

MEMORANDUM

February 25, 2021

To: Marc Elrich, County Executive
Tom Hucker, County Council President
Members of the County Council

From: Advisory Committee on Consumer Protection
Daniel Caplan, Chair
Jim Michaels, Vice-Chair

Subject: Annual Report for 2020

The Advisory Committee on Consumer Protection (“ACCP”) submits this Memorandum to the County Executive and County Council as its Annual Report for 2020.

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A. Budget Concerns in Protecting Consumers During the Pandemic

Advisory Committee members are concerned about the impact of recent budget cuts and the potential for future cuts to lessen the effectiveness of the County's Office of Consumer Protection ("OCP") in protecting consumers during the pandemic.¹

Advisory Committee members understand that Montgomery County is experiencing a large and unprecedented decline in revenue due to the COVID-19 pandemic and that all department and agency directors were requested to submit suggested reductions to their budgets. OCP's operating budget for fiscal year 2021 is approximately \$2.2 million, which is a decrease of \$181,990 (7.65%) from its FY2020 budget. Personnel costs represent 94% of OCP's budget which includes both full-time and part-time employees, for a total count of 16.6 full-time equivalents.

OCP's budget, however, is a relatively small portion of the County's \$5.8 billion operating budget. Advisory Committee members urge the County Executive and County Council to use caution in considering further budget cuts that could compromise OCP's ability to respond to consumer protection needs resulting from the pandemic.

While the pandemic has precipitated an economic downturn and a decline in revenue for the County, it also has adversely affected consumers' financial conditions. The economic hardship caused by the pandemic puts consumers at greater risk of defaulting on their mortgages and other loans, and falling behind on rent payments. The economic pressure created by the pandemic also has led some to engage in scams such as fake COVID cures and harmful price-gouging.

These consequences require OCP to strengthen its efforts to educate and inform consumers and communities so they are aware about steps they can take to protect themselves from potential financial crises. This includes making people aware of foreclosure prevention options, and consumers' rights concerning debt collection and vehicle repossession.

Across the country, state and local officials have adopted temporary emergency consumer protections to shield consumers from hardships caused by the pandemic, such as protections from overly aggressive debt collection tactics. Some states are considering whether new laws are needed to make their temporary measures permanent. Maryland officials are among those who have been studying possible changes to eviction, foreclosure and debt-collection laws. See Report of the Maryland Attorney General's COVID-19 Access to Justice Task Force (January 11, 2021) ("Maryland AG Report").²

¹ OCP's mission is enforcing consumer protection laws that prohibit unfair, deceptive, or unconscionable business practices, to ensure a fair marketplace for consumers and businesses. OCP receives and investigates consumer complaints and initiates its own investigations of unfair or deceptive practices. OCP's activities also include consumer education, conducting public information campaigns to raise consumer awareness, and conducting outreach to vulnerable consumers and communities.

² https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.

See also Covid-19 Access to Justice Task Force: Press Conference, <https://www.youtube.com/watch?v=yaQKzEIVQfU&feature=youtu.be>.

One of the findings listed in the Maryland AG Report is that our current system “does not provide enough protections to people facing financial debts, leaving them with inadequate options for maintaining resources to meet basic needs.”³ The OCP could participate in the legislative process as advocates for improving consumer protection, possibly by providing written testimony or comments on proposed bills. It would be unfortunate if budget cuts resulted in staffing constraints that limit OCP’s ability to do so.

B. Advisory Committee Activities in 2020

During 2020, the ACCP met regularly with OCP staff to discuss a variety of consumer protection issues so that Committee members could draw on their own experience and expertise to provide views about how OCP might address and resolve these issues.

1. Ensuring Equity in Protecting Consumers and Communities

The ACCP is currently planning how it can work with OCP to enhance outreach efforts to identifiable communities and assist OCP with its implementation of the County’s Racial Equity and Social Justice Policy.

In its discussions, ACCP members recognized the need to focus on equity issues and the adverse impact on communities of color resulting from scams or unfair business practices. The ACCP will continue exploring how to ensure that identifiable communities are not disproportionately affected by scams or unfair business practices that target or have a disparate impact upon particular racial, ethnic or religious groups. The ACCP is working on developing a list of community groups and contacts by consulting with the County’s Office of Community Partnerships and the various Chambers of Commerce and business groups.

The ACCP plans to consult the various Advisory Groups for the Office of Community Partnerships regarding whether OCP’s messaging on consumer protection issues is currently reaching the appropriate communities. The ACCP is planning to establish a list of standard topics for consumer education that can be presented to consumers within the identified communities. Because in-person education sessions are not feasible during the pandemic, for the foreseeable future the educational forums would be offered as webinars that can be interactive. Interactive sessions would connect consumers who have questions or problems with local experts or resources that can answer or assist them. Possible topics include debt collection and online shopping scams.

The Advisory Committee was informed that the County Executive has requested County agencies’ assistance in obtaining data on community impacts. The ACCP plans to consult the Office of Community Partnerships on whether it is aware of data pertaining to harms suffered by consumers that can be analyzed by zip code or some demographic criteria to determine whether certain communities are being disproportionately affected.

³ See Maryland AG Report at 27.

2. Protecting Consumers from Unfair, Deceptive or Unconscionable Business Practices

New Vehicle Dealers' Price Advertising

Members of the Advisory Committee spent a significant amount of time reviewing and discussing how motor vehicle dealers in Montgomery County advertise the selling price of new vehicles.

Information was collected from several new vehicle dealers. This included visiting one dealership in-person before the COVID-19 pandemic and interviewing the sales manager. Information collected at that dealership was later compared to pricing information available on the dealer's website. For other dealers, pricing information was obtained on the dealers' website and that information was used to conduct conversations as a potential buyer with the dealer's sales representative, by e-mail and by telephone. The information obtained from the salesperson was compared to prices advertised on the dealer's website.

New vehicle dealers generally advertise a selling price that is below the Manufacturer's Suggested Retail Price (MSRP). Manufacturers sometimes offer cash rebates to buyers that might or might not be included in the dealers advertised price. While some cash rebates are available to all buyers, other rebates are only available to buyers who meet specified criteria. For example, some rebates apply only to customers who have an existing lease on a vehicle made by the same manufacturer. Other rebates only apply to buyers who finance their new vehicle with the finance company owned by the manufacturer. And some rebates only apply to students or members of the military on active duty.

A review of several dealers' advertising showed that there is some inconsistency in how dealers advertise new vehicle prices. Some dealers appeared to be advertising a selling price to the general public that was not actually available to all purchasers because the advertised price included a cash rebate that only applied to certain buyers. Sometimes that price was displayed on the vehicle window as well as the dealer's website.

This raised a concern among Advisory Committee members when the advertisement did not clearly and conspicuously state that the generally advertised price did not apply to all buyers. These advertisements also did not clearly state what criteria a buyer would need to meet to obtain the advertised price.

Some advertisements displayed multiple selling prices for a particular vehicle, both with and without rebates. However, the lower price available to select qualifying buyers might be displayed prominently while the higher price applicable to all buyers might only be stated in a footnote or in fine-print.

Advertisements were also found in which the dealer first showed the MSRP, then showed the specific dollar amount that the dealer would deduct from the MSRP as a dealer discount, and then finally, the resulting "selling price" after the dealer discount was deducted. However, for some dealers, buyers would be required to also pay an additional "freight" or "transportation" fee on top of the advertised "selling price" even though the advertised MSRP

already included the manufacturer's freight or transportation fee. In such cases, the amount of the dealer's advertised discount was overstated by the amount of the freight/transportation fee. OCP staff noted, at the time, that it then had one consumer complaint citing this practice as well.

At its meeting on September 1, 2020, the Advisory Committee voted unanimously to adopt a recommendation that that OCP issue written guidance to new vehicle dealers in Montgomery County to address the noted problems with dealers' advertising practices. Subsequently, OCP staff informed the Advisory Committee that OCP would be issuing guidance to dealers as recommended.

Solar Panels

At the beginning of the year, an ACCP member noted his perception that solicitations from solar panel companies seemed to be occurring more frequently, including solicitations in-person made by marketing agents stationed inside some home improvement stores. Some solicitations include a statement that the panels and installation are "free" which might confuse some consumers who are not aware they would essentially lease, not own, the equipment.

These solicitations raised the question of whether consumers generally receive the information they need to make informed decisions about the costs and benefits. As an example, a solar panel company might project the consumer's future expenses for electricity by comparing the future energy cost with solar panels to the future cost without them. But do solar panel companies explain the assumptions about future utility rates that were used to project those costs? How can consumers evaluate the applicability or accuracy of the seller's projected costs?

In response to these concerns, OCP staff created a new webpage containing information on "Solar Financing." In June 2020, the OCP staff also joined with Solar United Neighbors and the Montgomery County Department of Environment Protection, to present a webinar titled "Consumer Protection Issues When Going Solar." The OCP staff presentation continues to be available for viewing on its YouTube channel, "ConsumerWise."⁴

Energy Scams

The ACCP reviewed and discussed the OCP's recent newsletter article on "energy scams" which was published online to alert consumers on how to avoid becoming a victim of some common energy scams. This led to a discussion by ACCP members about the need to also provide consumers with information about what to do after they have been scammed.

One recurring scam involves "slamming," which is the practice of switching a consumer to a new utility supplier without the consumer's consent. In Maryland, consumers can choose among many companies as their energy supplier. A salesperson can switch a consumer to a new supplier without the consumer's knowledge if the salesperson is able to obtain the

⁴ <https://www.youtube.com/channel/UCb9MuAC-6BGG7TcAT4vrjRA>.

consumer's account number with the current supplier. Some consumers provide their account number after the salesperson falsely represents that they need the number to apply a rebate or refund to the consumer's current account.

After consulting ACCP members, OCP expanded its webpage article to include information that explains how consumers can rectify the situation after they have become victims of "slamming" and been switched to a new supplier.⁵

Sales of Used Vehicles with Open Recalls

ACCP members discussed whether the OCP would have jurisdiction to identify as "unfair," a local car dealer's sale of used vehicles with open safety recalls. The issue applies only to used vehicles because the sale of new vehicles with open recalls is already prohibited by federal law.

ACCP members researched Maryland law, Motor Vehicle Administration regulations, and bills pending before the Maryland legislature. They also consulted a national consumer advocacy organization, Consumers for Auto Reliability and Safety (C.A.R.S.).

Some consumer advocates argue there should be an outright ban on the sale of used vehicles with open recalls. Other advocates note that requiring disclosure of known recalls essentially authorizes sales and isn't sufficient to keep unsafe vehicles off the road.

Maryland law does require disclosure of material information, which would include known safety defects, under the Maryland Consumer Protection Act ("CPA"), which prohibits unfair or deceptive practices. As a result, under the CPA, the government already has the ability to bring a legal action against dealers selling such vehicles before injuries and damages occur. Consultation with the Office of the Attorney General suggested that legislation to ban sales in Maryland is unnecessary and, if pursued unsuccessfully, might have the unintended consequence of weakening claims under the CPA.

Given the various points of view, the ACCP tabled discussion on the issue. Subsequently, Washington Consumer Checkbook published an article discussing the issue, which OCP disseminated on social media: <https://www.facebook.com/OCP.ConsumerWise>.⁶

⁵ Consumers can confirm the name of their current energy supplier by contacting the public utility company that provides the bills on behalf of all energy suppliers. The Maryland Public Service Commission (PSC) has a website where consumers can shop and compare offers from different energy suppliers for electricity. The Maryland PSC website also explains how consumers can change from one retail electricity supplier to another. To switch service from the existing electricity supplier, consumers must contact the new electricity supplier they are choosing and provide their current account number. The PSC website lists all of the licensed electricity suppliers and utility companies with their contact information and the PSC plans to launch a companion site for natural gas.

⁶ Vol. 20, No. 3, Washington Consumer Checkbook, On the Road Again, Despite Dangerous Defects, 83-89 (Fall 2020/Winter 2021). See <https://www.checkbook.org/puget-sound-area/used-cars-often-sold-with-dangerous-defects/>

Vendor Solicitations that Violate the FTC's "Do Not Call" Rules

Throughout the year, ACCP members shared their experiences with robocalls and telemarketing sales calls that are made using a live person. Many of the calls involve scams. Some calls, however, are made on behalf of vendors offering goods or services in Montgomery County. These might include offers for home security systems, air duct cleaning services, discount vacation packages, health insurance and Medicare supplement ("medigap") plans, solar panels, and home improvements such as a new roof.

These calls are often made in violation of the federal laws prohibiting robocalls and the FTC's "Do Not Call" rules. The Office of Consumer Protection generally is not responsible for enforcing those federal regulations. However, the Advisory Committee discussed with OCP staff whether a local vendor is violating the County Code's prohibition against "unfair practices" if the vendor uses a telephone marketing campaign to solicit new customers in violation of the Do Not Call rules or the federal ban on robocalls.

In response, OCP staff indicated that the Office has previously taken the position that a vendor that adopts a practice that violates federal law is also violating the County Code's prohibition against unfair trade practices. However, OCP staff noted there are practical difficulties in identifying such businesses unless they are the subject of consumer complaints filed with the OCP. One suggestion was having the OCP use its website to request that consumers report the names of vendors who violate the Do No Call rules.

An ACCP member inquired about allowing consumers to enroll voluntarily as "mystery shoppers" who set up the appointments offered by companies that are marketing home services by telephone. That could allow consumers to collect more information about the actual vendors. OCP staff indicated, however, that the Office does not have the budget funds to conduct "mystery shopper" campaigns and any program would have to rely on consumers acting as volunteers.

Mail Solicitations for "Home-Value Investments" that Purport to be "Debt-Free"

An ACCP member brought to the Committee's attention a mail solicitation that advertises a "debt-free" way for homeowners to access the equity in their homes to obtain cash. The advertisement stated the company will make an "investment" in the home. On inquiry, however, it was learned that the company does not take a legal interest in the property as a co-owner. Instead the company expects repayment of the full amount advanced, and files a lien on the home. This reflects the homeowner's obligation to repay the full amount of the cash received at the end of 10 years, regardless of the home's value at that time.⁷ The increase or decrease in the home's value is used to determine what additional amount the homeowner also owes as the cost or "finance charge" for obtaining the cash advance.

⁷ An Advisory Committee member with relevant legal expertise opined that this would be considered "debt" for purposes of the Federal Truth in Lending Act (TILA). If so, then the cost would be considered a "finance charge" and the transaction would be subject to TILA's disclosure requirements.

In response to the concern raised about whether the mailed advertisement is misleading, the OCP staff is developing an informational article for publication on its website to educate consumers.

3. Consumer Education

An Advisory Committee member who is a professional financial advisor conducted an online workshop presented with sponsorship of the Office of Consumer Protection. The workshop, titled “Small Business Side Hustle,” seeks to educate consumers on starting small businesses. The workshop covered researching and developing ideas for a business, creating a business plan, funding and structuring the business, tax issues, and resources for obtaining additional information or assistance.

4. Process Improvements

During 2020, the ACCP considered three matters aimed at improving the effectiveness of the Advisory Committee:

(a) The ACCP worked with OCP staff to update the OCP webpage description of the Advisory Committee’s functions and activities. The changes are intended to enhance the public’s understanding of the ACCP’s role which might encourage more public input and participation.

(b) ACCP members discussed whether OCP should work with the ACCP on establishing a more formal process for outreach to community stakeholders to make such contacts routine and more regular. The goal of regular contacts with stakeholders, such as consumer lawyers or consumer advocacy groups, is to identify and obtain timely information about current business practices that adversely affect consumers. Currently, there is a heavy reliance on consumer complaints received by the OCP, reports in the news media, and reports of actions taken by other government agencies.

ACCP members will continue to discuss and work towards accomplishing this goal during 2021 with the advice of several new Committee members who have longstanding ties to consumer attorneys and advocacy groups.

(c) ACCP discussed establishing a routine process for tracking state legislation relating to consumer protection. This would facilitate having information about the bills’ content and movement through the legislative process communicated on a timely basis to ACCP members and OCP staff. Having such information would allow ACCP members to consider whether the Advisory Committee or OCP should consult the Office of Intergovernmental Relations about providing comments or advocating a position on a pending bill.

C. Advisory Committee Agenda for 2021

Four new members were appointed to join the Advisory Committee in November 2020, in time for their participation in the ACCP's final meeting of the year on December 1, 2020.

The four new members represent a significant portion of the Committee's nine members. Accordingly, the Committee members anticipate that during the first few months of 2021 they will discuss the priorities and goals that ACCP members want to establish for the newly formed Committee. This will take into account the experience and expertise of the ACCP members, the needs of consumers in light of the pandemic and current economic climate, and the available resources.

1. Outreach Efforts

(a) ACCP members hope to work with OCP staff to establish a routine for conducting regular outreach to community stakeholders. Regular contact with stakeholders and their representatives can inform OCP and the ACCP by providing timely information about current trends and business practices that create risks and harms for consumers.

(b) ACCP and OCP staff will use a volunteer student intern to track the progress of state legislation that relates to consumer protection. Tracking legislation would allow ACCP members and OCP staff to consider whether to consult the Office of Intergovernmental Relations about providing comments or advocating a position on any pending legislation. OCP's current staffing level is not sufficient to accomplish this without utilizing a volunteer intern.

2. Consumer Education: Webinar Topics for 2021

Advisory Committee members anticipate that the economic hardship caused by the pandemic likely will be the greatest threat to consumers' financial well-being in 2021. Accordingly, the Committee plans to focus on consumer education and community awareness to help consumers obtain information they can use to protect themselves from potential financial crises.

Committee members have identified the following webinar topics based on the expertise of Committee members and OCP staff who can serve as presenters:

- Consumer issues in the home-buying process;
- Foreclosure prevention and consumer rights in foreclosure;
- Issues related to landlord-tenant credit reporting; and
- Consumer rights in debt collection and vehicle repossessions.

However, as other timely topics are identified, the Committee members might seek to partner with other organizations and obtain outside speakers.

3. Public Hearings in 2021

The Montgomery County Code (section 11-3) authorizes the ACCP to hold public hearings on any topic related to consumer protection.

The ACCP welcomes input from the County Executive and the County Council on topics for hearings, town halls, or other public forums that the Advisory Committee could hold jointly or in collaboration with members of the Council, the OCP or other County offices and agencies.

At its meeting on February 2, 2021, the Advisory Committee members approved submission of this Memorandum as its Annual Report for 2020.