

MEMORANDUM

May 18, 2023

To: Marc Elrich, County Executive
Evan Glass, County Council President
Members of the County Council

From: Advisory Committee on Consumer Protection
Jim Michaels, Chair

Subject: Annual Report for 2022

The Advisory Committee on Consumer Protection (“Committee”) has approved the submission of this Memorandum to the County Executive and County Council as its Annual Report for 2022. Members of the ACCP invite the County Executive to hold a virtual forum with Advisory Committee members to discuss the consumer issues raised in this Annual Report and other consumer protection matters.

Overview and Summary

Throughout 2022, the Advisory Committee continued using a virtual meeting platform. Committee members provided opinions and advice to OCP staff at regularly scheduled Committee meetings, as well as in periodic e-mail communications. Committee members participated in consumer education programs and identified topics or areas of concern as suggestions for the Office of Consumer Protection (OCP) staff’s community outreach and education efforts. Advisory Committee members also consulted and collaborated with members of the Howard County Advisory Board on Consumer Protection and look forward to collaborating on a joint program during 2023.

Advisory Committee members followed several bills that were introduced during the Maryland General Assembly’s 2022 legislative session to enhance consumer protection. On several occasions, Committee members expressed interest in discussing consumer-related bills with members of the Montgomery County delegation in Annapolis to provide the delegation with additional information and the perspective of consumer advocates on the bills’ potential impact on consumers.

Student Loans

In January 2022, the Committee discussed Maryland House Bill 111 (2022 Session) which would prohibit a private education lender or private education loan collector from initiating a collection action on a private student loan unless the lender or loan collector possesses (and introduces into evidence) specified documents related to the loan. The bill would apply to loans that are not federally insured under the Higher Education Act. The Advisory Committee

voted to recommend that the County support HB 111. Although the bill was subsequently passed in the House, no action was taken on the bill in the Senate.

Moving Brokers

Members of the Advisory Committee had several discussions about moving brokers, based on the recent experiences of two Committee members who had assisted family members with interstate moves. Sometimes consumers attempting to hire a moving company might believe they are dealing with a local moving company, but in reality they might be communicating instead with a moving broker's call center located in a different state. The broker will then attempt to negotiate with and hire another company that is unknown to the consumer, to do the work. Consumer Checkbook magazine has published an article on this business practice and the issues it can raise. Federal regulations governing interstate movers, that aim to protect consumers, might also apply. Advisory Committee members suggested that OCP consider publishing something on its website and social media pages to educate consumers about moving brokers when the traditional spring moving season begins.

Jumbo Reverse Mortgages

Advisory Committee members had several discussions about "jumbo" reverse mortgages and why they were not available in Maryland. One committee member was concerned about the inability of consumers with large amounts of equity in their home to fully access that equity using a reverse mortgage. Other members indicated that there are other financial products available to meet those consumers' needs that don't involve the same risks.

A reverse mortgage loan officer was invited to speak at one of the Advisory Committee's meetings. He noted that the only reverse mortgage product offered by lenders in Maryland is the U.S. Department of Housing and Urban Development (HUD) Home Equity Conversion Mortgage ("HECM") that is federally insured but subject to a loan limit of \$970,000 under regulations issued by the Federal Housing Authority (FHA). HECM loans are subject to consumer protection regulations issued by HUD. In order to obtain a loan exceeding the FHA limit, consumers would need to obtain a "proprietary" reverse mortgage (not federally insured), but private lenders currently do not offer these in Maryland. One Committee member reached out to the National Reverse Mortgage Lenders Association (NRMLA) to obtain additional information which suggested that lenders' are not offering proprietary, jumbo reverse mortgages in Maryland for business reasons and not because they are legally prohibited.

Community Outreach

The Advisory Committee remained committed during 2022 to strengthening community outreach efforts to make consumer education programming available to diverse communities. Committee members acknowledge the importance of identifying, raising public awareness about, and strengthening OCP's efforts to eliminate scams and fraud that target communities of color, immigrants, and seniors in Montgomery County. Consequently, in September 2022, the Advisory Committee and OCP jointly sent a letter to community organizations, requesting their

assistance in identifying the consumer protection concerns in their community. The letter offered to provide consumer education programs for these communities and their constituents, described a number of potential topics that could be covered and listed multiple languages in which these programs could be provided. This was a follow up to a similar letter that the Advisory Committee issued in June 2021.

Avoiding Home Mortgage Foreclosures

Throughout the year, Advisory Committee members attempted to monitor home mortgage foreclosure activity in Montgomery County. Committee members supported public messaging campaigns to teach homeowners about the foreclosure process and about their options for avoiding foreclosure. A subcommittee was formed to plan a consumer education program with the assistance of community organizations that provide homeowner counseling and legal services.

On December 6, 2022, the Advisory Committee and OCP co-hosted a virtual presentation with representatives from: the Maryland Office of the Commissioner of Financial Regulation, two organizations that conduct housing counseling -- the Housing Initiative Partnership, Inc., and the Latino Economic Development Center-- and the Pro Bono Resource Center of Maryland, that provides legal services. The presentations explained the various options consumers should consider and how to make the necessary arrangements so they can catch up on their payments and make their loans current to avoid default and possible foreclosure. The webinar can be viewed online at:
<https://www.youtube.com/watch?v=65co7QFt7SU>.

Mandatory Arbitration Clause Included on Customer Receipts

In March 2022, an OCP investigation was prompted by consumer complaints about certain Jiffy Lube Service Centers located in Montgomery County. The Jiffy Lube locations in question were providing customers with a sales receipt that included a mandatory arbitration clause on the reverse side of the receipt. The receipt's language stated that consumers must submit any claim or controversy in writing within 90 days to a specified mediation service and, if mediation is not successful, they must resolve their claim through arbitration rather than litigation. The mandatory mediation and arbitration clause did not disclose to consumers that the mediation and arbitration service was operated by the merchant's attorney.

Customers were only given the receipt including the mandatory arbitration clause after the Jiffy Lube Service Center performed its services and the consumer had already paid for and completed the transaction. Consequently, customers did not have the ability either to agree to or opt out of the terms stated in mandatory arbitration clause. Nevertheless, the receipt stated the customer's failure to abide by the arbitration clause's provisions would represent the customer's material breach of the contract which would prevent the customer from asserting a claim against any Jiffy Lube Service Center.

Throughout 2022, Advisory Committee members continued to express interest in having OCP and, if necessary, the Office of the County Attorney, take appropriate legal action to

address and prohibit this practice as a violation of the applicable laws that prohibit business practices that are unfair or deceptive.

At the Advisory Committee's meeting on September 6, 2022, OCP staff informed Committee members that the affected Jiffy Lube stores had agreed to remove the arbitration provision from their sales receipts. On September 14, 2022, a member of the Advisory Committee visited one of the Jiffy Lube Service Centers in Montgomery County to have his vehicle serviced and obtain a copy of the revised customer receipt. As had been the case previously, on September 14, the Committee member received a written sales receipt only after Jiffy Lube's services had been fully performed and paid for, and the transaction was completed. The receipt received on September 14 continued to assert that the consumer had "agreed" to the terms of a paragraph on dispute resolution. The dispute resolution paragraph on the September 14 receipt continued to state that the customer must initiate any claim within 90 days and must submit their claim or controversy to mediation prior to initiating litigation. However, there was no longer a reference to an arbitration requirement or to a specific mediation and arbitration service provider.

The Advisory Committee member provided the September 14th receipt to OCP staff. Subsequently, OCP staff informed the Advisory Committee that OCP had formally opened an Executive Director-initiated complaint to pursue the matter with the relevant Jiffy Lube Service Centers. At the Advisory Committee's April 25, 2023 meeting, committee members were informed that OCP's further action in this matter had resulted in the Jiffy Lube Service Centers again revising their customer receipts. As a result, an Advisory Committee member visited one of the Jiffy Lube locations on April 26, 2023 to have his vehicle serviced and obtain a new receipt. The receipt obtained on April 26 contained no provision concerning dispute resolution and had no mediation or arbitration clause.

Motor Vehicle Advertising

Two members of the Advisory Committee reported to the Committee on House Bill 274 (2022 Session) based on information they had obtained from the bill's sponsor who is a member of the Montgomery County delegation. The bill would have provided that a manufacturer, distributor, or factory branch could not prohibit individual vehicle dealers in Maryland from advertising vehicles for sale or lease below a specified price. The bill also would have prohibited the initiation of adverse actions against a dealer for advertising vehicles below a certain price specified. OCP Staff informed the Advisory Committee that OCP submitted a statement to the County's Office of Intergovernmental Relations regarding the bill.

The two Committee members who met with the bill's sponsor understood that the bill was intended to enhance competition by preventing restraints on a dealer's advertised price, but they were uncertain about predicting whether consumers would benefit. Accordingly, the Committee members expressed caution about categorizing this as "consumer protection." Ultimately the bill was not enacted in the 2022 session.

Used Vehicle Dealer Sales Practice

An Advisory Committee member briefed Committee members about ongoing litigation against a nationwide used vehicle dealer that had not been providing a permanent vehicle title and registration in a timely manner for a substantial percentage of its transactions. The Advisory Committee voted to advise the Office of Consumer Protection that it should notify the Office of the Maryland Attorney General and request that it conduct an appropriate investigation.

Request for Public Hearing Topics in 2023

The Montgomery County Code (section 11-3) authorizes the Advisory Committee to hold public hearings on any topic related to consumer protection. Such hearings could be used to inform public policy and decision-making, increase public awareness, or educate consumers.

Advisory Committee members welcome input from the County Executive and the Council on topics that would be appropriate for hearings, town halls, or other public forums. Those could be held by the Advisory Committee or by the Committee in collaboration with members of the Council, the OCP, or other County offices and agencies.