MARCH 2014

Community Bank Advisory Council meeting summary

MARCH 26, 2014

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 8:30 a.m. on March 26, 2014. The meeting was held at 1625 I Street NW, Washington, DC 20037.

Council members present:

Timothy K. Zimmerman, chair
Tyrone Fenderson Jr., vice chair
Guillermo Diaz-Rousselot
Donald C. Giles
Jack A. 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
Kelvin Chen
Kelly Cochran
Joseph Devlin
Andrea Edmunds
Eric Goldberg
Delicia Hand
Gail Hillebrand
Joan Kayagil
Tom Kearny
Jeff Langer
Noerena Limon
Zixta Martinez
Patrick Orr
Thomas Pahl
Patrick Pangan
Eric Reusch
Nora Rigby
Kathleen Ryan
Will Wade-Gery
Brian Webster

CFPB Ombudsman staff present:

Wendy Kamenshine

March 26, 2014

Welcome and meeting overview

Delicia Hand, CAB staff director

Timothy Zimmerman, CBAC chair

Chair Timothy Zimmerman called the CBAC meeting to order on March 26, 2014 at 8:30 a.m. EST. The chair welcomed the members and reviewed the agenda for the day. CFPB staff encouraged members rotating off of CBAC this year to continue their engagement with the Bureau.

Overview of the CFPB ombudsman's office

Wendy Kamenshine, Ombudsman,CFPB Ombudsman's Office

Ombudsman staff discussed the role of the Ombudsman's Office at the Bureau. The Ombudsman's Office was anticipated in the Dodd-Frank Act and serves as a third-party neutral advocate for a fair process between the public and the CFPB. Ombudsman staff explained the three basic ombudsman tenets:

1. Independence—The CFPB's Ombudsman's Office is not part of the CFPB business lines and is not part of the Director's Office. The Ombudsman reports to the Deputy Director and meets monthly with the Director.
2. Impartiality—The CFPB's Ombudsman's Office does not advocate for one side, instead it advocates for a fair process.
3. Confidentiality—The CFPB's Ombudsman's Office has safeguards in place to preserve confidentiality in reaching the Ombudsman's Office. It will not share information outside the office without the consumer's or institution's approval. The few exceptions to confidentiality include if there is a threat of imminent risk of serious harm; an allegation of government fraud, waste, or abuse; or if required by law.

CBAC comments and questions

- CBAC members asked about the amount and origins of inquiries to the Ombudsman's Office. Ombudsman staff stated that in its first full fiscal year the office received more than 1,400 individual inquiries.
- A CBAC member asked how the Bureau handles inquiries to the CFPB concerning FDIC- or OCC-regulated entities. Ombudsman staff responded that the inquirer is directed to the appropriate regulatory agency if it is not an issue addressed by the CFPB.
- Ombudsman staff referred CBAC members to the office's Annual Report to the CFPB Director to view some of the systemic issues the office has reviewed in the last two years.

Regulatory outlook

Overview of the Bureau's Agenda for 2014

Kelly Cochran, assistant director of regulations, Office of Regulations
Joseph Devlin, regulations counsel, Office of Regulations
Eric Goldberg, senior counsel, Office of Regulations
Thomas Pahl, managing regulatory counsel, Office of Regulations
Nora Rigby, regulations counsel, Office of Regulations

A CFPB staff member provided an overview of the Bureau's agenda for 2014. The CFPB will issue a proposal seeking further comment on extending exemptions under the Remittance Rule. The Bureau will also issue a proposal and seek further comment on an alternate means of delivering annual privacy notices. The CFPB will look into issues regarding implementation of Title XIV under Dodd-Frank and will continue to get input from consumers and institutions on how those rules impact the market.

CBAC comments and questions

- A CBAC member cautioned the CFPB against overburdening the institutions that are conducting business appropriately. CFPB staff responded that they recognize the majority of their information comes from consumer complaints.
- A CBAC member asked about exemptions for small lenders that are Home Mortgage Disclosure Act (HMDA) reportable but do not collect credit score information. CFPB staff responded that the CFPB acknowledges the varying situations of lenders.

- A CBAC member asked if the remittance exemption would remain in the regulations. Bureau staff responded that entities that do not provide remittances in the normal course of their business are not subject to the rule.
- A CBAC member commented on the deluge of requests for comment issued by the CFPB. The member questioned whether comments had significant impact on rulemakings. CFPB staff responded that comments greatly influenced the mortgage rules, among other rulemakings. A CBAC member suggested utilizing bank associations for feedback.
- CBAC members addressed the burden of regulations on small providers. Bureau staff explained that providing flexibility for responsible lenders while simultaneously dealing with the bad actors is a constant issue. Director Cordray noted that he hopes that the rate of new regulations will start to slow down soon.

Regulatory outlook

Commentary on recent data breaches

Will Wade-Gary, senior counselor, Office of Card Markets

CFPB staff discussed CFPB activity on data security and recent breaches. In the wake of the security breaches at major retailers, the CFPB acted very quickly to get effective and useful information to consumers. The Bureau released advisory informing consumers of what to look for and what to do if they think were defrauded. The Bureau has analyzed how well back-end protections work for consumers, how well the system distributes costs, and how well it works for small issuers in terms of the timing of the alert.

CBAC comments and questions

- A CBAC member explained that in these kinds of events, the public generally follows the advice of the media. Bureau staff reaffirmed the necessity to get out the advisory as quickly as possible.
- A CBAC member stated that fraud scoring on each transaction is effective at their institution.
- CBAC members explained that their institutions do not budget for large-scale breaches and that reissuing cards are expenses that have pushed them above their annual fraud allocations. When retailers have large data breaches, the banks and credit unions bear all the costs of reissuing cards. Director Cordray suggested the issuers work with retailers to propose adjusted cost sharing.

- A CBAC member expressed concern that, under Regulation E, issuers have all the liability even though they are not necessarily the cause of the problem. Bureau staff thought the concern may fall outside of Regulation E and is more of an issue with network rules and bank policies that go beyond what is required. The Bureau staff is looking into how the system distributes costs.
- A CBAC member stated that the situation is probably going to stay the same until cost responsibilities shift toward the bigger players.
- CBAC members noted that the alerts have been helpful; yet community banks are the last to know about breaches before they get to the media.

Regulatory outlook

Commentary on recent data breaches

Kelvin Chen, attorney advisor, Office of Card Markets

A CFPB staff member discussed a recent preliminary proposal from the Postal Regulatory Commission regarding the U.S. Postal Service offering nonbank lending to generate revenue. The USPS Office of the Inspector General released a white paper that mentioned utilizing the Postal Service's retail footprint to reach unbanked and under-banked populations offering nonbank commercial services. The Postal Service has a history with certain financial services, especially the paper money order market. CFPB staff described congressional action regarding this issue. Director Cordray does not expect any Congressional movement on the issue.

CBAC comments and questions

- A CBAC member commented that the Postal Service would push out money without financial consideration. This business should stay in the private sector among entities that have skin in the game.
- A CBAC member stated that competing with payday lenders would entail catering to clienteles that would cause the agency to lose more money.
- CFPB staff members commented that they are reaching out to stakeholders to get their perspectives on the proposal. CFPB staff explained that some banks are opposed to the idea of competing with the Postal Service; however, some banks are enthusiastic about partnering with the Postal Service as distributors of their products.

- A CBAC member suggested that a study be conducted to find out whom the potential customers would be and if there is a need for this additional distribution.
- A CBAC member asked if the CFPB can find the needs of the underbanked and unbanked. Director Cordray explained that payday lending and small-dollar loans are the main services that people go outside of the banking system for. He would like to see more competition from the banks offering small loans within the FDIC's allowed 36% interest rate. CBAC members said that the problem is that payday lenders do not have the paperwork requirements of banks.

Indirect Auto Lending

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

A CFPB staff member updated the CBAC on the Bureau's activities related to indirect auto lending. During a recent auto-finance forum hosted by the CFPB, the panel analyzed three examples of nondiscretionary compensation including: flat fees, scalable fees based on the amount financed, and scalable fees based on the amount financed that also relate to the term. The Bureau found significant disparities in pricing for similarly situated individuals in which the only difference was race. The CFPB has published supervisory highlights that compile lessons learned from enforcements and that report to the market what the resolutions are.

CBAC comments and questions

- A CBAC member commented that, in his experience, dealers selling new cars have similar financing across the board but that used-car dealers often come to his bank with egregious rates. The difference can be analyzed with the data the CFPB has collected.
- CBAC members commented that the CFPB's efforts have affected regulated industry, but private entities are still operating as they always have and taking business from compliant institutions. CFPB staff explained that the Bureau maintains enforcement authority.
- A CBAC member believes it would be better to address the issue from a regulation standpoint to avoid having to correct later.
- CBAC members noted that because there is no exception for volume or size in the education loan rules, banks stopped offering them. Therefore, consumers suffer because they have to go to bigger institutions with economies of scale to secure these loans at

higher rates. There seems to be a disincentive for community banks to engage in consumer lending.

- CBAC members commented that they can't compete and remain in compliance with CRA requirements. These regulations have caused community banks to offer fewer services to their consumers.

Working lunch with plenary remarks

Martin Gruenberg, FDIC Chairman

During a working lunch the CBAC heard remarks by Federal Deposit Insurance Corporation (FDIC) Chairman Martin Gruenberg. Chairman Gruenberg reviewed the history of the FDIC, an agency established in 1933 as an attempt to regain the public's trust in banks. He also described the importance of the CFPB's work in examining nonbank financial companies. A majority of the subprime lending that led to the financial crisis originated in nonbank financial institutions that had not been subject to any meaningful supervision. Nonbank financial institutions are now subject to standards which are as important as safety and soundness measures for consumer protection.

Chairman Gruenberg explained that community banks are incredibly important to the financial system States and their significance has been underappreciated. He stated that the FDIC has closed 498 banks in the past eight years, over 400 of which were community banks with assets under $1 billion. The FDIC identified three common factors in the profile of failed community banks: (1) very rapid growth; (2) high concentrations of risky assets; and (3) reliance on volatile broker deposits. This profile is distinct from the traditional community bank profile.

CBAC comments and questions

- A CBAC member expressed concern that the Dodd-Frank Act was designed to stop "too big to fail" and instead may have created a "too little to survive" scenario. Chairman Gruenberg reviewed several ways that the Act has addressed the "too big to fail" issue. A paper on the consolidation of community banks will be released soon.
- A CBAC member stated that the regulations cause banks to focus on exams rather than service to customers and the credit needs of their communities. A CBAC member asked for the Chairman's thoughts on the relative importance of compliance exams versus

safety and soundness. Chairman Gruenberg acknowledged that meeting regulatory obligations is particularly difficult for smaller banks. The FDIC has posted a series of videos on its website about bank examinations and bank management. Chairman Gruenberg encouraged CBAC members to contact the FDIC regional offices to find out about available assistance.

- A CBAC member inquired about expectations for the examiners going out to community banks with regard to the new mortgage rules. Chairman Gruenberg explained that guidance has been issued on how bank examiners should view non-QM loans, specifically if an entity has made sound and compliant loans. He encouraged CBAC members to reach out to regional offices with any compliance questions.
- A CBAC member asked if banks will be assessed in a two-tiered system that views big banks differently from small ones. Chairman Gruenberg responded that the FDIC utilizes a separate group of examiners for institutions with more than $10 billion in assets.

Title XIV Mortgage Rules

Brian Webster, program manager, Office of Mortgage Markets

CFPB staff sought feedback from CBAC members regarding how Title XIV mortgage rules have impacted their businesses and where their institutions stand with regard to implementation.

CBAC comments and questions

- A CBAC member noted that this is the first time regulations have gone into his bank's underwriting standards. Issues remain with DTI tracking, whereby different software programs are used for various services.
- A CBAC member stated that loans are taking very long and becoming expensive, especially for rural banks in areas with a shortage of appraisers. Consumers often do not understand appraisal fees or escrow requirements. The member said his bank makes fewer loans as a result.
- CBAC members explained that the rules are having a tremendous impact on smaller loans. Director Cordray responded that the Bureau does not want to cut off the market and suggested that staff look into whether the CFPB has the authority to create an exemption for de minimis loans.
- A CBAC member suggested that realtors need to be educated on what to expect.
- A CBAC member asked what qualifies an institution for safe harbor.

After it became apparent that Council members still had questions about small lender and other exemptions, CBAC Chair Zimmerman asked that Mr. Webster be involved on the next CBAC conference call to discuss this issue further.

Home Mortgage Disclosure Act: small business perspectives

Joan Kayagil, senior counsel, Office of Regulations
Kathleen Ryan, deputy assistant director, Office of Research, Markets and Regulations

Joan Kayagil, senior counsel, spoke about a recent meeting with small entities, as part of the SBREFA process, including community banks, credit unions, and mortgage companies, to discuss proposals under consideration for HMDA. The meeting and the preliminary, small-group conference calls were held to help the Bureau understand the burdens and processes and the benefits for small entities confronted with new HMDA rulemakings. The meeting included an introduction to the Mortgage Industry Standards Maintenance Organization (MISMO) which also serves to help the industry comply with HMDA standards, establishing definitions and data-recording practices.

CBAC comments and questions

- Some CBAC members were unfamiliar with MISMO. CFPB staff explained that for banks using manual inputs, applying MISMO should not be additional burden; instead it will make things much easier.
- A CBAC member asked how the data collection is currently used and why the results of HMDA studies are not being released publicly. CFPB staff responded that the data has three primary purposes: (1) to inform communities about whether or not banks are meeting their needs; (2) to help public officials determine if policy changes are needed to encourage private investment; and (3) to ensure fair-lending laws are being followed.
- A CBAC member asked if reporting could be due later in the year, because it comes very soon after other end-of-the-year reports are due.
- CBAC members commented that tolerance for errors is too low. Bureau staff responded that they have received a lot of feedback regarding that matter. There is no provision in the statute requiring accuracy or establishing a tolerance; the tolerance is at the discretion of the regulator examining the bank's data.
- Director Cordray stated that the HMDA rulemaking and implementation process will unfold fairly slowly and probably will not affect data until 2017. There will be a significant implementation period, and he hopes that over the next couple of years technology and MISMO will seep deeper into the industry, making for an easier transition.

Know before you owe initiatives: perspectives on closing time

Noerena Limon, policy analyst, Office of Mortgage Markets

Brian Webster, program manager, Office of Mortgage Markets

CFPB staff discussed the CFPB's "Know Before You Owe" initiative which is included in the recent mortgage rule. The CFPB is conducting research to look at ways it can collaborate with industry to improve the closing process. The goal of the initiative is to ensure that the consumer understands the terms of a loan and is empowered to play an active role in the process. Bureau staff hopes to leverage technological innovations to create a more paperless process that will include e-signature/e-reporting mechanisms and embedded educational tools.

CBAC comments and questions

- CBAC members commented that any further delay in a customer's closing as a result of this initiative would not be well received. Bureau staff responded that it would be optional and there is a lot of interest in the industry around providing the forms electronically to simplify the closing experience. Some pilot projects will begin this year.
- A CBAC member asked about requirements some jurisdictions have for a wet signature. Bureau staff responded that wet signatures are usually only required on certain forms, such as the deed or note.
- Bureau staff explained that the Bureau is working with title companies. Title companies stand to save a lot of money with this development and close many more transactions in less time.
- CFPB staff stated that consumers will have the option of having a paper copy printed out for them.
- The new technology will preserve every step of data entry and associated metadata which will provide evidence of compliance and encourage better practices.

Annual privacy notices: member perspectives

Kelly Cochran, assistant director, Office of Research, Markets and Regulations

CFPB staff discussed an alternative delivery system for annual privacy notices. If the notice has not changed since a previous notice was delivered and the institution does not offer notice opt-outs to their customers, the institution will only be required to post its privacy notice on its website. A notice of availability will need to be sent to customers with other mailings, and a toll-free number must be available to customers who wish to request a paper copy. This alternate delivery would also apply to customers who conduct all of their business electronically.

CBAC comments and questions

- CBAC members were very supportive of the proposal.
- Bureau staff sought more feedback on how privacy notices are currently handled. Most CBAC members currently post the privacy notice on their websites. Some members use the model notice.
- Members had no problem inserting a prepared statement in boldface at the beginning of privacy notices.
- Some members send out privacy statements as a separate mailing due to timing.
- Most members have very low opt-in numbers for electronic notices. The number of electronic users is growing, but the baseline is generally low among members' institutions.

Remittances

Though not scheduled as an agenda item for discussion, in response to comments made earlier in the day, CFPB staff made themselves available for a discussion on extending the temporary exemption under the remittance rule for estimating exchange rate fees if certain conditions are met.

- A CBAC member raised the concern of Western Union holding a monopoly on foreign currency remittances. Bureau staff responded that they have reached out to banks, credit unions, and service providers to understand the issues with foreign currency.

Adjournment

Director Cordray thanked off-boarding members for their service. He asked that the members continue to reach out to the Bureau. Chair Zimmerman adjourned the meeting at on March 26, 2014 at 4:59 p.m. EDT.