MAY 2013

Consumer Advisory Board meeting minutes

FEBRUARY 20-21, 2013

Consumer Financial Protection Bureau

Second meeting of the Consumer Advisory Board

The Consumer Advisory Board (CAB) of the Consumer Financial Protection Bureau (CFPB) convened for its second meeting at 9 a.m. on February 20, 2013. The CAB met at the Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, D.C.

CAB members present:

Bo Jose Quinonez, Chair
Bill Bynum, Vice Chair
Gary Acosta
Jo Ann Barefoot
Don Baylor
Maeve Brown
Steve Carlson
Laura Castro de Cortes
Elizabeth Costle
Prentiss Cox
Patricia Duarte
Patricia Hasson
Adam, Levitin
James McCarthy
Jennifer Mishory
William Nelson
Michelle Peluso
Dory Rand
Annette Rizzo
Ellen Seidman
Josh Silverman
Robert Stoll
Donna Tanoue
Jane Thompson
Jonathan Zinman

Present from the CFPB:

Director, Richard Cordray
Lisa Applegate
Marla Blow
Camille Busette
Peter Carroll
Kelly Cochran
Dubis Correal
Patrice Ficklin
Alice Hrdy
Delicia Hand
Jesse Leary
Ana Mahony
Zixta Martinez
Cassandra McConnell
Margaret Plank
Scott Pluta
Dan Quan
Cliff Rosenthal
Dan Rutherford
Paul Sanford
Corey Stone
Anna Tabor
Peggy Twohig
Will Wade-Gery
Wei Zhang

DAY ONE

Welcome and meeting overview

The meeting was called to order at 9:01 a.m. by CAB Chair Jose Quinonez. Chair Quinonez confirmed that the overall meeting goal is to allow the CAB to understand the CFPB's work, build relationships with key staff, and provide input and information to the Bureau. CAB Staff Director Delicia Hand reviewed the plan for the public meeting. CFPB Director Richard Cordray joined the meeting at approximately 9:15 a.m., welcomed CAB members, and provided an overview of the Bureau's recent accomplishments and the current environment.

Public meeting of the CAB

Please see the transcript for the public portion of the meeting. After the public session, the CAB meeting resumed in closed session.

Public session debrief and committee organizing

After the public meeting, the CAB meeting resumed in closed session during which CAB members presented Bureau staff with feedback about the public meeting. Bureau staff reiterated that CFPB field events have helped to provide valuable input from consumers outside the Beltway and on the ground. The CFPB invited the CAB to suggest groups that the Bureau should engage with for future field events and CAB meetings. Other discussion points included the following:

- The Bureau may want to consider responding to the comments raised during comment periods. For instance, a simple answer to comments received about mandatory arbitration clauses is that the CFPB is mandated to finish its ongoing study of arbitration before taking action. CAB members inquired about how much time the Bureau has to complete its studies. Staff responded that, in some cases, Congress has assigned deadlines; in other cases, the timeframe depends on the subject matter. There is no specific deadline for the arbitration study.
- Some CAB members felt that the discussion during the public session provided a good representation of CAB members' different perspectives and areas of expertise.
- The Bureau should consider deficiency of credit availability. The recovery is leaving low and moderate-income people behind and endangering their ability to be homeowners.

The CFPB does not intend to signal to industry through the mortgage rules that the subprime market should be avoided; responsible lending can be done in this area.

- The CFPB noted that under its new mortgage rules there is room for responsible lending in the subprime market and it encourages lenders to make responsible loans in this space.
- A presentation on possible patterns in abusive lending practices would be appreciated. The CFPB noted it periodically publishes data on complaints received as part of its transparency efforts.
- Director Cordray highlighted the risks of a mortgage servicing or debt collection system in which the consumer is frozen out of the business-to-business relationship. The Bureau was asked how it plans to deal with this, and staff responded that enforcing existing law, pushing collectors and creditors to deal with the consumer, should help. Different strategies will be pursued for different markets.
- The CAB encouraged the CFPB to consider debt traps in a larger context. A Pew Charitable Trust study showed that payday loans are often used for day-to-day expenses because stagnant wages are not enough to cover people's daily needs. Some people live in a state of constant emergency. What looks like a need for credit might really be a need for higher wages. The CAB recognized that the CFPB unfortunately cannot solve all these problems.
- Helping people find a way to save is a way of avoiding debt traps. However, some people living on public benefits face asset limits which prohibit them from accumulating savings, especially banked savings, to deal with emergencies. Maybe the CFPB can use its bully pulpit to raise awareness of these issues.

Committee assignments

CAB Chair Quinonez reviewed the steps leading up to the organizing of the CAB committees and committee assignments and reminded CAB members that each CAB member will serve on at least one committee, but no more than two committees. Section seven of the CAB Charter provides that the CAB may establish and dissolve committees, in consultation with the Bureau. Any committees shall report to the CAB and not directly to the Bureau. Leading up to the February meeting, the CAB organized four committees, organized by a policy issue area under the Bureau's jurisdiction.CAB committees will meet at least once in between CAB meetings and will also meet during CAB meetings.

Chair Quinonez announced the Committee Chairs:

1. Adam Levitin, chair Mortgages Committee
2. Maeve Brown, chair Credit Reporting, Debt Collection and Deposits Committee
3. Jane Thompson, chair Card and Payments Committee
4. Don Baylor, chair Small Dollar Lending and Installment Lending Committee.

The 2013 CAB committee rosters follow below:

Mortgages (10)

☐Adam Levitin, chair

☐Annette Rizzo

☐Elizabeth Costle

☐Ellen Seidman

☐Patricia Garcia Duarte

☐Gary Acosta

☐ James (Jim) McCarthy

☐ Donna Tanoue

☐Jo Ann Barefoot

☐Bill Bynum, *ex officio*

☐Maeve Brown

Card and Payments (9)

☐Jane Thompson, chair

☐Joshua Silverman

☐Laura Castro De Cortes

☐Steve Carlson

☐Michelle Peluso

☐Robert Stoll

☐Donna Tanoue

☐Jo Ann Barefoot

☐ Jose Quinonez, *ex officio*

☐Adam Levitin

☐Dory Rand

☐Patty Hasson

Credit Reporting, Debt Collection and Deposits (8)

☐Maeve Brown, chair

☐Patricia Hasson

☐Robert Stoll

☐Gary Acosta

☐Jose Quinonez, *ex officio*

☐Joshua Silverman

☐Prentiss Cox

☐Elizabeth Costle

Small Dollar Lending and Installment Lending (9)

☐Don Baylor, Jr., chair

☐Dory Rand

☐Jonathan Zinman

☐Prentiss Cox

☐Bill Bynum, *ex officio*

☐Jennifer Mishory

☐William Nelson

☐Jane Thompson

☐Steve Carlson

☐Ellen Seidman

Presentation & discussion on CFPB supervision offices

Peggy Twohig, assistant director of Supervision Policy

Paul Sanford, assistant director of Supervision Examinations

Assistant Director of Supervision Policy Peggy Twohig and Assistant Director of Supervision Examinations Paul Sanford provided an overview of the organization of the Supervision Office. Assistant Director Twohig opened the session explaining that when the Bureau first opened its doors, the supervision program at the CFPB was originally organized using the distinction between bank and non-bank supervision because the CFPB immediately inherited responsibility for bank supervision, while the supervision of non-bank entities had a later effective date. The Office of Large Bank Supervision and Office of Non-Bank Supervision were therefore separate. The fact that the CFPB's mission applies to policies and procedures consistently across markets, coupled with the rollout of the non-bank supervisory program, led to a recent re-organizing into the Offices of Supervision Policy and of Supervision Examinations. Assistant Director Twohig, shared that the Office of Supervision Policy determines overall supervision strategy and ensures that examinations are conducted consistently across markets and across the country, and is organized by type of financial product. Assistant Director Sanford explained that the Office of Supervision Examinations receives reports from regional directors, and has responsibility for data and systems that support examiners, such as the supervisory examination system (SES), compliance tool, and interstate land sales registration system. Supervision Examinations is also responsible for examiner training and development, and for ensuring production of examination reports that are consistent, accurate, and understandable.

Presentation & discussion on CFPB supervision offices: comments and questions from the CAB

- Members asked whether assessment of risk to consumers is the only risk being looking at. Is the CFPB going to consider the safety and soundness of the financial institution? The CFPB's focus is on consumer safety, although there could be some situations where the financial stability of the entity might be relevant in dealing with risks to consumers.
- How are the offices dealing with the sparseness of data requirements in the non-bank sector? The Markets and Research staff help with finding accessible data. The CFPB does have the authority to require registration of non-bank financial institutions, although it has not done so thus far.
- How much progress has been made in the task of quickly setting up examination capability? The field examination workforce is about 60% staffed, and more recruitment is planned.

- Is examination of non-bank institutions up and running? Yes, it has been launched. The first priorities were payday loans and mortgage servicing, and now that the debt collection rule is in effect, work on the debt collectors will go forward. Prioritizing where to direct resources is very important.
- Many mortgage servicing problems were violations of state law, not federal law. To what extent is the CFPB looking at compliance with state law? CFPB's focus is federal law compliance; the Bureau does not have authority to enforce state law, although many examiners have experience in state agencies. If a violation of state law is observed, CFPB examiners would inform state regulators.
- How is the CFPB interacting with other regulators, and in particular, is the CFPB's examination strategy influencing other regulatory systems? CFPB's coordination with other agencies is going well. In some cases, long-term relationships already exist, which makes it easier to share and coordinate examination schedules and priorities.
- A CAB member noted that there is a memo – not a product of either the CFPB or the CAB – going around that compliance with regulation is unprofitable. Research might be able to answer the question of whether what is good for the consumer is bad for safety and soundness. In what cases could this be an issue? Compliance with regulatory requirements is good business as well as the law. Experienced examiners can explain to industry that noncompliance can lead to legal liability, cost, corporate image problems, and lost revenues.
- How does the CFPB look at UDAAP enforcement issues? Staff responded that Rule-based enforcement can be done systematically, but truly effective enforcement is a more intuitive, comprehensive process.

Concurrent breakout sessions

During this session, CAB members participated in small group discussions and presentations led by CFPB staff by participating in two sessions out of a choice of three consecutive tracks.

Track 1: Office of Consumer Response

Scott Pluta, assistant director for Consumer Response

Assistant Director Scott Pluta provided an overview of the Office of Consumer Response and answered questions from CAB members about the office. As the second-largest office in the

Bureau with 135 people on staff, Consumer Response receives complaints and inquiries directly from consumers about the challenges they face in the marketplace, brings their concerns to the attention of financial institutions, and assists in addressing their complaints.

Consumer Response overview: Comments and questions from the CAB;

- Members asked about the contrasts between the FTC complaint system and the Bureau's complaint system; specifically, CAB members noted that one criticism of the FTC's high-volume, no-touch complaint handling model was its black-box approach: a consumer submits a complaint and never sees it again. The CFPB's complaints system deals with a large volume of complaints, using the high-touch approach only where it can be of value. Consumers are communicated with at every step of the process. Consumers can also log in or call to see the status of their complaint.
- What is CFPB doing to get the word out about this function? The system was built quickly after Dodd-Frank passage and is meant to be scalable. All complaints go into FTC Sentinel and are shared with other agencies. Natural language processing is also used to filter out personally identifiable information (PII).
- CAB members asked whether outside researchers will be able to get access to demographic data on complainants for their own studies. There needs to be a balance between data collection and usability of the form. Complainants have the option to give their age, but most do not. There is a risk that too many data fields may discourage complainants and thus decrease the percentage of forms completed.
- CAB members suggested that perhaps if consumers knew how such data was being used, they would be less reluctant to provide it. CAB members continued to share that the CFPB should do a better job of explaining what it's doing–even if a complaint can't be resolved to a consumer's satisfaction, it may help others.
- CAB members asked how much time is spent on average per complaint. No number is presently available.
- CAB members asked whether, on mortgage servicing, is the Bureau screening strictly for RESPA and TILA violations. Sometimes the response to a complaint indicates that the nature of the problem is not understood. The system might work better for straightforward RESPA violations, but not for more complex complaints. CFPB receives

more complaints about mortgages than about anything else, and foreclosure avoidance is the number one consumer request.

Track 1: Office of Fair Lending

Patrice Ficklin, assistant director for the Office of Fair Lending
Christine Ladd, deputy assistant director, Office of Fair Lending
Anna Tabor, counsel, Office of Fair Lending

Assistant Director Patrice Ficklin provided an overview of the Office of Fair Lending and answered questions from CAB members about the office. The CFPB is taking a close look at mortgage lending practices to ensure that the institutions that the Bureau supervises are complying with ECOA (the Equal Credit Opportunity Act) and HMDA (the Home Mortgage Disclosure Act). The Office of Fair Lending's multi-pronged approach focuses on a few key areas: accurate HMDA data for banks and non-banks is critical to the fair lending work done by regulators and advocates, as well as giving institutions the ability to evaluate lending risks. The Bureau is taking a risk-based approach to prioritization of fair lending work to ensure that resources are directed where risk to consumers is greatest. Statistical analysis is a central part of the Bureau's fair lending work. The CFPB's statistical work falls under the two broad categories of in-depth individualized analysis and the development of screening tools to evaluate underwriting and pricing, comparing one institution to other similar institutions.

Assistant Director Ficklin also discussed Special Purpose Credit Programs and Section 1071 of the Dodd Frank Act. The Bureau prioritizes credit availability. The Bureau has recently begun assessing Special Purpose Credit Programs (SPCPs) as one way that lenders may be able to increase access to credit. Special Purpose Credit Programs are lending programs that are designed to extend credit to those who would not otherwise receive credit on favorable terms. SPCPs are voluntarily created by lenders and do not require prior approval by the CFPB. The SPCP provision has existed in ECOA for over 30 years but has been underutilized; the Bureau is reviewing how it can become a meaningful program.

Section 1071 of the Dodd-Frank Act requires the CFPB to collect data on loans made to small, minority-owned, and women-owned businesses. The Bureau is gaining expertise in this area and is reaching out to other federal agencies for their feedback.

Track 1: Card and payments

Marla Blow, assistant director of Card Markets Office
Wei Zhang, Card Markets Office

Assistant Director Marla Blow provided an overview of the Office of Card Markets and answered questions from CAB members about the office. The goal of the CFPB's Card Markets Group is to bring together people from the private sector and financial industries to inform the CFPB's perspective on rulemaking and policy. In 2013, the markets team will focus on studying the impact of the CARD Act on the credit card market. The act created a considerable amount of controversy; the original request for comments received almost 6,000 before the comment period ended. The markets team will soon begin reviewing comments they received.

Card and payments: Comments and questions from the CAB

- CAB members expressed concern about the quality of data available, how far back it goes, and whether the CARD Act itself actually influenced small business market data._ A number of credit card companies raised interest rates or lowered credit lines before the Act, and participants wondered whether the data available would be able to capture that. The CFPB will be able to recognize the changes, but it will be difficult to identify what was done solely in anticipation of the act.
- CAB members emphasized that the pre-CARD-Act industry was heavily reliant on penalty fees and rates and expressed concern that the CFPB may discover that the CARD Act helped certain groups of consumers more than it helped others, and that the CFPB will have to find ways to assess the data to properly articulate that divergence.
- CAB members raised the importance of measuring the level of consumer knowledge about the rules and protections of the Act. The student population, for example, is a major consumer group that is very specifically affected by the CARD Act. The CFPB is limited in that regard because its database cannot currently identify credit card accounts that belong to students.
- CAB members discussed how the industry is changing the terms of its products in response to changes in regulation and consumer use patterns. This could be an area for further research.

- CAB members raised the common misconception that the population of credit card users can be divided into two equal and consistent groups of transactors and revolvers. In fact, there is a small group of consistent transactors and a massive group of “sloppy” payers.
- CAB members inquired about the Bureau’s work on prepaid cards. An Advanced Notice of Proposed Rulemaking was released in May 2012 and work is ongoing.

Track 2: Office of Financial Education

Camille Busette, assistant director for Financial Education
Cassandra McConnell, deputy assistant director for Financial Education
Dubis Correal, strategic partnerships and outreach coordinator

Assistant Director Camille Busette provided an overview of the Office of Financial Education and answered questions from CAB members about the Office. The Office of Financial Education is located within the Consumer Education and Engagement Division. Key themes raised in the presentation included:

- The Dodd-Frank Act created the Office of Financial Education, whose overall goal is to help consumers use the information they have at key moments to make better-informed financial decisions.
- Through the office, the Bureau will reach out to make sustained connections with a variety of stakeholders including schools, nonprofits, and federal agencies. The goal is to understand what is happening on the ground.
- Research is another priority for the Office of Financial Education. One research project this year has analyzed two well-known programs in order to determine which elements of those programs are correlated with improved financial behaviors .
- Lastly, the Office of Financial Education provides some information directly to the public. Members were provided a general brochure on the CFPB in English or Spanish. There is a range of publications available on the GSA website, and since December 2012, 100,000 requests for hard copy brochures have been received. Consumers can reach CFPB through its blog, Facebook, Twitter, newsletter, or a site called Tell Your Story. Ask CFPB, an interactive tool on consumerfinance.gov, allows consumers to obtain stock answers on a number of products, services and issues. One tool called Paying for College: A Shopping Sheet allows students to compare the loan offers they get.

Office of Financial Education: Comments and questions from the CAB

- A CAB member commented that consumers need help determining which financial applications are safe and reliable. Part of the office's job is helping consumers sort through the risks and benefits associated with a financial product.
- CAB members discussed the use of targeted ads; for instance, Facebook ads for the Paying for College tool targeting high school seniors.
- CAB members asked how we get people to use the tools that are available and suggested that behavioral economics research may be applicable here.
- CAB members commented that the Financial Education mission is so broad and suggested that the Bureau should partner with specialized or local financial services organizations to get its message out. Several listening sessions with smaller organizations have been held. The members observed that the Office of Servicemember Affairs has held listening sessions on bases.
- A CAB member asked how financial education addresses those financial problems that cannot be avoided through good choices and responsibility.

Track 2: Office of Research

Jesse Leary, deputy assistant Director for Research

Deputy Assistant Director Jesse Leary provided an overview of the Office of Research and answered questions from CAB members about this Bureau office. The Office of Research is currently made up of about 30 people, most of whom are economists. Research's portfolio consists of three major areas:

1. Bureau research, often in partnership with other Offices at the Bureau, resulting in Congressional reports, Bureau-initiated reports, and internal research to inform policy;
2. Self-directed research by researchers that determine topics within the range of issues relevant to the Bureau's mission. Researchers can then publish that work in academic journals under their own names;
3. Policy development and rulemaking, as well as a formal role in cost-benefit analysis.

4. Analytic support of supervision and enforcement.

The central topic for the Office of Research is examining how consumers make decisions about obtaining and using financial products and what role the required disclosures play in those decisions.

Office of Research: Comments and questions from the CAB

- CAB members discussed how to develop better, more effective disclosures, considering how long it might take consumers to digest the information contained in them. In particular, mortgage borrowers are confronted with an overwhelming amount of information at closing time. CAB Members suggested that the process ought to be divided into separate transactions or consumers should be sent a condensed version of the disclosures ahead of time. CAB Members also suggested that, to better understand consumer decision making, the Bureau should delve into lender marketing and training programs.

- CAB members posed questions about how the Office of Research is utilizing data, particularly consumer complaint, examination, and enforcement data. Members suggested that the Bureau is uniquely poised to examine this rich store of data for anomalies to structure its research questions and act on its findings. Some believe that research has been too focused on data without incorporating real time trends that could highlight and signal harmful consumer trends.

- Some CAB members expressed concern about whether the Bureau is examining how many consumers seek private redress and are turned away or how many consumers have been satisfied with the outcome of the complaint process, when dealing directly with companies' complaints and customer service processes. That data would be critical to the ongoing CFPB arbitration study and should be added as a data point on the survey or included in the narratives of the arbitration study.

Track 3: Office of Financial Empowerment

Cliff Rosenthal, assistant director, Office of Financial Empowerment

The Office of Financial Empowerment (OFE) is located in the Division of Consumer Education & Engagement. Its target population is low-income and other economically vulnerable individuals. The OFE's strategic approach consists of using intermediaries, collaborating with other federal agencies that work with target populations, and identifying the most promising products, services, and delivery channels.

The OFE is working on a number of major projects. One is a train-the-trainer initiative to equip personnel with knowledge and tools to provide financial education. The OFE will also be studying bundled financial products and/or services focused on building financial capability. Another project is working with the Volunteer Income Tax Assistance program.

Office of Financial Empowerment: Comments and questions from the CAB

CAB members raised the importance of identifying and studying other segments of OFE's target population, such as students, families, and the disabled.

Overview of recently issued mortgage rules and implementation plans

Kelly Cochran, assistant director of Regulations
Lisa Applegate, mortgage implementation lead
Peter Carroll, assistant director of Mortgage Markets

CFPB staff presented an overview of the Bureau's recently issued mortgage rules, which were published January 2013 and will go into effect January 2014. The mortgage rules address some of the problem issues that led to the financial crisis and clear the way for consumers to obtain mortgages from responsible lenders. The intent is to protect consumers while balancing access to credit needs. CFPB staff's presentation covered the following points:

1. The ability to repay (ATR) requirement will apply to all mortgages, defined as closed-end transactions secured by a dwelling. Lenders must make a reasonable, good-faith determination of a consumer's ability to repay a mortgage loan.
2. Qualified mortgages (QMs) are mortgages which offer additional protections for consumers and additional protections from liability for lenders.
3. The mortgage servicing rule, published by CFPB in January 2013, implements provisions of Dodd-Frank regarding transparency and consistency in mortgage servicing and addresses how creditors work with borrowers in trouble.
4. Dodd-Frank expanded the definition of high-cost mortgages to cover purchase money, loans and home equity lines of credit. For any high-cost mortgage loan, prepayment penalties are prohibited. Consumers must get financial counseling before taking out a high-cost mortgage. First-time homebuyers with negative amortization loans must also get counseling.

Regulatory implementation:

CFPB Mortgage implementation staff provided an overview of efforts to ensure industry implements these rules accurately, expeditiously, and evenly, and that financial entities will be ready to be examined under these rules at the appropriate dates. Themes covered include:

1. Increasing consumer awareness of the new protections is important.
2. CFPB will provide plain-language guides, videos, and speaking engagements, and will make these explanations accessible in different formats. The Bureau is actively responding to requests for information.
3. Staff will work with federal and state regulators, trade associations, and industry service providers such as vendors, consumer, community and fair lending groups.

Overview of recently issued mortgage rules and implementation plans: Comments and questions from the CAB

- CAB members asked about a private right of action for delinquent borrowers. Some key pieces, such as the 120-day requirement, are privately enforceable.
- CAB members asked about the kind of input still outstanding in connection to mortgage originator compensation. Under existing regulations, the points and fees cap is only counted when money goes directly from the consumer to the broker. The statute now covers retail

loan officers, brokers, and brokerages. It is unclear how often (or whether) payments passed from party to party should be counted.

- CAB members asked what if the outcome of financial counseling for high-cost mortgages is that the customer does not take the loan. This is a requirement under Dodd-Frank. The counselor will still get paid if the consumer decides against the loan.
- A CAB member asked why there was such a long period between the date a borrower becomes delinquent and the time foreclosure can begin? Staff responded that the rule gives consumers a defined time and incentive to apply for loan mitigation.
- A CAB member commented that many federal and state requirements overlap. How is CFPB educating the courts on these issues? Staff noted that the 120-day rule will preempt shorter state requirements, but where states are more protective, their rules will still be in effect. Reaching out to courts is a good idea.
- CAB members asked what about mortgage-like products such as property tax liens? These rules generally apply to closed-end products; some anti-evasion provisions are in HOEPA. CFPB is aware of the tax lien issue.

Update on CFPB research on overdrafts

Corey Stone, assistant director for Deposits, Collections and Credit Information Markets

Corey Stone, assistant director for Deposits, Collections and Credit Information Markets provided an overview of CFPB research on large bank overdraft practices. The Bureau published an RFI in February 2012 to understand and evaluate the potential consumer protection issues with regard to overdraft products. The Large Bank Overdraft Program Research Project is a study of nine large banks who were asked to share their current procedures related to overdrafts and what the effect of these policies was on the banks and on the customers.

The RFI requested:

1. What alerts and information on overdrafts are provided?
2. What lower cost alternatives are offered?
3. How have changes in required disclosures affected overdraft behavior?
4. How have institutions changed operating policies?
5. What are the economic revenues and costs of overdraft programs?

6. What are the long-term impacts of overdraft programs on heavy overdraft users, including their use of and access to bank accounts?

Some of the questions the study aims to address are:

1. How do overdraft fees contribute to negative outcomes such as repeated overdrafts and voluntary or involuntary account closure?
2. Do complex designs challenge consumers' ability to forecast the fees they can expect to pay?
3. Does posting order or funds availability matter?
4. How do bank processing methods affect incidence of use?
5. How does marketing of and differences in the opt-in process affect opt-in rates?

Update on CFPB research on overdrafts: Comments and questions from the CAB

- A CAB member asked why overdraft fees are considered fees and not loans. This comes from the history of the regulation.
- A CAB member asked whether it is appropriate to assume everyone needs a checking account. Some customers might be better off with alternatives to a checking account such as prepaid cards. Some people use a mix of formal banking for savings combined with a prepaid card for spending.CAB members commented that financial education often focuses on savings and paying down debt, but in fact, knowing how to find the right transaction account or right bank is important.
- CAB members commented that research should address why people opt in to overdrafts or not. Some institutions use incentives to encourage hard selling of opt-ins.
- A CAB member commented that the study would be more powerful if framed looking at consumer behavior than at institutions' products.
- A CAB member commented that there is no reason not to choose to link a savings account to checking in order to avoid overdrafts, so why do people not do so? Staff commented that the assumption in the field is that people selecting a bank account generally assume they will never overdraft, so they are unlikely to choose a bank based on fees, and there is no standard for disclosure of these fees.
- Is the Bureau studying NSF (non-sufficient funds) and its cost to the institution? Staff responded that the Bureau is also reviewing NSFs. CAB Members commented that if banks

were driven to allow fewer overdrafts and more NSFs, this would lead to more items being unpaid, which would itself have consequences for customers.

Day 1 of the meeting recessed at 5:59 p.m.

DAY TWO

CAB member training

Delicia Hand, CAB staff director
Margaret Plank, CFPB senior counsel

Delicia Hand and Margaret Plank provided an overview of CAB member responsibilities and provided guidance to CAB members around interaction with the general public. Themes covered included:

- **Representation:** Generally speaking, members of federal advisory committees fall into two categories: special government employees and representatives. All members of the CAB are representatives, not special government employees.
- **Confidentiality:** FOIA (the Freedom of Information Act) applies to CAB written records.
- **Press guidelines:** CAB members should not share information obtained in a CAB meeting with the press or public. This information may be predecisional or sensitive. All communication with the press should include a disclaimer that CAB members are not employees of the CFPB, and any opinion a member expresses is his or her own opinion and does not represent that of the Bureau.
- **Official correspondence:** Any correspondence received about CAB business is a Bureau record and should be forwarded to CFPB staff. Members may acknowledge receipt and express their personal opinions in response.
- **Interaction with Bureau staff:** CAB Members should not use their relationship with the CFPB to promise access to the Bureau, although they may help bring input to the CFPB. A good rule of thumb is to ask the CFPB contact if she or he is interested in meeting.

CAB member training: Comments and questions from the CAB

- Are notes taken by CAB members subject to FOIA? This depends on whether the notes are in CFPB's custody and control.
- CAB members suggested a few rules of thumb to keep in mind:
  - Members are asked to provide information and insights to the CFPB, not to speak on behalf of the CFPB.
  - Members can give their individual opinion on the relevant issues, but not discuss the work of the CAB or actions planned by the CFPB.
  - Not every question asked by a reporter needs to be answered.
  - The default should be confidentiality.
  - If there is any doubt about what can be said, send a quick email to the Bureau staff.

CAB structure & governance

Delicia Hand, Advisory CAB and Council Staff director

Staff Director Delicia Hand reviewed recent changes to the Advisory CAB governance documents. Among the changes made, the CAB charter now sets out guidelines for establishing working groups and committees. Additionally, the CAB bylaws have been amended to permit that the CAB may meet up to three times a year. The Chair called for a voice vote on these bylaw changes, and the motion was carried unanimously.

Arbitration study overview

Will Wade-Gery, senior counsel, RMR

In response to CAB members' questions about CFPB's work on arbitration clauses, a very brief overview of the topic was presented by Will Wade-Gery, senior counsel, Card and Payments Markets. The presentation outlined the scope of the Bureau's authority and inquiry on arbitration.

Section 1028 of the Dodd-Frank Act directs the CFPB to study the use of pre-dispute mandatory arbitration clauses in contracts related to consumer financial products. The Bureau has the authority to then adopt regulations consistent with its study. CFPB is now in the study phase.

A request for information on arbitration clauses was issued by the Bureau in mid-2012. Three types of information were requested:

- What is the prevalence and what are the types of mandatory arbitration clauses?
- How do arbitration and litigation compare as dispute resolution mechanisms?
- What are the impacts of arbitration clauses outside their role in specific disputes? What is their effect on claim incidence?

Project Catalyst

Ana Mahony, special advisor to the director
Will Wade-Gery, senior counsel, RMR

In this session, Ana Mahony, special advisor to the director, provided an overview of Project Catalyst. Project Catalyst is a Bureau initiative which seeks to support consumer-friendly innovation in the field of financial products.

Its objectives are to:

- Establish and maintain open and consistent communication with the innovator community, including businesses and nonprofits.
- Participate in innovative initiatives that inform the Bureau's policy work and test some assumptions being made in the market. CFPB should be on the emerging trends such as use of geolocation data, crowd funding, and collection of big data.
- Provide information and other resources that support the Bureau as a forward-looking organization.

Bureau staff also provided an overview of existing Project Catalyst initiatives. CFPB's trial disclosure program is one of these initiatives. The trial disclosure initiative is authorized by Section 1032(e) of Dodd-Frank and enables in-market testing of alternative disclosure models which can potentially improve on existing disclosure mandates. The staff asked the CAB to help the Bureau build its network within the innovator community, and make contacts with those who can teach the Bureau.

Project Catalyst: Comments and questions from the CAB

- CAB Members commented that much innovation occurs in larger institutions and nonprofits.
- A CAB member asked whether the Office of Research is working on testing methodologies to make sure that the test is scientifically validated and learnings maximized. Staff responded yes, and quantitative metrics will be used.
- A CAB member asked whether there is any thought of applying this approach in the financial products space? There is thinking in that direction.
- CAB members commented that the CFPB should be thinking about its toolkit of policy levers. Is Project Catalyst concerned with innovative public policy as well as private products? For example, some states have introduced legislation to create auto-IRAs for those who have no access to traditional retirement savings. Project Catalyst is more concerned with private products, while the Bureau's Intergovernmental Affairs Office tries to understand and interact with state and local policy developments.
- CAB members commented that since the CFPB is new, some other regulators are still promoting their own jurisdiction over consumer financial products. The Bureau is collaborating with other regulators to address issues.
- CAB members asked where Project Catalyst is along the spectrum of innovation. Project Catalyst is open to all different types of innovation.
- CAB members commented that maybe the Bureau should ensure that those who provide deceptive products are motivated to move away from hiding or marketing deceptive products via innovation.

Working lunch: Trends and themes discussion

A few CAB members were given an opportunity to present to the Bureau and each other on consumer finance trends observed in their communities and to help identify broader issues that cut across committees.

Small dollar loan trends in the South: Bill Bynum, Hope Enterprise Federal Credit Union & Hope Enterprise Corporation

Bill Bynum described the Hope Credit Union, a Mississippi-based institution which attempts to reach out to unbanked, under banked and low-income customers and the trends he has observed in Mississippi with respect to unbanked consumers. His presentation noted:

- Some larger banks have closed branches in the area, resulting in so-called “bank deserts” where banks are absent. This has had an impact on consumers particularly the choices of financial services for lending.
- Mississippi has the highest poverty level, the highest concentration of payday lenders, and the highest concentration of unbanked people. Arkansas, which banned payday lending in 2008, is still the most under banked state in the nation.
- So far, some Southern states lead on payday loan regulation. Some Southern states banned customers from taking out more than one payday loan at a time. However, reporting loan data is necessary to enforce this proviso. Smaller-dollar loan disclosure requirements might be a way to get the data needed for larger policy decisions.
- How can people access the credit they need without payday loans? Credit unions can serve this need, as long as they have the capital and motivation to reach out to un- or under banked people. Employers can also provide a platform for small-dollar loans to their employees.

Financial concerns for older Americans: Elizabeth Costle, AARP

Elizabeth Costle discussed the 50 and above demographic, a growing segment of the American population which has a broad range of financial concerns. Her presentation included:

- Middle-class security in retirement is endangered. Younger generations are going to be much less secure in retirement than previous generations because of rising health care costs, increasing average middle-class debt ratios, and the trend towards defined-contribution pension schemes.
- In today’s 50-plus population, 16% of mortgages are underwater.
- Reverse mortgages are a special area of concern for older Americans.
- Some borrowers have taken younger spouses off their titles in order to get a bigger payout.
- AARP plans to research what types of borrowers are suffering foreclosure.
- In its work on financial education, CFPB should reach out to parents and grandparents to ensure that student loans do not endanger the parents’ financial security.

- Elder financial exploitation, fraud, and diminished capacity issues are another big concern for older people.

Questions for the CFPB on this issue are:

- Is there a service or product that could be developed to protect senior citizens' assets from potential fraud by family members? Banks and credit unions may see fraud happening and be unable to stop it. Guardianship is now the only way to stop the fraud. Adult protective services agencies are overwhelmed and banks may face liability if they try to report such fraud.
- How burdensome has it been in California to make financial services institutions mandatory reporters when elder financial exploitation is suspected? Could this be extended nationally? Consciousness-raising about this risk and age-friendly banking ideas can help.

Financial concerns for servicemembers: William Nelson, University of North Georgia

Bill Nelson presented on servicemember issues, a population which includes over 22 million veterans and 3 million uniformed servicemembers. His presentation covered the following issues:

- Unemployment among veterans is a serious problem. It is estimated that about a third of returning Guard members will be unemployed.
- Multiple deployments to war zone and stop loss orders have become more common, which throws servicemembers' personal and financial lives into chaos.
- The military has a complex pay system, with at least 80 different kinds of pay, such as combat pay, base pay, housing allowance and so forth, with varying tax statuses, even loan officers may not understand it.
- Many junior enlisted servicemembers live paycheck to paycheck, and servicemember pay can be erratic, which makes dubious loans tempting. Deployed servicemembers often auto-pay bills, which means that any disruption in pay means risking overdraft fees.
- Many servicemembers are in their twenties, not well-educated or financially sophisticated. On-base financial counselors are available, but there is no requirement to use them. Financial institutions are allowed on base.

- A special concern for servicemembers is that delinquent debt can lead to a servicemember losing his security clearance and therefore his/her job.
- The military does not provide for all servicemembers' needs. Most do not live on base. Frequent moves are a financial strain, especially in a weak housing market.
- The CFPB should consider servicemembers' duty to their country, so we have a duty to make sure they are treated fairly in the marketplace.
- The Servicemembers Civil Relief Act (SCRA) sets forth conditions on how servicemembers can be treated in the financial products market. However, many lenders fail to understand the act and therefore violate it. Some servicemembers come home from being deployed and find their homes have been foreclosed upon and sold without their knowledge. Fines to financial institutions do not help servicemembers who have been hurt by such violations. CFPB does not enforce SCRA, but it can enforce the Military Lending Act along with other banking agencies.

Credit reporting & debt collection discussion

Kelly Cochran, assistant director for Regulations
Alice Hrdy, deputy, Office of Supervision Policy

Bureau staff reviewed ongoing work on credit reporting and debt collection issues.

Consumer reporting and debt collection companies provide critical infrastructure for the entire consumer credit system. Credit reporting companies influence whether and on what terms consumers receive credit and also affect their ability to rent housing, their insurance premiums, utility service deposits, and employment prospects. There are about 400 consumer reporting agencies (CRAs) in the country, including the big three and many specialty agencies. The big three credit reporting companies report on about 200 million customers. Consumers cannot vote with their feet in this market because consumer reporting is a business-to-business relationship, removing the market discipline present in other consumer financial product markets.

CFPB Regulatory authority: CFPB now has authority to implement provisions of FCRA and FDCPA.

Credit Reporting and Debt Collection: Comments and Questions from the CAB

- A CAB member asked why financial institutions don't care about the high rate of error on credit reports. The CFPB is focusing on data integrity, which affects both credit reporting and debt collection. Most credit report disputes are for trade lines that are with a collection agency.
- A CAB member asked whether the CFPB is exploring the formulas used to derive credit scores, which are hidden from consumers and vary between agencies. There may be a difference in scores sold to consumers versus those sold to financial institutions. This was the subject of one of the Bureau's first reports to Congress. Research will address what data is being furnished to agencies, and then how the data is used to determine a credit score.
- A CAB member asked what an example of a specialty credit reporting agency is. Check systems agencies used by banks when someone wants to open a checking account or agencies used by payday lenders are examples.
- CAB members asked how often employers use credit reports for employment checks? This is not known.
- CAB members asked whether the Bureau is looking at use of credit scoring to determine eligibility to purchase homeowner insurance or size of car insurance premiums. No, the focus of current research is on understanding the credit reporting system and studying basic accuracy and dispute resolution. State law largely determines what use is made of credit reports.
- CAB members asked about recent legislation on medical collection. Provisions of the Affordable Care Act mean that medical debt cannot go into collections for 120 days and cannot be reported for some time.
- A CAB member commented that there is a correlation between credit score and likelihood of default, but does credit scoring discriminate against low-income or minority consumers?
- CAB members raised concerns about thin credit files. Expatriates, immigrants, and those new to the workforce are too often assumed guilty until proven innocent.
- A CAB member commented that the CFPB should consider possible differentials in targeting of collection activities. CFPB examiners are directed to look for the possibility that collections are done on a prohibited basis.
- A CAB member commented that in the credit card secondary debt market, debt buyers often collect interest without knowing what the interest rate is, since that field is not

reported. CFPB could come up with a standard format for what information should be shared between buyers and sellers of debt.

- A CAB member asked whether a broker of consumer debt falls under the Fair Debt Collection Practices Act (FDCPA). Is a mortgage servicer a debt collector? The Sixth Circuit recently ruled that mortgage foreclosure essentially is debt collection.
- A CAB member asked to the extent a mortgage servicer is subject to FDCPA, what obligations do they have in terms of verifying the amount owed? Once someone goes into default, collections will be transferred to a default servicer who is clearly covered by FDCPA.
- A CAB member commented that debt buyers sometimes collect based on very limited and unreliable data. At the state, municipal, and court level, standards are being set for what is minimally required to collect a debt.
- CAB members suggested that mortgage servicing and credit reporting both process a large volume of data at low cost via automation, but when individual problems arise, automated processes don't work as well.
- A CAB member commented that the new opportunity to look at the whole system top to bottom makes it possible to fix systemic problems that cannot be addressed by private actions taken one by one.
- CAB members raised the issue that some customers are confused by domain names: freecreditreport.com is not truly free, while annualcreditreport.com is free.

Mobile payments policy discussion

Marla Blow, assistant director of Card Markets
Dan Quan, financial analyst

Assistant Director Marla Blow provided an overview of the Bureau's work on mobile payments and engaged the CAB in a discussion about what trends members are seeing in their communities. Mobile payments are still in the very early stages of its development and may be years away from becoming universal. However, it has tremendous growth potential; it is projected that global mobile payment volume will reach $945 billion by 2015.

A mobile payment system typically has three components:

- An electronic wallet which stores payment instruments, enables payment services, and may store coupons and store rewards points

- Mobile payment services that allow online or point of sale purchases and person-to-person transfers
- Mobile payment instruments that are electronic versions of plastic credit, debit and prepaid cards

The mobile payments market is very fragmented: NFC or near-field communications, cloud servers, direct carrier billing, and QR (quick response) codes are all used. Concerns over security are a top priority, and they are the top reason why consumers do not adopt mobile payments.

Mobile payments policy discussion: Comments and questions from the CAB

- CAB members commented that this may be an opportunity to allow underserved consumers to access the banking system.
- A CAB member asked whether consumers lose access to mobile payments if they miss a payment on phone service or lose a phone. It is not uncommon for low-income consumers to have smart phones, but many customers have prepaid plans, and their carriers and phone numbers change rapidly, which could also lead to inconsistent access.
- CAB members commented that there is a cultural attitude that smart phones are an irresponsible indulgence which those on public assistance should not have. In fact, many don't have land lines and a land line or non-smart phone may even be more expensive.
- CAB members commented that there is a distinction between mobile banking, which is well-regulated, and mobile payment, which is new.
- CAB members commented that research shows that consumers don't necessarily view paying with a phone as any more convenient as paying with a card. But, if people are offered a coupon at point of sale, mobile payments will be more popular.
- CAB members commented that in other countries, mobile payments have created transactional data that can be used to extend credit to consumers; this has not been done in the U.S.
- CAB members commented that the word "mobile" may be a red herring, since not all mobile players are mobile anymore. Some providers now issue plastic cards intended to replace traditional credit cards.
- A CAB member asked if it is clear to consumers which card they are using, which provider they are dealing with, and what fees or interest rates apply? Who answers the

phone when you have a problem? Who do you file a dispute with? What legal regime applies? What is FDIC-insured in this space?

- CAB members commented that some established companies are in this space, but some are not accustomed to a regulated business culture with a compliance department. There is a risk that one company's failure to adapt could drive out good companies.
- CAB members suggested that the CFPB might look at recent research done looking at which actions consumers want to perform on phones and which ones are more comfortably done on computers.
- CAB members commented that customers often have a number of prepaid cards which they use for different expenses, as a way of bucketing spending. They sometimes use pawn shops as a kind of safe to secure valuable possessions.
- CAB members commented that privacy concerns have risen in prominence as mobile payments providers attempt to leverage transaction data for their own purposes.
- CAB members commented that from a retail perspective, retailers have their own data which they won't give up for free.
- A CAB member asked if regulation of privacy could/will have a chilling effect on innovation.
- A CAB member asked whether merchants are using their access to accounts to circumvent people's shorthand understandings of how they control their accounts in order to sell them things they would never buy in other circumstances. The ultimate consumer harm comes from consumers losing the ability to give meaningful consent to use of their accounts.
- CAB members commented that making purchases painless may encourage consumers to buy more than they otherwise would.
- A CAB member commented that it's important to be aware of business models arising in other parts of the world. Major telecom carriers could choose to play an important role in this market.
- A CAB member commented that especially with SKU-level data, there is a possibility of bleeding into discriminatory lending. If a provider has access to transaction-level data, they may be able to guess a person's ethnicity or religion; for instance, when someone buys Goya or Manischewitz products.
- A CAB member commented that there is a potential network neutrality issue: who has access to the mobile device?

- A CAB member commented that there needs to be clarity about how dispute rights work for mobile payment products. If a mistaken charge is made, do I call the store I shopped at, the card provider, the mobile wallet provider, or the telecom company?
- A CAB member commented that a trial disclosure program which would try to convey to consumers how mobile payments work might be useful.
- CAB members asked who regulates peer-to-peer transactions within PayPal. This transaction counts as a remittance, so remittance laws apply.
- CAB members asked, what about receipts? Some companies, especially in Silicon Valley, see the requirement to deliver paper receipts as an antiquated barrier to innovation. Some companies email receipts, but they are still required to have the capacity to print paper ones.
- CAB members mentioned the new technology which allows micro-merchants to swipe credit cards through a dongle attached to a smart phone. There is a need to balance the risk of harm to consumers not given receipts with the benefit to small businesspersons of being able easily to take credit card payments.
- CAB members flagged that the issue is similar to e-statements: despite years of marketing e-statements, only a minority of consumers has taken them up.

Remittance policy discussion

Kelly Cochran, assistant director for Regulations
Dubis Correal, strategic partnerships and outreach coordinator

CFPB staff provided an overview of the remittance rule issued in 2012 and the Bureau's consumer education materials. The development of the CFPB remittance policy was mandated in the Dodd-Frank Act. Prior to Dodd-Frank, foreign remittance transfers were generally not covered by regulations. The rule does not apply to institutions that do not provide remittances in the normal course of business, defined as making less than 100 transfers per year consistently.

The proposed new rules call for:

- Basic disclosures to the consumer that outline exchange rate, taxes, delivery date, and fees.
- Consumers have cancellation rights up to 30 minutes after payment. There are special rules for preauthorized transfers.

- Error resolution: transfer providers have obligations to investigate a problem. Consumers have a right to resend without cost or get a refund within 180 days, if there is an error.
- Standards for agent liability have been set.

In response to comments, the Bureau has recently made a proposal to amend the rule. This means the effective date for the rule is on hold. The Bureau is now in the process of reviewing comments about the rule before it is implemented.

The CFPB plans to conduct a consumer education effort so that those who use remittances are aware of their new protections.

Remittance policy discussion: questions and comments from the CAB

- CAB members asked whether the rule applies to ACH. Yes, and ACH has been a growing area?
- CAB members asked what are the language requirements for disclosures. The disclosure should be made in the language in which the customer has been served, and should always be available in English.
- CAB members also asked about the error rate for remittances. It's very hard to get information about this, particularly since past studies concerned a narrower set of transactions.
- CAB members asked whether it is common to use names in remittance transfers, even where there is a language difference. This varies from system to system; generally, the routing numbers and account numbers are most important.
- CAB members commented that the requirement to provide exact change in another currency and the need to provide new receipts may be burdensome on very small businesses. Staff replied that these operational difficulties were taken into account when setting the implementation period of one year.
- CAB members asked whether the CFPB will conduct research on exchange rate issues. An initial study on remittance issues was published in July 2011. The current focus is on finishing this rulemaking, and a number of studies are ongoing to study the impact of new rules.

- CAB members suggested adding Polish-language education materials. The Illinois Coalition for Immigrant and Refugee Rights might be a valuable partner. Working with community colleges, which do a great job teaching ESL, could also help.
- Will the launch of the education campaign be national? Yes, but a strategic approach to smaller markets is planned.
- CAB members discussed the benefits of writing original material versus translation.
- CAB member asked whether the CFPB could require financial institutions to carry consumer education materials. There are legal constraints which would probably prevent this.
- CAB members suggested that the CFPB develop a common creative platform in communicating this message.

Adjournment

The Chair thanked CAB members and Bureau staff for their hard work, and the meeting was adjourned at 5:02 p.m.