MEMORANDUM IN SUPPORT

To: **The Honorable Members of the Maryland General Assembly**

Cc: **Gary Gensler, Chairman, Maryland Financial Consumer Protection Commission**
Commissioners, Maryland Financial Consumer Protection Commission

From: **Anne M. Balcer, Commissioner**

Date: **January 18, 2018**

Re: **Memorandum in Support of the Maryland Consumer Financial Protection Commission's Report**

It has been an honor serving as a Commissioner on the Maryland Consumer Financial Protection Commission and I am grateful to this body and my fellow commissioners for the opportunity. In consideration of the impressive testimony of the witnesses, fellow commissioners and questions raised during the course of deliberations, I support the Commission's first annual report to the Maryland General Assembly.

Overall, I am of the impression that Maryland can take certain decisive steps to combat the degradation of consumer protections at the federal level under the current Administration. Through closing gaps in state law, enforcing existing laws and regulations, authorizing enforcement actions against the offenders while supporting the financial institutions that play by the rules, the Commission's recommendations have the potential to be impactful for our State's consumers and economy alike making Maryland a leader in this area as it was previously in response to the macro economic recession of 2008 and resulting foreclosure crisis.

By way of this Memorandum, I am submitting additional points of clarification and or detail in furtherance of the recommendations made therein.

Access to Credit

The Report notes that "credit is flowing" and that there has been a "stable flow of credit to main street" in the Executive Summary.[1] While this is generally true, I note however, that credit is not flowing equally to all who live on main street and certainly less so to those that live outside of it. For example, women and minority small business owners continue to face obstacles when seeking to access credit. Women own 28.8% of the nation's businesses but only receive 4% of the total dollar value of small business loans.[2] On average, women receive fewer, smaller loans

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[1] Commission Report, Executive Summary, page 5
[2] *See* http://www.baltimoresun.com/business/bs-bz-women-in-entrepreneurship-20140815-story.html; and *see also* https://www.sbc.senate.gov/public/_cache/files/3/f/3f954386-f16b-48d2-86ad-

for higher interest rates.[3] This is further concerning in that 47% of all minority-owned businesses are also female owned. [4] Minority-owned businesses are three times as likely to be denied loans as are comparable non-minority businesses, even after controlling for business and owner characteristics[5] While this was not a topic of discussion during the Commission hearings or directly at the core of the Commission's legislatively prescribed objectives, support for the banks that provide such credit access is critical to a strong Maryland economy.

Bank Consolidation

While the Report correctly notes that bank profits have continued to rise since the passage of Dodd-Frank, there remains the issue of bank consolidation which may be contributing to this factor. According to the FDIC's most recent earnings report, the number of Maryland Headquartered Banks (MHBs) totals 52 as of the end of the third quarter of 2017. This is a decline of 45% from 95 banks as of year-end 2008. This decrease in number of MHBs from 2008 resulted primarily from mergers / acquisitions, however, there were also bank failures, and collapsing of bank charters by some bank holding companies. The median asset size of MHBs continues to increase at $371 million. In 2008, the median asset size was $224 million.

In total, there are 95 FDIC-insured banks holding $143 billion in deposits in Maryland. The largest 20 banks account for 80% of total assets. At year end, Eagle Bank had assets in excess of $7 billion and was the largest Maryland chartered institution in the State. Compare Eagle to J.P. Morgan's $2.1 trillion in asset size; it would take more than 300 Eagle Banks to reach J.P. Morgan. Another "too big to fail" institution, Bank of America, recorded over $18 billion in after tax net income in 2017. In other words, the mega-banks or Wall Street banks that were at the root cause of the financial meltdown are not the same institutions serving Maryland communities. Accordingly, regulatory requirements and legislative initiatives should consider the size and risk profile of community-based banks so that those that contribute most to Maryland's economy are not forced to bear the burdens of the systemically largest and riskiest national players that caused the most harm. Over time, the failure to regulate to risk will only result in greater consolidation and more mega banks that have little ties to the State operating in Maryland.

Consequently, I caution lawmakers against categorizing all "banks" as Wall Street or "too big to fail" institutions operating in the global market when in fact, Maryland chartered institutions are operating safely and soundly within our communities.

698a75e33cc4/F74C2CA266014842F8A3D86C3AB619BA.21st-century-barriers-to-women-s-entrepreneurship-revised-ed.-v.1.pdf

[3] https://www.forbes.com/sites/amyfeldman/2016/09/06/new-study-women-entrepreneurs-ask-for-less-financing-than-men-get-smaller-loans-at-higher-rates/#2ac44afc13ee

[4] https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf

[5] https://www.brookings.edu/wp-content/uploads/2016/07/minority_women_entrepreneurs_building_skills_barr.pdf

Regulatory Relief for Community Banks

It is my experience that community banks do not oppose thoughtful regulation and, rather, support the implementation and enforcement of consumer protections - strong consumer protections operative in a safe and sound banking environment needed to prevent another financial crisis as was experienced in 2008 as a result of the largest and riskiest market participants operating recklessly following decades of deregulation. Further, it is important to note that many of the rules before Congress that are categorized as regulatory relief for the community banks are in fact tailored to benefit the largest institutions without providing any real benefit to the smaller ones that are truly serving the community. And while Congressional legislative efforts summarized in the report, including the CHOICE Act, largely fall under this classification, the undersigned Commissioner is of the opinion that certain regulatory relief to banks that are below $3B in asset size is warranted. "One size fits all" regulation and implementation thereof can result in a competitive disadvantage for the smaller market participants that struggle with the costs of compliance. In other words, community banks and small credit unions should not be treated in the same manner that the nation's largest and riskiest institutions are regulated. Some calibration of regulation to address an institution's risk profile and threat to the markets would be beneficial. Failure to do so can result in inadvertently harming community banks and their ability to serve their customers. For example, Congressional Bank's asset size as of the date of this Report is below $1B. In any given 12 month period, the Bank spends three months or a full quarter with regulatory examiners – both on site during an examination as well as preparing for and following issuance of a report of examination. Having dedicated full time employees spend similar time and resources as much larger institutions is onerous for a small bank when regulators apply broad sweeping reviews rather than targeting areas of heightened risk. It is clear that there are benefits of comprehensive regulatory oversight, however, such benefit must be balanced with the economic benefits to the State of Maryland that stem from strong community-based banking, including greater access to credit for small businesses and reinvestment in neighborhoods throughout the State and it is important to ensure that banks serving their communities have the ability to do so.

MD Office of the Commissioner of Financial Regulation – Nonbank Oversight

The MD Office of the Commissioner of Financial Regulation (OCFR) must be given appropriate funding to have the resources necessary to implement prudential standards for nonbank financial institutions, particularly mortgage loan servicers, on par with depository institutions, to include: capital requirements for non-bank entities that pose market and consumer risk, enhanced public disclosures, short-term debt limits and maximum leverage ratio; concentration limits and resolution plans.[6] In doing so, the current outdated licensing fee schedule should be amended in

[6] *See* Financial Stability Oversight Council 2014 Annual Report, "the Council recommends that, in addition to continued monitoring, state regulators work together to collaborate on prudential and corporate governance standards to strengthen [nonbank mortgage servicing companies]…" available at: https://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf

order to provide the OCFR the authority to establish annual assessments of non-bank licensed entities based on volume and other criteria determined by the Commissioner, in line with the assessment process for banks and credit unions operating in the State (for example, Ocwen Financial had just over $8B in assets for Q3 2017 and yet only pays $1,000 annually to renew its license (MD Code Ann Fin Inst §11-511(b)(2)) – such nominal amount is insufficient to provide resources needed to adequately oversee an institution that poses a significant degree of risk to the mortgage market in Maryland). The OCFR could therefore apply increased assessment revenues to expand and strengthen supervisory oversight of subject licensees. It is impractical to recommend expanded enforcement and supervisory authority without the funding to support the critically important role that OCFR plays in the regulatory space.

Recent Development: Community Reinvestment Act

Lastly, the Trump Administration has indicated that it will propose major changes to the Community Reinvestment Act of 1977 (CRA). CRA was initially put into place to curtail redlining practices at banks at a time in which they would not lend money to businesses and individuals in certain neighborhoods based on predatory practices. While CRA has not kept pace with current lending practices and technology, it is widely accepted to have helped low income communities. Unfortunately, CRA modernization was left out of Dodd-Frank and an opportunity to update the law was missed. Clearly, there is a benefit to ensuring that credit is available in low to moderate income communities and communities of color and I urge the Commission, Members of the General Assembly and Congressional delegation to carefully watch the Administration's attempts to erode the benefits provided by a relevant and up to date CRA.

Conclusion

As stated previously, Maryland is positioned to again lead in the critical areas of consumer protection and remain at the forefront of combatting abusive practices when federal action or inaction provides inadequate support for our fellow citizens. I look forward to assisting in the furtherance of the prescribed objectives of the Commission in the coming months and remained honored to serve on the Commission.