small lending requirements within the MCLL and prohibit a person from lending \$25,000 or less if the person is not licensed under (or exempt from) requirements under MCLL.
- The bills also (1) increases the threshold whereby retail installment sales requirements apply to all tangible personal property from a cash price of \$25,000 to a cash price of \$100,000 and (2) establishes that specified violations result in a loan becoming void as well as unenforceable.

Maryland Consumer Protection Act

- The bills expand the definition of “unfair and deceptive trade practices” under MCPA to include “abusive” practices. In addition, the bills expand MCPA to include violations of the Military Lending Act and the federal Service Members Civil Relief Act.

Debt Collection

- The bills prohibit a person from engaging in unlicensed debt collection activity in violation of the Maryland Collection Agency Licensing Act, or from engaging in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act.

Enforcement and Penalties

- The bills increase the maximum civil penalties that may be imposed for several types of violations, as shown in **Exhibit 1**. In general, *Chapter 732 and Chapter 731* harmonize the penalties for initial and subsequent violations and set the maximum penalty at \$10,000 for an initial violation and \$25,000 for subsequent violations.

Exhibit 1
Maximum Civil Penalties for Violations Modified by
Chapter 732 (Senate Bill 1068) and Chapter 731 (House Bill 1634)

	<u>Current Penalty</u>		<u>Proposed Penalty</u>	
	<u>Initial Violation</u>	<u>Subsequent Violation</u>	<u>Initial Violation</u>	<u>Subsequent Violation</u>
MCPA	\$1,000	\$5,000	\$10,000	\$25,000
OCFR General Enforcement	1,000	5,000	10,000	25,000
Mortgage Lenders	5,000	5,000*	10,000	25,000*
Mortgage Loan Originators	5,000	5,000*	10,000	25,000*
Check Cashers	1,000	5,000	10,000	25,000
Money Transmitters	1,000	5,000*	10,000	25,000*
Debt Management Services	1,000	1,000*	10,000	25,000*

*The maximum penalty is for each violation (rather than each subsequent violation) from which the violator failed to cease and desist or take affirmative action to correct.

MCPA: Maryland Consumer Protection Act
OCFR: Office of the Commissioner of Financial Regulation

Source: Department of Legislative Services

- Similarly, the bills increase the maximum penalty the State Collection Agency Licensing Board may impose against a licensed collection agency for a violation of a lawful order by the board. Specifically, the maximum penalty imposed for each violation cited increases from \$500 to \$10,000, and the total amount that may be imposed increases from a maximum of \$5,000 to \$25,000.
- The bills also require the Governor to include a general fund appropriation in the State budget of at least \$700,000 for OAG and \$300,000 for OCFR, to be used for specified enforcement activities. In addition, the bills require OAG and OCFR to use their authority under a specified section of Dodd-Frank, whenever considered appropriate, to bring civil actions or other appropriate proceedings authorized under Dodd-Frank.

Student Loan Ombudsman

- The bills require OCFR to designate an individual to serve as the Student Loan Ombudsman. Each student loan servicer in the State must designate an individual to represent the student loan servicer in communications with the ombudsman. The ombudsman (in consultation with OCFR) must receive and process complaints about student education loan servicing, including receiving and reviewing complaints from

student loan borrowers; attempt to resolve complaints; and compile and analyze complaint data.

- In addition, the ombudsman (in consultation with OCFR) must disseminate information about student education loans and servicing by helping borrowers understand their rights and responsibilities, providing information to the public and others, and disseminating information about the ombudsman. The ombudsman may refer any matter that is abusive, unfair, deceptive, or fraudulent to OAG for civil enforcement or criminal prosecution.
- The bills also require the ombudsman to take other specified actions and, on or before January 1 each year, report its findings and recommendations to the General Assembly. Lastly, by October 1, 2019, the ombudsman must establish a student loan education course that includes educational presentations and material about student loans.

Consumer Reporting Agencies

Regulation

- **Chapter 480 (House Bill 848) of 2018** expands regulation of consumer reporting agencies (CRAs) under the Maryland Credit Reporting Agencies Act (MCRAA). The bill codifies an existing regulatory requirement that CRAs must register with OCFR; establishes a process for receiving and investigating complaints about CRAs; imposes a surety bond requirement on CRAs; and allows OCFR to recoup investigation costs.
- The bill also increases the maximum civil monetary penalty to \$1,000 for the first violation of MCRAA and \$2,500 for each subsequent violation of MCRAA and authorizes the imposition of a civil penalty instead of or in addition to any other action that may be taken.

Security Freezes

- **Chapter 480** requires CRAs to develop secure connections to process electronic requests for placing, lifting, or removing a security freeze and expands the definition of a “protected consumer” to include the elderly (age 85 or older), specified members of the military, and incarcerated persons.
- Additionally, **Chapter 677 (Senate Bill 202)/Chapter 767 (House Bill 710) of 2018** and **Chapter 732 (Senate Bill 1068)** prohibit a CRA from charging a consumer or a protected consumer’s representative a fee for a placement, removal, or temporary lift of a security freeze.

Required Studies

Maryland Financial Consumer Protection Commission Studies (from *Chapter 732/Chapter 731*)

The commission is required to include related recommendations in its 2018 report to the Governor and the General Assembly.

Cryptocurrencies, Initial Coin Offerings, Cryptocurrency Exchanges, and Other Blockchain Technologies

- ***Introduced Bills:*** The introduced bills included study language and was slightly modified in the final legislation.
- ***Study Language:*** The commission is required to study cryptocurrencies, initial coin offerings, cryptocurrency exchanges, and other blockchain technologies. The commission is required to determine recommendations for State action to regulate these technologies.

Consumer Financial Protection Bureau Arbitration Rule and the Model Consumer and Employee Justice Enforcement Act

- ***Introduced Bills:*** The introduced bills would have required the Standing Committee on Rules of Practice and Procedure of the Court of Appeals to adopt rules consistent with the Act. Also, the Commissioner of Financial Regulation would have had to adopt regulations consistent with Titles III and IV of the Act to prohibit a person over whom the commissioner has jurisdiction from engaging in any practice prohibited under those titles.
- “Forced arbitration” clauses are the fine-print terms included in contracts that require the consumer or employee to be unable to assert claims against a merchant or employer in court as a class action suit. The Act includes eight separate titles that protect against different harms related to forced arbitration of consumer and employment disputes.
- ***Comments from the Maryland Judicial Conference (Government Relations and Public Affairs):*** The Maryland Judiciary opposes the provision. The Court of Appeals, rather than the Rules Committee, is the body empowered to adopt rules of judicial administration, practice, and procedure which have the force of law. In addition, the Judiciary questions whether the legislature has the authority to direct the Court of Appeals to adopt rules (Article 8, Maryland Declaration of Rights, and Article IV, Section 18 of the Constitution).
- ***Other Comments:*** The requirement for the commissioner to adopt regulations should be further clarified to only apply to consumer financial contracts (and not contracts between two banks that may have arbitration language over a disputed loan participation; and not contracts between bank employers and employees or independent contractors).

- ***Study Language:*** The commission is required to study the Consumer Financial Protection Bureau arbitration rule and the Model Consumer and Employee Justice Enforcement Act, including reviewing similar laws adopted in other states. The commission is required to determine recommendations for changes to State law to provide the protection intended by the Act.

Retailers of Manufactured Homes

- ***Introduced Bills:*** The introduced bills would have defined “mortgage loan originator” under the Maryland Mortgage Originator’s Law to include a retailer of a manufactured home.
- ***Consumer Financial Protection Bureau:*** Loan originator is defined as a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs specified activities (i.e., takes application; offers, arranges, or assists a consumer in obtaining or applying to obtain a loan; or negotiates, or otherwise obtains or makes, an extension of consumer credit for another person). The term is used to cover both individuals and business entities. Employees of a manufactured home retailer who do not do the specified activities are not included in the definition.
- ***Comments by the Commissioner of Financial Regulation:*** As drafted, it is unclear how to implement the provision. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), designed to enhance consumer protection and reduce fraud through the setting of minimum standards for the regulation of state-licensed mortgage loan originators, triggers licensing through the origination of a mortgage loan either by the acceptance of a mortgage loan application or the negotiation of the terms of a mortgage loan. A license under the Maryland Mortgage Originator’s Law (MMOL) is held by individuals (not businesses). An individual can only originate a mortgage loan if that individual is sponsored by a Maryland licensed mortgage lender. Since it is unclear whether a retail seller is an individual or a business entity, it is unclear how to reconcile MMOL with the licensing and supervision of a business entity or if an individual needs to be licensed.
- ***Study Language:*** The commission is required to study the possible exemption of retailers of manufactured homes from the definition of “mortgage originator” in federal law. The commission is required to determine recommendations for clarification of State law to ensure that Maryland buyers of manufactured homes are protected in their home-buying transaction.

Fiduciary Duty: U.S. Department of Labor Conflicts of Interest Rule and Actions of the U.S. Securities and Exchange Commission

- ***Introduced Bills:*** The introduced bills would have established that specified persons are a fiduciary and have a duty to act primarily for the benefit of clients. Specified persons would

have included: (1) a person who engages in the business of effecting transactions in securities for the account of others or for the person's own account; (2) a broker dealer or agent; (3) an agent; and (4) an investment adviser. A person would have had to disclose to a client, at the time advice is given, any gain, profit, or commission the person may receive if the advice is followed and a legal or disciplinary event that is material to an evaluation of the person's integrity or ability to meet contractual commitments to clients. The person would have been required to make diligent inquiries of each client to determine the financial circumstances and obligations of the client initially and subsequent to the first contact and the client's present and anticipated obligations to the client's family and for the client's family and goals for the client's family. The commissioner would have been required to adopt regulations.

- ***Maryland Law:*** 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.
- ***Federal Action:*** The U.S. Department of Labor (DOL) finalized the fiduciary rule addressing conflicts of interest in the offering of retirement advice. Under securities laws, SEC has long had the authority to raise the standards that apply to broker-dealers offering investment advice. DOL is currently reviewing the fiduciary rule it adopted in 2016, the SEC is currently reviewing public comments about possible SEC rulemaking in this space, and National Association of Insurance Commissioners (NAIC) is currently reviewing public comments on a draft proposal to impose a best interest standard on state-regulated insurance producers.
- ***Opposed by Investment Companies:*** Many investment companies expressed serious concerns with imposing on federally-registered broker-dealers requirements that violate preemptive provisions in the Securities Exchange Act of 1934. Pursuant to preemptive provisions of federal law, the language that was in the introduced bill could not be lawfully applied to any federally-registered broker deal. This is because, as of the National Securities Markets Improvement Act of 1996, federal law preempts any state from imposing on any federally-registered broker-dealer any recordkeeping requirement that is not imposed under federal law. This preemptive provision recognizes the fact that federally-registered broker-dealers conduct business nationally. When individual states enact unique provisions regulating their activities or conduct, the provisions impede interstate commerce. The only way for a broker-dealer to demonstrate compliance with the disclosures and diligence requirements would be by maintaining records to document their compliance.
- ***Study Language:*** The commission is required to study the DOL rule and actions of the SEC in addressing conflicts of interest in broker-dealers offering investment advice by aligning the standard of care for broker-dealers with that of the fiduciary duty of investment advisors. The commission is required to determine recommendations regarding changes to State law to provide the protection intended by the DOL rule addressing fiduciary duty standards of care.

Maryland Commissioner of Financial Regulation Study

Fintech Firms and Technology Driven Nonbank Companies

- **Study Language:** The Commissioner of Financial Regulation is required to conduct a study to assess whether the commissioner has enough statutory authority to regulate “Fintech” firms or technology driven nonbank companies that compete with traditional methods in the delivery of financial services. The commissioner is required to identify any gaps in the regulation of Fintech firms, including any specific types of companies that are not subject to regulation under State law. The commissioner is required to report to the General Assembly by December 31, 2019, on its findings and recommendations for legislative proposals to regulate Fintech firms.

Issue that was Stricken from the Introduced Legislation But No Study Language

Student Loan Servicers

- **Introduced Bills:** The bills would have established new requirements for student loan servicers operating in Maryland. The bill would have established an application process for licensure and would have authorized the Office of the Commissioner of Regulation to conduct investigations and enforce the regulation of student loan servicers.
- **Comments by Federal Student Loan Servicers:** 93% of all student loans are owned or guaranteed by the federal government and are governed by comprehensive rules under the Higher Education Act. There is oversight by the U.S. Department of Education, the Consumer Financial Protection Bureau, and the U.S. Department of the Treasury. They are subject to federal consumer protection and privacy laws. The effect of state regulation of a federal student loan program would create a complex process, borrower confusion, additional costs, and not address the real issues of student loan debt. The servicer’s relationship with the borrower begins only after the student has taken out the loan and the funds have been spent. Complaints about student loans concern areas not controlled by servicers (i.e. interest rates, repayment options, and inability to discharge in bankruptcy). Small servicers will be harmed with the added cost of a licensing schemes, with audits, examinations, and annual licensing fees.

Request for a Maryland Financial Consumer Protection Commission Study

Consumer Data Breaches

- **Comments from Credit Unions:** There is a significant financial burden placed on credit unions and other financial institutions when an organization, third party transaction

processor, or other group has its financial transaction system or its consumer data breached, including the undetected fraud committed on a consumer, and the substantial work and cost credit unions and financial institutions are forced to outlay for the notification, cancellation, or replacement of the cards. The focus of accountable, comprehensive data breach legislation should be on where the actual breach occurred and should not be limited to credit reporting agencies. The legislation did not address this issue and did not provide a remedy to recover the actual costs credit unions had to absorb because of the fraud.

- ***Study Language:*** The credit unions requests that the commission study consumer data breaches that occur to financial institutions and its consumers as a result of a merchant or processor's data being breached and the costs to the financial institutions. The study should include reviewing actions in other states. The credit unions request the commission determine recommendations as to who should share the responsibility of the costs of these breaches.