

FEBRUARY 2014

# Consumer Advisory Board meeting summary

FEBRUARY 26-27, 2014

## Fifth meeting of the Consumer Advisory Board

The Consumer Advisory Board (CAB) of the Consumer Financial Protection Bureau (CFPB) convened for its fifth meeting at 8:30 a.m. on February 26, 2014, and at 12:30 p.m. on February 27, 2014 at the headquarters of the Office of the Comptroller of the Currency, located at 400 Seventh Street, Southwest, Washington, D.C.

### CAB members present

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

### Present from the CFPB

CFPB Director, Richard Cordray  
CFPB Deputy Director, Steve Antonakes  
Julian Alcazar  
Darian Dorsey  
Ren Essene  
Patrice Ficklin  
Eric Goldberg  
Delicia Hand  
Jonah Kaplan  
Joan Kayagil  
Timothy Lambert  
Zixta Martinez  
Kristin McPartland  
Martin Michalosky  
Patrick Orr  
Thomas Oscherwitz  
Thomas Pahl  
Margaret Plank  
Eric Reush  
Stephen Shin  
David Silberman  
Corey Stone  
Will Wade-Gery

DAY ONE, 02/26/2014

Welcome and meeting overview

**Richard Cordray, CFPB director**

**Delicia Hand, CAB staff director**

**Jose Quiñonez, CAB chair**

### **Welcome and meeting overview**

Chair Quiñonez called the meeting to order at 8:50 a.m. He thanked those assembled for their presence at the fifth meeting of the Consumer Advisory Board (CAB). He reviewed the agenda for open and closed portions of the two-day meeting.

Staff director Delicia Hand reviewed the contents of the CAB members' meeting binders, including updated governance documents and items requiring CAB members' signatures, such as financial disclosures and non-disclosure agreements.

Director Cordray also welcomed the CAB and expressed his appreciation for the CAB's work. He provided an update on recent Bureau work; in particular he provided an overview of the Bureau's evolving work in supervision, enforcement, regulation, engagement, and education. Specifically, he mentioned recently proposed Truth in Lending Act and the Real Estate Settlement Procedures Act (TILA-RESPA) integrated mortgage disclosures which would become effective in summer 2015; he referenced that this year the Bureau would continue its work on improvements to the Home Mortgage Disclosure Act (HMDA) database interface and rulemaking required under Dodd Frank. He also highlighted the Bureau's work in trying to support financial education in schools and faith communities, and strengthen relationships and partnerships with sister regulatory agencies and other key organizations.

### **FOIA Training and Ethics recap**

**Martin Michalosky, manager, Freedom of Information Act (FOIA)**

**Margaret Plank, senior counsel, General Law and Ethics**

CFPB staff provided a set of information and expectations regarding the Freedom of Information Act (FOIA) and reviewed federal rules of ethics. CAB members reviewed and signed ethics forms. Staff members also explained that work products of CAB members and their

communication with the Bureau in that role constitute government records which may be subject to FOIA.

## HMDA Rulemaking discussion

**Ren Essene, mortgage data assets team lead, Mortgage Markets**

**Joan Kayagil, senior counsel, Regulations**

CFPB staff provided an update on the HMDA rulemaking and data tool. Staff members explained that the feedback received from a recent small business review (SBREFA) panel will help inform the regulations. The CFPB recognizes the need to facilitate development among regulated entities in order to achieve higher levels of sophistication, which will drive down compliance costs. CFPB staff also noted that the Bureau's primary goal is to improve public access. The addition of data points will help assess underwriting and pricing practices, which will help fill in knowledge gaps pertaining to the mortgage industry.

## CAB comment and questions

- CAB members asked how the CFPB will handle the source of denial data elements. CFPB staff noted that the Bureau will develop methods over the course of the rulemaking process.
- CAB members voiced support for the HMDA data portal; however, they suggested that some data elements (such as escrow and property tax lending) are difficult to incorporate at present. CAB members inquired about the data availability to calculate yield spread premiums. CFPB staff noted that the answer would be a powerful indication whether mortgages are being fairly priced; however, such calculations are not presently achievable with the HMDA dataset.
- A CAB member encouraged staff to take a long-term approach to regulation. CAB members reinforced the importance of understanding denial rates which requires data on applicants who do not become borrowers. CFPB staff responded that regulators must be careful not to crowd out good lending practices.
- A CAB member voiced specific interest in the information pertaining to reverse mortgages, especially in light of HUD's upcoming regulations in this area.

Lunch and Learn; Trends and Themes panel; Managing consumer credit

**Jo Ann Barefoot, CAB member**

**Steve Carlson, CAB member**

**Patricia Hasson, CAB member**

**Jonathan Zinman, CAB member**

CAB members Jo Ann Barefoot, Steve Carlson, Patricia Hasson and Jonathan Zinman participated in a panel discussion during which they shared their expertise on consumers experience and struggles with managing credit. Jo Ann Barefoot provided an industry perspective in a new regulatory environment; Steve Carlson discussed information and trends about innovations in online lending and consumer credit offerings; Patricia Hasson provided on the ground perspectives, specifically consumer struggles with managing credit; Jonathan Zinman led an inquiry-based discussion about whether there is too little or too much credit.

## CAB Committee meetings

The CAB chair adjourned the meeting at 9:46 a.m. so that members could converse in committee breakout sessions. Summaries of these discussions may be found in this document. The plenary session resumed at 2:20 p.m.

## Mortgages Committee

**Richard Cordray, CFPB director**

**Gary Acosta, chair, Mortgages Committee**

**Patrice Ficklin, assistant director, Office of Fair Lending and Equal Opportunity**

**Timothy Lambert, senior counsel, Office of Fair Lending and Equal Opportunity**

Chair Acosta called the meeting to order at 9:56 a.m. He welcomed anecdotal feedback from the Mortgages Committee on the implementation of the new mortgage rules. The committee acknowledged that it can help staff by identifying unintended consequences and gaps in the new rules.

## CAB comments and questions

- A committee member said some servicers believe they cannot perform loan modifications because doing so will violate the Qualifying Mortgage (QM) rules. QM rules are now driving consumers to “bump up against” other sets of regulatory parameters.
- A committee member stated re-defaults following loan modification are down dramatically, raising the question whether applying QM rules will be necessary. A committee member responded that most re-defaults come at the time of the interest-rate modification.
- Committee members voiced the concern of many attorneys about regulatory uncertainty. A committee member noted that, this is a fair-lending issue which leads to multiple disparate issues.
- Committee members noted that refinance volumes are down. New data on debt-to-income ratios (DTIs) will provide valuable insight into the mortgage market. A committee member said servicers strategically decide whether to engage in foreclosure or REO sales.
- Committee members questioned whether CFPB has jurisdiction over REO sales. The member also suggested that those who work with minority communities are especially interested in such groups’ creditability.
- Committee members asked how CFPB handles QM-only and non-QM-only lending. CFPB staff said the agency is looking at the issue, and is very interested in mortgage and fair-lending practices. The new HMDA database would include a QM flag to allow more granular sifting of data. Additionally, staff observed that there is broad agreement among prudential regulators that fair lending rules will allow the CFPB to examine fair lending practices.
- A committee member inquired about the regulatory impact on QM-only issuers who begin to move into non-QM-only lending. CFPB staff noted that robust non-QM lending is looked on favorably in the community.

Chair Acosta said the committee would discuss kickbacks at a future meeting, which will become a bigger issue over time. The meeting adjourned at 11:10 a.m.

## Card, Payment and Deposit Committee

**Eric Goldberg, senior counsel, Regulations**

**Patrick Orr, policy analyst, Consumer Advisory Board**

**Dory Rand, chair, Card, Payment and Deposit Committee Breakout**

**Stephen Shin, managing counsel, Regulations**  
**Will Wade-Gery, senior counsel, Card Markets**

Chair Rand called the meeting to order at 9:54 a.m. The committee discussion focused on responsibilities and liabilities involved in third-party payment processing. CFPB staff was present at the committee meeting and the committee sought comment from staff for their views on this issue.

CAB staff said that the Bureau is working to understand the landscape and how consumers are affected. Bureau staff has met with representatives of third party payment processors to understand different issues such as virtual wallet prepaid cards and merchant of record issues, and to generally understand operations in this sector. There may be customer confusion, and the Bureau hopes to understand that better.

### CAB comments and questions

- Committee members asked how these issues might affect the upcoming release of rules pertaining to prepaid cards. CFPB staff responded that there are essentially two kinds of products at issue: traditional prepaid cards and virtual wallets.
- A committee member said that the most important issue is identification of the proper merchant of record. For example, dispute rates are higher when Amex must involve PayPal versus when Amex can resolve the claim on their own. CFPB staff noted that it is difficult to track funds all the way from a customer to a merchant.
- A committee member stated that more entities are standing in as a merchant of record; the implications of this practice for consumers are not clear. Committee members said appropriate disclosures may assist in disclosing these issues.
- Committee members said extending the protections of more secure transaction types to less secure types may mitigate the problem. CFPB staff recommended that committee members look at the public Consumer Complaint Database (located on [consumerfinance.gov](http://consumerfinance.gov)) to get a sense of the problems customers experience.
- CFPB staff sought feedback from the committee on a number of questions including what products should be included in the rule. Committee members said mobile payments may become more common in the U.S.

- A committee member noted that prepaid cards were initially marketed as alternative checking accounts for individuals who may not have access to traditional checking accounts.
- Committee members stated prepaid cards represent one of the best hopes for many people to expand their access to financial institutions. A committee member suggested that consumers should be informed about features of their prepaid cards.
- Committee members stated that prepaid cards should be FDIC-insured, subject to FDIC Reg. E requirements, and include disclosed fee tables. Committee members inquired whether the regulations would go in this direction. Committee members said some banks find that former prepaid users occasionally run into overdraft issues once they move to a traditional checking account.
- Committee members highlighted prepaid cards as a low-cost entry mechanism into the banking industry.
- A committee member suggested regulation cover two kinds of prepaid cards: those with and without overdraft protection. The committee disagreed on the usefulness of a CFPB database on prepaid card offerings.
- A committee member inquired about CFPB action following recent card payment and data security issues at Target. CFPB staff responded that the Bureau is examining the range of products available to consumers and their varying types and levels of protection.
- Committee members asked whether CFPB has jurisdiction over the disclosures companies need to make to consumers in the wake of data breaches. CFPB staff responded that the Bureau jurisdiction is limited in these cases.

The committee tabled discussions on the CARD Act study for a later meeting. The meeting adjourned at 11:06 a.m.

## Consumer Lending Committee

**Prentiss Cox, chair, Consumer Lending Committee**

**Eric Reusch, program manager, Auto and Student Finance, Installment and Liquidity Lending Markets**

**Corey Stone, assistant director, Credit Information Collections and Deposit Markets**



Chair Cox called the meeting to order at 9:51 a.m. CFPB staff made note of a handful of recent market developments in the payday loans market. Staff members summarized the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” on deposit advances as well as the reactions of major banks to the guidance.

Staff members described CFPB’s interest in monitoring the impact of state level enforcement actions on the payday loan market.

CFPB staff discussed the research the Bureau is conducting on the drivers of the payday loan market. Research topics included the various populations of the online marketplace and the demographics of online borrowers. Based on the Center for Financial Services Innovation findings (CFSI) findings, staff members identified four types of small dollar borrowers: borrowers with emergency expenses, those with timing problems, those who borrow at a high rate to make large item purchases, and those who suffer from chronic shortfalls between income and expenses.

## CAB comments and questions

- Committee members described the payday loan market as a “hot space” and suggested there is a large push from big data and underwriting within it.
- Committee members said it would be interesting to look into the reasons that individuals obtain loans and how one defines a “successful borrower.”
- A committee member asked how one frames the information from the report, and how it relates to CFPB’s authority as an agency. CFPB staff said student loans have been a very active space within the last two years and affect 45 million American households. These numbers increase every year and may threaten a generation struggling under other financial burdens. Last year, the CFPB proposed a new servicing rule to supervise larger participants in the non-bank student lending space.
- CFPB staff noted that the student debt area will be a priority for the Bureau going into this year.

Chair Cox confirmed the committee will hold monthly 90-minute meetings. Half of the meeting will feature a presentation, while the committee will use the other half to reach consensus

among members. The meeting adjourned at 11:06 a.m.

## Policy discussion – approach to regulation

**Steve Antonakes, CFPB deputy director**

**David Silberman – associate director, Research, Markets, and Regulations**

CFPB staff discussed how the Bureau can best deploy its tools to achieve its vision of a market in which consumers “can see prices and risks up front and easily make product comparisons.”

Bureau staff solicited the views of CAB members about whether disclosures achieve the intended effect and what the range of indicators and information the Bureau should consider when determining whether to move from efforts to increase transparency toward substantive regulation. Lastly, CFPB staff asked what should the Bureau’s goals be with respect to consumers’ knowledge and understanding of the products they consider purchasing.

## CAB comments and questions

- A CAB member said regulations should be promulgated in accordance with an iterative, data-driven methodology. CFPB should be cognizant of the emotional conditions under which consumers make decisions. Certain portions of the population experience heightened reward-sensitivity and may be more vulnerable to bad decision making.
- CFPB staff suggested that it may be helpful to think of disclosures in terms of notifications, that is, timely, targeted information to consumers, and asked what disclosures can do in this particular context. Building pauses into disclosures and transactions would increase mindfulness and result in consumers making better choices.
- CAB members differed as to the definitions of unfair, deceptive or abusive business practices.

## First day adjourn

Chair Quiñonez adjourned the closed-session meeting at 5:00 p.m.

Second Day, 02/27/2014

## CFPB Consumer Advisory Board public meeting

**Richard Cordray, CFPB director**

**Meredith Fuchs, general counsel**

**Delicia Hand, CAB staff director**

**Zixta Q. Martinez, associate director, External Affairs**

**Jose Quiñonez, CAB chair**

Zixta Martinez, associate director of External Affairs, welcomed audience members to the CAB public meeting and introduced CAB members and CFPB staff. During the public meeting Director Cordray addressed the CAB, panelists, and members of the public. Director Cordray provided remarks about the credit reporting industry and emphasized the importance of fair and accurate credit reporting. Director Cordray also discussed the CFPB's work to ensure large credit reporting companies and their largest furnishers are in compliance with consumer financial protection laws. Following Director Cordray's remarks, CAB chair Jose Quinonez and Meredith Fuchs, CFPB general counsel, led a panel discussion about credit reporting and the consumer experience. A live stream video of the session is available on [consumerfinance.gov](http://consumerfinance.gov).

## Working Lunch: Public Session Debrief and Continued Conversation on Trends in Consumer Reporting

**Darian Dorsey, chief of staff, Consumer Response**

**Jonah Kaplan, program manager of consumer reporting, Consumer Response**

**Thomas Oscherwitz, program manager of consumer reporting, Consumer Response**

After the public session, Chair Quiñonez reconvened the CAB in a Working Lunch at 12:26 p.m. At this working lunch the CAB debriefed on the public session and also continued some of the public session discussion by hearing from CFPB staff about trends in consumer reporting. During this session, the US Comptroller of the Currency, Tom Curry, came and greeted the CAB and the Bureau. In his greeting remarks, Comptroller Curry emphasized that each federal

financial regulatory agency was birthed in some historical moment and that the OCC and CFPB have developed a good collegial relationship and this kind of collaboration will help to protect public interests.

## CAB comments and questions

- A CAB member voiced surprise at how computerized the consumer credit reporting system is, adding that such a system is theoretically easier to fix than a human one. CFPB staff noted that credit reporting is among the top category of consumer complaints handled by the CFPB, constituting 11% of all complaints **handled** since the inception of CFPB.
- A CAB member suggested that the CFPB should track both positive and negative outcomes of consumer complaints. A large portion of consumer complaints pertains to the improper use of the credit report or score. A CAB member stated that the consumer reporting data in its current form may not be of sufficient granularity to provide diagnostic value.

## CAB Committee reports

### Mortgages Committee **Gary Acosta, chair, Mortgages Committee**

Gary Acosta provided the Mortgages Committee's report. Since the prior CAB meeting, the committee has focused on bringing forth early feedback on the Title XIV mortgages rules which became effective in January 2014. Trends noted by the committee include:

1. At least one major servicer is using QM as an excuse for not doing loan modifications. Fair lending among diverse communities remains an issue.
2. There may be a regulatory loophole that has the effect of exempting lenders who only engage in QM loan origination from fair-lending scrutiny.
3. A closed loop between builders, real estate agents and loan originators may impede consumers' ability to enter the marketplace.
4. MSAs allow lenders to pay potential sources of business to promote the lender's business, camouflaging kickbacks. The committee suggested that the CFPB should guide the industry on the proper use of MSAs.

## Consumer Lending Committee

### **Prentiss Cox, chair, Consumer Lending Committee**

Prentiss Cox provided the Consumer Lending Committee's report. The committee decided to hold a monthly 90-minute teleconference to discuss payday and student lending, the committee's two priorities for the year. CFPB staff briefed the committee on these issues.

Highlights of the briefing include:

- New regulations from FDIC and OCC on marketing of payday lending services have driven banks out of this market.
- Enforcement actions in some states have helped to contain payday internet lending within regulatory parameters.
- The new focus among regulators is to examine loan sequences instead of individual borrowers.
- The totality of the student lending market affects 45 million people in the U.S. About 35 companies handle student debt servicing, though four of these companies constitute 93% of the student loan servicing market. Federal student loans provide a number of protections that private student loans do not.

## Card, Payment and Deposit Markets Committee

### **Dory Rand chair, Card, Payment and Deposit Markets committee**

Dory Rand provided the Card, Payment and Deposit Markets Committee's report. Recent committee discussions have focused on whether there may be a regulatory gap pertaining to third party payment processors. The committee also discussed prepaid cards approaches to rulemaking which the Bureau staff noted is on track to be released sometime in the early summer. The group disagreed about allowances for overdraft on prepaid cards. The committee suggested CFPB compile a database of prepaid card agreements and protections. The committee also discussed card security and fraud-protection measures in magnetic strip cards, as well as newer systems using chips, PINs and/or signatures.

## Discussion: Debt Collection Advance Notice of Proposed Rulemaking

### **Kristin McPartland, counsel, Regulations**

### **Thomas Pahl, managing regulatory counsel, Regulations**

### **Corey Stone, assistant director, Deposits, Cash, Collections and Reporting markets**

CFPB staff provided CAB with an update of what has happened with respect to the debt-collection Advanced Notice of Proposed Rulemaking (ANPR) since its release in November 2013. Staff also sought CAB's input on questions raised in the ANPR. The ANPR was designed to be very broad in order to collect a wide range of opinions on the regulation. The CFPB has met with numerous organizations to obtain their feedback in the rulemaking. Uniform standards in the industry could be helpful, although significant disagreement persists about what those standards should be. The CFPB expects to receive over 5,000 comments by the close of the comment period.

## CAB comments and questions

- A CAB member suggested conducting a consumer survey to learn more about consumers' experiences.
- CAB members recommended that the CFPB cast "a broad geographic net" to obtain the views of different demographic groups. Debt litigation is of particular interest, especially

with respect to process servers. CFPB staff responded that the Bureau is performing qualitative research to determine whether loan validation notices contain comprehensible, pertinent information.

- The CAB members generally agree that there should be a limit on the number of times that debt can be bought and sold.

### **Adjournment**

Chair Quiñonez adjourned the fifth meeting of the CFPB Consumer Advisory Board on February 27, 2014 at 4:30 p.m.