OCTOBER 2013

Community Bank Advisory Council meeting summary

OCTOBER 9, 2013

Consumer Financial Protection Bureau

Meeting of the Community Bank Advisory Council

The Community Bank Advisory Council (CBAC) of the Consumer Financial Protection Bureau (CFPB) met in person at 9:30 a.m. on October 9, 2013. The meeting was held at CFPB headquarters, 1700 G Street NW, Washington, DC 20552.

Council members present:

Robin Loftus, chair
Timothy Zimmerman, vice chair
Guillermo Diaz-Rousselot
Tyrone Fenderson
Donald Giles
Jack Hartings
Melany Kniffen
Jo Ann Merfeld
Kim Saunders
Farid Tan
Glen Thurman
Huey Townsend
Larry Wilson

CFPB staff present:

CFPB Director, Richard Cordray
Julian Alcazar
Lisa Applegate
Maria Blow
Darian Dorsey
Sarita Frattaroli
Delicia Hand
Zixta Martinez
Jane Peterson
Scott Pluta
Eric Reusch
Kathleen Ryan
Dan Smith
Gary Stein

Welcome and meeting overview

Delicia Hand, CAB staff director
Robin Loftus, CBAC chair

The CBAC meeting was called to order at 9:37 a.m. EST by Staff Director, Delicia Hand who, along with CBAC Chairwoman, Robin Loftus, reviewed the day's agenda. Meeting goals and topics that were discussed included: Title XIV Mortgage Rule implementation, Payday and Automated Clearing House (ACH) transactions, Auto lending, Consumer Complaints, and the CARD Act study.

Year-in-Review discussion

Delicia Hand, CAB staff director
Robin Loftus, CBAC chair

CBAC Chair Loftus called the meeting back to order to discuss the CBAC's first year and to review key lessons, highlights and improvements that could be made. The year in review took the form of broad questions from staff with specific feedback from the council.

CBAC comments and questions

- CBAC members asked if their comments were being heard and whether they have had an impact on CFPB regulations. Bureau staff responded that Council comments have been heard and their interactions with CFPB staff have informed the Bureau's regulatory outlook.
- A CBAC member commented that the recent overdraft work and Fair Lending remain a major concern along with the high cost of compliance. The member continued to say that it is easier to deny all of the marginal customers that come in for a loan than to approve some. The line between discrimination and discretion has become uncomfortably muddled.
- CBAC members commended the Bureau on the quality of the face-to-face meetings. The involvement of the director and senior CFPB management at each meeting has been very effective.
- CBAC members remarked that if everything were pre-determined by regulations, banks would be hard pressed to custom design lending products for specific customers.

- CFPB staff asked how communication to the group could be improved. CBAC members shared that they felt well informed about what is happening in the Bureau through email, conference calls, and meetings.

Title XIV Mortgage Rules implementation

Lisa Applegate, mortgage implementation lead, Research, Markets, and Regulations

Kathleen Ryan, deputy assistant director, Research, Markets, and Regulations

Mortgage Implementation Lead, Lisa Applegate and Deputy Assistant Director, Kathleen Ryan provided an overview of the mortgage rules implementation process.

CBAC comments and questions

- CBAC members inquired about how strict exams would be during the first year of the mortgage rules once in effect. CFPB staff responded that the Bureau would not have a "gotcha" approach and have worked closely with other regulators to ensure that good faith efforts towards compliance were recognized.
- A CBAC member expressed concern that there needs to be a balance on the compliance side so that lending can continue. The concern expressed was that community banks were concerned about new exposure to risk from the new regulations because loans that community banks would make in the past would not be made in the future.
- CBAC recommended clarifying the small lender QM to say that secondary market loans should not count toward the 500 loan requirement for the small lender exemption. CBAC members continued by explaining that one possibility is for the agency to say that only the loans kept in portfolio should count against the 500 first lien limit.
- CBAC members said that they are hearing that some of their colleagues will be charging considerably more for non-qualifying mortgages because of the risk.
- A CBAC member urged the CFPB to place information about the CFPB mortgage regulations up on the websites of other regulatory agencies.
- A CBAC member expressed concerns about their internal property "appraisal" documents being used by external entities.

Payday and Automated Clearing House (ACH)

Sarita Frattaroli, counsel, Credit Information Collections and Deposits Markets
Gary Stein, deposits markets program manager, Credit Information Collections and Deposits Markets

Deposits Markets Program Manager, Gary Stein and Counsel, Sarita Frattaroli provided an overview of the Bureau's interest in payments processing. Specifically, staff wanted to deepen their understanding of the payments processing system through a discussion about how small financial institutions act as consumer banks (RDFIs) and merchant banks (ODFIs). The conversation focused on how Community Banks handle consumer de-authorizations or stop payments, and how merchants and third party payment processors gain access to the payments system. After providing this framing, CBAC members provided the following:

CBAC comments and questions

- A CBAC member said that the most prevalent reason for overdrafts on ACH is cash advance. The stop payment system otherwise does a good job at effectively resolving these situations.
- CBAC members mentioned that insurance payments through ACH have been common and difficult for consumers to stop. Bureau staff pointed out that the ODFI is liable for ensuring that the payments that they enable are authorized.
- CBAC members said that if they have a customer that is originating ACH, they view that as credit risk.
- A CBAC member stated that community banks can get fined and have their CAMELS rating downgraded while larger banks build fines in as part of the cost of doing business.
- CBAC members recommended that staff speak to bank staff that is actually looking at the ACH file so that they can ask more detailed questions.

Auto lending and compliance with the Equal Credit Opportunity Act

Jane Peterson, counsel, Fair Lending and Equal Opportunity

Eric Reusch, program manager, auto and student finance, Installment and Liquidity Lending Markets

Program Manager, Eric Reusch and Counsel, Jane Peterson provided an overview of guidance on issued by the Bureau in March 2013 on indirect auto lending and compliance with the Equal Credit Opportunity Act.

CBAC comments and questions

- CBAC members shared that there are many community banks that do indirect auto lending. Bureau staff shared that the supervisory experience of the CFPB confirms that some indirect auto lenders have policies that allow auto dealers to mark up lender-established buy rates and that compensate dealers for those markups in the form of reserve (collectively, "markup and compensation policies"). Because of the incentives these policies create, and the discretion they permit, there is a significant risk that they will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases. Congress provided authority in the Dodd Frank Act for the Bureau to regulate indirect auto lending. The Federal Trade Commission has authority over auto dealers.
- CBAC members mentioned that markups on the products (autos) seem to be plaguing buyers more than buy rates.
- Many CBAC members suggested that auto lending is a market where the credit unions have a big advantage because they do not have to pay taxes. Bureau staff suggested that a flat rate system or a tiered system may help address issues surrounding discretionary buy rates.

Managing consumer complaints

Darian Dorsey, chief of staff for consumer response, Consumer Response
Scott Pluta, assistant director for consumer response, Consumer Response

Assistant Director for Consumer Response Scott Pluta and Chief of Staff for Consumer Response Darian Dorsey gave an overview of CFPB's management of consumer complaints. A "complaint" is an expression of dissatisfaction with a consumer financial product or service over which CFPB has jurisdiction. CFPB is the first agency to actually publish complaint data. There are over 2,000 companies currently on the complaint portal.

CFPB gets complaints across a wide spectrum. Right now CFPB is handling complaints on banks over $10 billion and non-banks. Complaints on banks under $10 billion are sent to the prudential regulators. The CFPB provides a structured setting in which the CFPB sends consumers' complaints to the appropriate company and works to get a response from them. Information about company responses, the timeliness of responses, and consumers' dispute of responses is published in the CFPB's public Consumer Complaint Database.

Half of the complaints are mortgage-related. Debt collection and credit reporting follow on the heels of mortgage complaints. The number one issue in mortgages is inability to pay, within that is some form of foreclosure/denial of modification. Amongst complaints received, there is a large amount of frustration with mortgage servicers.

CARD Act study overview

Richard Cordray, CFPB Director
Marla Blow, assistant director for card & payment markets, Card Markets

Director, Cordray and Assistant Director for Card & Payment, Markets Marla Blow provided an overview of the CARD Act study. Congress required the CFPB to do a study on the state of the credit card market and the effect of the CARD Act. The CARD Act does not apply to business credit cards. Between over limit and late fees, consumers saved about $4 billion per year because of the CARD Act. Fees cannot be greater than 25% of the credit line.

CFPB has had a number of enforcement actions associated with add-on products like credit protection and identity theft. Many companies are deciding not to offer certain products because they cannot offer them in straightforward, accurate ways and have consumers want to buy them. Fee harvester cards tend to be cards offered to subprime consumers. The CARD Act restricted these fees. Right now under the law, banks can't charge fees before an account is opened.

On the issue of disclosure, CFPB is going to look at credit card products that are hard for consumers to figure out, and determine whether more disclosure will resolve the confusion. Staff indicated that on the multiple disclosure fronts the CFPB should be moving toward promoting a simple two-page form with key points. Such a form could contain information about where to get additional information online. Credit card agreements have already become more readable since the passage of the Act. CFPB wants to engage the industry to implement a disclosure for online credit card payment of how long it will take a customer to pay off his bill by paying the minimum amount each month.

CBAC comments and questions

- CBAC members asked about what progress the agency has been making with credit reporting. Bureau staff said they now have the authority to go in and examine the credit reporting agencies. The Bureau is currently supervising three major agencies as well as with specialty agencies. Staff recognizes the huge challenges that the credit rating agencies have in getting things right - part of getting things right is working through the complaint process.
- A CBAC member inquired about the fines that the Bureau collects in enforcement actions. CFPB staff explained that the fines that the agency collects in enforcement actions go into a civil penalty fund which provides compensation for victims and supports financial literacy, and consumer education. The agency, for example, will seek proposals to engage in financial coaching for active duty service members who are separating from the military.
- A CBAC member asked what the Bureau feels the impact will be with the new QM rule. The agency will be monitoring the impact of rising interest rates on the mortgage market and the impact that those rising rates will have on its rules.

Adjournment

CBAC members provided feedback on the format and content of the current meeting, and the meeting adjourned at 4: 53 p.m. EST.