

Combined Advisory Councils Meeting

November 3, 2022

Meeting of the CFPB Advisory Councils

The Consumer Financial Protection Bureau’s (CFPB) Community Bank Advisory Council (CBAC) and Credit Union Advisory Council (CUAC) met via WebEx at 1 p.m. EST on November 3, 2022.

Council members present	CFPB staff participants
Community Bank Advisory Council	Director Rohit Chopra
Chair John Buhrmaster	Deputy Director Zixta Martinez
Barry Anderson	Max Bentovim
Mary Buche	Allison Brown
Todd McDonald	Manny Mañón
Kristina Schaefer	Leslie Parrish
Michael Tucker	Yaritza Velez
Credit Union Advisory Council	Chris Young
Chair Jose Iregui	Amy Zirkle
Michael Daugherty	
Monica Davis	
Michelle Dwyer	
Jeremiah Kossen	
Michael Levy	
Deborah Wreden	

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Welcome

Deputy Director Zixta Martinez

Manny Mañón, Staff Director, Section for Advisory Board and Councils, Office of Stakeholder Management

John Buhrmaster, Chair, Community Bank Advisory Council

The CFPB's Section for Advisory Board and Councils Staff Director, Manny Mañón, convened the combined advisory council meeting and welcomed committee members and members of the listening public. He provided a brief overview of the meeting's agenda and introduced Deputy Director Zixta Martinez. Deputy Director Martinez provided remarks on the Bureau's priorities, focusing on Non-Bank Supervision, Personal Financial Data Rights, and Peer-to-Peer Payments. Following Deputy Director Martinez's remarks, CBAC Chair John Buhrmaster welcomed attendees, emphasized the importance of the session topics, and expressed his appreciation for being able to serve as Chair of the CBAC.

Non-Bank Supervision

Chris Young, Deputy Assistant Director for Supervision Policy, Office of Supervision Policy

Allison Brown, Deputy Assistant Director for Servicing, Office of Supervision Policy

The first session of the day began with a presentation from the Office of Supervision Policy on Non-Bank Supervision. During this presentation, CFPB staff provided background information on non-banks and discussed supervised entities, the CFPB's supervisory authority and prioritization, and the importance of service provider oversight. Following the presentation portion of this session, CFPB staff sought input from Council members.

Multiple members raised concerns with core providers. One member said that there needs to be a better way to handle compliance issues caused by core providers. Another member said that there is no accountability from these providers and that due diligence falls on the financial institutions. This member said that the financial institutions must follow the law, but stated it is not a priority for the core providers. Another member said that it is very important to have

regulatory oversight over these companies. This member said that core providers aren't held responsible for not keeping up with compliance or customer service standards. Another member shared that maintaining working relationships with fintechs requires integration with the core providers. This member said that it is difficult, as a smaller community bank, to be prioritized by core providers and to be integrated with application programming interfaces (APIs). This member added that there is a need for core providers and fintech, but that also there needs to be a level playing field. This member said that there are many fees owed to the core providers in order to be released from the original contracts. Another member said that many community banks and credit unions rely on core providers to supply services to customers, such as online banking, bill pay services, and applications such as Zelle. The member said that these services make customer lives easier and it gives them access to funds, but financial intuitions are locked into contracts with big service providers. Another member said that it would be beneficial for the CFPB to set fair standards for negotiating contracts with core providers. This member said that banks and credit unions need a referee in this space. Another member said that contracts are long-term and are not based on providing financial institutions with good service to maintain loyalty. This member added that they are required to prepay the balance of the contract terms or pay an early termination fee to exit the contract. Another member stated that core providers are forcing smaller credit unions and banks to migrate to the cloud by choking the availability of services and support for on-premises computer systems.

Another member mentioned that fintechs are more flexible with smaller financial institutions than the core providers are. The member said that they are great to pair with but are not moving quickly enough to provide banks and credit unions with the API connections needed.

Several members discussed emerging risks in the industry. A member said that emerging risks in the industry is an important topic and community banks and credits unions have been interested in this for a long time and welcomed the CFPB making this one of its priorities. The member said that there are some in the industry that are not regulated to the extent that they need to be, such as industrial loan companies (ILC). The member said that if community banks and credit unions are going to compete, then everyone needs to have the same rules. A member said that ILCs aren't bad programs, but they are receiving applications from some of the largest technology companies or huge corporations that are forming banks and stated that banks and credit unions are at a competitive disadvantage, because their holding companies are not held to

the same standards as financial institution holding companies. This member said that some of the ways ILCs offer their products are right on the edge of what should be regulated. Another member said that the CFPB would be doing a disservice if they don't put ILCs at the top of the list for hybrid bank and non-bank supervision. This member said that service providers also need to be considered in this space and that community banks and credit unions are stuck paying deconversion fees for years because core providers are anticompetitive. The member continued that even if financial institutions don't like the services of core providers and do not renew contracts, the core providers still impose deconversion fees, and asked if the CFPB could investigate conversion fees during the examinations process.

A few members talked about filing complaints against core providers. A member asked if the CFPB would consider providing the banks and credit unions with a service provider complaint log. The member said the CFPB can take actions that banks and credit unions cannot and the CFPB can take the lead on monitoring these gray areas. A member said that it would be helpful if the CFPB and other regulators could publish some type of report or complaint database, similar to the consumer complaints log, about vendors who have been examined. The member said that community banks and credit unions need some sort of indicator to be alerted about areas of concern and added that it would be helpful to know which vendors to stay away from.

Another member mentioned the concerns of rural communities and stated that there needs to be more offered to rural communities such as the same technology and services offered to larger institutions. The member said that this would be beneficial to everyone in these communities.

Members talked about laws and regulations and noted it would be helpful if the CFPB would keep in mind that many community banks and smaller credit unions do rely heavily on their respective service providers to comply with the relevant laws, regulations, and new guidance. One member said that this makes keeping up with new laws and regulations very challenging. This member added that in some instances, it requires custom work orders from the vendor and more time and money just to meet basic compliance obligations. A member said that there needs to be more oversight, regulation, and concentration of inclusivity that requires core providers to provide a level playing field for smaller credit unions and banks.

Another member mentioned that as the CFPB undertakes non-bank supervision, it should remember that small financial institutions such as community banks and credit unions are the

engines that power this nation. The member said that 80% of agriculture loans in the country were made by smaller banks and credit unions.

Personal Financial Data Rights Briefing

Max Bentovim, Senior Financial Analyst, Office of Markets

Yaritza Velez, Attorney-Adviser, Office of Regulations

For the second session of the day, staff from the Office of Markets and the Office of Regulations presented on Section 1033 - Personal Financial Data Rights. During this presentation CFPB staff provided an overview of the Section 1033 SBREFA process, the consumer-authorized data sharing market, proposals under consideration, and CFPB next steps. Following the presentation, CFPB staff sought input from Council members.

Multiple members discussed concerns with liability standards. One member said that liability is the biggest issue. This member said that fintechs use data to provide financial solutions to consumers and banks and that core providers often hold up small institutions, that the Gramm-Leach-Bliley Act did not go far enough, and that small institutions have lost a lot of money due to security breaches. The member said that if the CFPB is going to open up “Pandora’s box,” it would then be the agency’s responsibility to assign liability, reiterating that this would be the government’s responsibility. Another member said that the Dodd-Frank Act did not outline liability standards and that under Regulation E, if a customer has an unauthorized transaction on their account, banks are liable. The member said that in terms of liability, if a customer gives a screen scraping service their sign-in information, banks should not be held accountable. The member said that when a customer gives authority to someone else, the financial institution may not know about it. The member said that community banks should be able to work with vendors and negotiate who gets the data so there would be more protection for community banks.

Another member said that in having to deal with fraud such as credit card fraud, credit unions see members sharing their online banking details with random people, such as with romance scams. The member said that there should be protection for financial intuitions for this, such as liability for the consumer who engaged in these actions. Another member said that if banks and credit unions are interested in providing services to consumers, then those financial institutions should make sure they know what they are consenting to and said that consumers’ consent to the use of their data all the time even without their bona fide knowledge. Another member said that the third-party is supposed to certify to the consumer that they will abide by data policies,

but that what they have seen is that third parties prevaricate. The member said that community banks need to receive standardized notices certifying that a company has the authority to use this data and, that they are complying with data security standards. Another member asked where the liability should lie when there is a data breach and said that there must be consumer education, pointing out that especially in light of phishing attempts, many consumers do not understand what it means to accept data sharing. Another member said that the most valuable thing a community bank has is its reputation and stated that data breaches cause harm to the community and many times they see entities get away with no accountability, and that this is the CFPB's opportunity to make sure entities are held accountable. Another member said that there needs to be protections for credit unions for scams against consumers, as the liability always falls on the credit unions. Another member said that small institutions are held to a much higher standard and also incur disproportionate expenses, such as with updating their cyber security systems. The member said that small institutions also foot the bill for merchants or unregulated entities who get breached. This member added that the playing field needs to be leveled and it is unfair for third parties to have members' data but not be held to the same standards. A member said that core providers must have standards, and all should have to comply.

Several members discussed ownership of data. One member said that the ownership of data is an issue for community banks. This member said that if a community bank attempts to cancel their contract with a core provider there may be a fee charged, and that the ownership of data needs to rest with the financial institution originally providing the service. The member said that there should be standards for how long small institutions have to keep data in electronic form. The member added that community banks cannot provide up to six years' worth of data, that it is not reasonable to require small institutions to give consumers two years' worth of statements, and the consumer should be responsible. Another member said that in 1976, the Supreme Court declared that customer data is the bank's property. This member said that banks have provided monthly account statements through paper and electronically, but banks have limitations and that while they want to make it easy for customers, information is electronic now and services are free of charge. This member also said that it is important to limit timeframes.

Another member mentioned litigation and said this should not be used as a tool to end run the class-action litigation process. This member said that lawyers have adequate avenues to get the

data through the proper judicial processes after a class is established and expressed concern that this could open new avenues for certain lawyers to “troll” consumers.

Several members discussed core integration. One member said that not all the credit union’s data is integrated into core systems. Another member noted that financial institutions may not have the data readily available. This member voiced concern over the cost associated with small institutions having to procure the data from core providers and said that some of the core providers hold data hostage and charge simply to access that data. The member questioned how much of this will turn into an additional cost burden on smaller institutions who are trying to navigate new regulations. Another member said that placing the burden on core providers would be helpful to small institutions and said that regulation and guidance need to apply to core providers. The member said that there needs to be pressure applied for the core providers to comply. The member said that it takes a lot of time for core providers to respond, that the response isn’t going to be adequate for small institutions unless a large institution that is financially important to these core providers makes suggestions, and concluded that there needs to be more burden placed on core providers.

Multiple members voiced their concerns over the cost to and burden on community banks and credit unions. One member mentioned the cost of a portal that credit unions have to create in order to be part of this system, noting that there were about 76 credit union mergers in the first half of 2022 and stated that this will rise if regulatory costs continue to rise. This member said that more consolidations would be a disservice to community members. Another member said that Title 10 authorizes the CFPB to establish a supervisory program for non-banks that aggregate this data and said that supervision would level the playing field and allow community banks to serve their customers better. The member said that recent Federal Deposit Insurance Corporation data shows that 96% of households are now banked and that a lot of this is coming from community bank outreach. The member said that these impacts must be kept to a minimum on small institutions, as larger players have the capacity to deal with this. This member said that a lot of credit unions are barely surviving and a proposal like the one being contemplated, in addition to eliminating some late fees that are necessary for survival, could be perilous for institutions in the long term.

Peer to Peer Payments

Director Rohit Chopra

Amy Zirkle, Senior Program Manager, Office of Markets

Leslie Parrish, Deputy Assistant Director, Office of Markets

For the last session of the day, CFPB staff from the Office of Markets presented on Peer-to-Peer payments (P2P). During this presentation, CFPB staff discussed trends in P2P usage, consumer growth in the usage of P2P, concerns with fraud, and the rise in consumer complaints.

Following the presentation portion of this session, staff sought input from Council members.

Many members voiced their concerns about fraud and a lack of security. One member said that there has been a massive uptick of fraud in New York and mentioned a recent study that Senator Elizabeth Warren (MA) released. The member said that the fraudsters are always finding new ways to take money from the elderly -- for example, they bring somebody in the car and the fraudster comes into the bank and entices the victim to withdraw cash. This member also said that the grandparent scam is worse than the romance scam. Another member said that speaking from a consumer standpoint, they were taken aback with Facebook marketplace and with recent fraud activity relating to Zelle. The member asked who is responsible for these fraudulent transactions, will it be the bank or the consumer – the payment apps and social media outlets will not be held responsible. This member added that community banks should not be hit with these losses as they cannot afford it. A member said that it is difficult to prevent fraud, comparing it to a speed bump concept. The member said that there is no way of seeing if it is a legitimate payment and not fraud, as you cannot see who is receiving the funds. This member said that banks do not have the means of knowing what constitutes fraud, as things move quickly with payment apps. This member said that even with security controls and pop-ups, folks can choose to send anyway. The member said that consumers do not like holds being put on their transfers and that they want their money instantly. One member said that consumers need to protect themselves and financial institutions need to help them understand what the risks are. The member said that CFPB can step up and bring some control to a very quickly changing environment. This member added that there are great apps doing good things, but there are some that are not. Another member said that with small financial institutions there are some that only have one person handling all of this, along with their regular duties.

Several members voiced their concerns with Regulation E and how it has not kept pace with the growth of P2P. A member voiced concern about the recent Regulation E guidance and said that

big apps should be treated like big banks, as P2P will only get larger. This member said that Regulation E is something that has progressed over the years as technology has changed. This member advocated for the need to press the providers and said that there is a need for Congressional involvement if banks or credit unions are to be held responsible for consumers' money lost due to fraud and scams. A couple of members said that P2P houses a lot of fraud and reiterated that Regulation E has not caught up to P2P. Another member said that when consumers attach their debit card then Regulation E comes into play. This member shared that her institution has lost over several thousand dollars with account takeovers and that a majority of the time – at least fifty-nine percent of the time – there is no response from the apps. This member said that phones are getting stolen or highjacked and then the cash app is used. The member said that when this occurs the consumer can not dispute the transaction as the phone identity is matched to the card. The member added that over the last two months there has been substantial loss due to this and there is no way that the fraudulent transactions can be proven. A member said that as non-bank entities are not regulated, there was nothing that they could do about it.

Multiple members discussed issues with P2P apps and the lack of response cited above. Another member said that there are issues with contacting the apps directly. The member said that the reviews from people not getting their money back from various apps are frustrating, and in turn, folks are not happy with the financial institutions when they do not get their funds returned. The member inquired about this distinction and asked who will be held accountable for the fraud. Another member said that consumers and financial institutions are ignored by the P2P apps. This member also shared their concerns with small community banks and credit unions having to absorb the costs related to fraud.

Another member said that some banks and credit unions only offer one form of a P2P app, and customers do not have a choice of what they would like to use.

Another member shared a recent personal experience and from that the realization that the United States is definitely behind Europe and that there is a need for these technologies to meet the worldwide payment standards, along with the importance for the transactions to be safe.

Adjournment

Staff Director Manny Mañón adjourned the meeting of the CFPB advisory committees on November 3, 2022, at approximately 5:00 p.m. EST.

Certification

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Crystal N. Dully

Crystal N. Dully, Designated Federal Officer
and Outreach and Engagement Specialist,
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