

CONSUMER FINANCIAL PROTECTION BUREAU | MAY 15, 2024

Consumer Advisory Board Meeting

May 15, 2024



Consumer Financial
Protection Bureau

Meeting of the CFPB Consumer Advisory Board

The Consumer Financial Protection Bureau's (CFPB) Consumer Advisory Board (CAB), met in person and via WebEx at 10:30 a.m. EDT on May 15, 2024.

CAB members present	CFPB staff present
Chair Sarah Bolling Mancini	Director Rohit Chopra
Juan Bonilla	Kim George
Watchen Harris Bruce	Kiren Gopal
Scott Dewald	Angela Hanks
Sarah Dieleman Perry	Andrea Lowe
Chelsie Evans	Manny Mañón
Tom Fitzgerald	Mark McArdle
Steve Gardner	Amy Quester
Annika Little	Diane Thompson
Nick Mitchell-Bennett	
Markita Morris-Louis	
Amy Nelson	
Rebecca Regan	
Denisse Rodriguez- Colón	
Denise Notice-Scott	
Shanelle Smith Whigham	
Tyrone Williams	

Welcome

Director Rohit Chopra

Kim George, Outreach and Engagement Associate, Advisory Board and Councils, External Affairs Division

Sarah Mancini, Chair, Consumer Advisory Board

The CFPB's Advisory Board and Councils Outreach and Engagement Associate Kim George convened the Consumer Advisory Board (CAB) meeting and welcomed committee members and the listening public. She provided a brief overview of the meeting's agenda and introduced Director Rohit Chopra.

Director Chopra started his opening remarks by welcoming everyone and saying it was good to see everybody in person since pre-pandemic. He said the economy is much different than pre-pandemic and is in a relatively higher-interest-rate environment, resulting in credit card debt going up, higher payments in auto lending market, and higher interest rates in the mortgage system. Two areas of focus for the CAB meeting would be mortgages and the credit reporting infrastructure.

If rates go down, there is concern if people will be able to take advantage of lower-balance mortgages. Some new products targeting specific sets of consumers with different types of mortgages, and CFPB has heard from legal aid entities and local communities about the impact of some of those products. An area needing further examination is closing costs and if they are competitively priced or not. Across many states, recent analysis reveals that homeowners insurance companies are paying out more than they charge in claims.

Director Chopra said mortgage servicing is always going receive a lot of attention at the CFPB. He mentioned the breakdown in mortgage servicing 15 years ago as one of the most extraordinary historical consumer protection failures, though the CFPB did put into place some enhanced rules over a decade ago and noted that consumers with limited English proficiency navigating the mortgage market is another area of concern. CFPB is working closely with other agencies to look at appraisals and shape the future of Fannie and Freddie.

On credit reporting, more financial companies are using mass bulk data to assess consumers' credit risk, but dispute resolutions have proved challenging. There is a huge ecosystem

consisting of background reporting and tenant screening companies, and addressing how data brokers will be using artificial intelligence in the future. A key issue when it comes to credit reporting is medical debt, and CFPB will be proposing some reforms. The future of credit reporting touches every single lending product.

After thanking Director Chopra for his opening remarks to help guide the meeting discussion, CAB Chair Sarah Mancini went around the room and online via WebEx to allow for member introductions. She said the CAB members consist of housing organizations, community leaders, nonprofit entities, and government representatives who focus on economic justice, and that the CFPB plays an important role to ensure fairness in the marketplace for consumers.

Mortgage Origination and Servicing

Director Rohit Chopra

Diane Thompson, Senior Advisor to the Director, Office of Policy, Planning, and Strategy

Mark McArdle, Assistant Director, Office of Markets

Andrea Lowe, Senior Policy Counsel, Office of Fair Lending and Equal Opportunity

Several members discussed the importance of homeownership and the obstacles that consumers are facing. A member shared feedback from housing counselors who were surprised that closing costs are negotiable, and realtors' fees are a big portion of it and there was an ask to cap some of the closing costs and eliminate ghost fees. Another member mentioned that down payment assistance programs are helping home buyers. The member said that there has been a noticeable increase in title insurance and attorney fees at closings. The member felt that predatory practices are creeping back into closings with bait-and-switch fees added in at the last minute. Another member felt that trust is needed within the communities, and closing costs add-ons is a barrier to homeownership, especially in low-income areas. The member shared that her organization has special purpose credit programs to assist with closing costs.

Director Chopra said closing costs create a dimension of anxiety. The Real Estate Settlement Procedures Act prevents kickbacks between real estate agents, title companies, and lenders. How can the CFPB address some of those costs is an area needing further development.

A member said that his clients were not aware that closing costs could be negotiated.

Director Chopra said a significant ruling in private litigation touched on the issue of real estate commissions, and more work needs to address how the system should work in the future in the housing market.

A member mentioned concerns with a growing problem regarding private equity investors having control of the housing market, which affects availability of affordable housing, especially in communities of color.

Director Chopra said the professional investors' growing role in the housing markets is an area of concern.

The Chair addressed an area of concern about the ability to refinance and the lack of access to good interest rates, especially homeowners with small balance mortgages. A member said that in his area there is not a lot of refinancing due to the complexity, which comes down to education. The member stated that rich people refinance; poor people do not. The member shared that his organization is in a low-income community and sees a lot of movement on small-dollar loans, with an average of a \$125,000 mortgage out of 100 completed.

Director Chopra asked what policy is needed to change the outcome? A member suggested the federal government create a market that will effect change, such as Duty to Serve. The Chair suggested the Bureau dive into research on financial incentives to lenders, lack of a secondary market, and the costs of mortgage servicing.

Bureau staff said that the CFPB has been talking to lenders and developing research in this area, and the FHFA has had a lot of leverage with their Duty to Serve. Bureau staff suggested given the Duty to Serve obligations on Fannie and Freddie, this is an area worth thinking about, and FHFA Director Thompson is committed to addressing this issue. Bureau staff said Duty to Serve is currently focused on three geographic areas in the country and needs to go national. Director Chopra said the refinance process must be made easier within the extent of the current rules. The Chair stated that the financial incentives are a problem, not the loan officer compensation. A member shared that his area does not get access to the secondary market, which fails the low-income community and needs addressing. Director Chopra suggested Community Reinvestment Act-like obligations on certain non-banks, particularly those that receive a lot of public benefit.

Multiple members discussed emerging risks and questionable fringe products. A member said her organization has been investigating rent-to-own and land contracts since 2014 and presented a facts sheet analysis of recorded land contracts in her area. The member shared that there is an increase in lack of affordable homes, and there is an increase in contracts with high interest rates with predatory terms, balloon payments, and pre-payment penalties. The list contained eighty-one percent Hispanic and Latino names on contract for deeds. The member believes there is targeted marketing going on in these communities. Another member shared that his organization is investigating the Hampton Roads part of Virginia where entities are buying rundown properties, targeting Blacks and Latinos. The member added that these are not traditional mortgages, and if the consumer cannot make a payment within the first year or two, they are evicted or foreclosed, losing their huge initial down payment. The member said that these entities are evading the consumer protection laws by structuring as LLCs, which looks more like commercial property. Another member commented that some entities are moving to doing a pre-signed deed in lieu of foreclosures. Director Chopra mentioned that CFPB sued a company that engaged in alleged predatory targeting of mostly Hispanic and Spanish-speaking families. Bureau staff said that the entity had no process of underwriting other than self-reported income, which is one of the alleged predatory practices. A member mentioned that rent-to-own transactions today must be habitable, but a new predatory lending practice recently to avoid that requirement is engaging in as-is land contracts, where the buyers are buying as-is. The Chair said a final rule on Property Assessed Clean Energy, is needed to protect low-income and older homeowners from environmental retrofitting being collected through property taxes.

Several members discussed home energy financing. The Chair stated that home energy financing is becoming a huge issue, and there is an important role for the Bureau to play to help prevent fraud. A member said that consumers are encouraged to make energy-efficient repairs on their homes by installing new technologies that will impact the environment. The member feels that there are good actors in the Community Development Financial Institutions (CDFI), world, but there are others whose goal is to trap homeowners and transparency in lending is needed in loan terms, fees, and interest rates. The member thinks the CFPB could play a major role in issuing advisory and notices to educate the public. Director Chopra said CFPB has proposed some reasonable protections to make sure terms are above board.

Multiple members discussed mortgage servicing and the importance of foreclosure protections. A member shared that her subsidiary area, CDFI asked the CFPB to examine the following

areas: require loss mitigation applications to be processed and decisions rendered prior to foreclosure; increase awareness about loss mitigation timeline requirements; how to report the servicers if they miss the deadlines, assign servicers if they do not meet established requirements, and use funds on foreclosure prevention counseling. Another member added that foreclosure prevention specialists mentioned broker price options as an area of concern. The member feels that companies do not have enough staff to review documentation, which results in huge delays in processing.

Bureau staff said the lack of incentives and repercussions of servicers who delay or fail to evaluate appropriately is a huge concern, and the CFPB has been working on terms of an incentive structure for servicer to address loss mitigation request promptly and cutting down delays due to a paper chase. Director Chopra said pulling the license on repeat offenders is on the table, but it must be done through the states.

A member emphasized that lenders want low-touch scale instead of high-touch servicing because low-touch scale equals money.

Several members discussed language access and the challenges consumers face when it comes to language barriers. A member encouraged the CFPB to leverage its convening power to bring together financial institutions and figure out how to create greater language access through products and services. Another member said that language is a major barrier because it handicaps economic opportunity and excludes people who cannot enter the market. The member stated that is does not only pertain to mortgages, but also access to banking services and other products are areas that need to be discussed. The member felt that CDFIs are working to bridge those gaps, but this area needs further development by bigger organizations. A member shared that there is a very low inventory in her area of affordable housing. The member mentioned that thirty-three percent of the Hispanic population in the United States are immigrants whose first language is Spanish and though 12.3 percent of Hispanics are between the ages of thirty-eight and fifty-three and already saving to purchase a home, there are not enough professionals to provide this service with interpreters. The member emphasized the need to have a greater focus on education in Spanish. A member said that in-language resources embedded in the products in needed. The member shared that her state has a statewide asset building coalition that has been working on children's savings account initiatives, however, her organization is finding a barrier with the 529 programs as it does not provide consumer-facing

resources in non-English languages, and people are opting out.

Director Chopra asked the CAB to think about the difference between more commonly spoken languages in the U.S. versus languages of a lesser dispersion and stated it should be thought about holistically.

A member brought up concerns with homeowners and hazard insurance. The member stated that his state is one of the highest property and casualty insurance premium payers in the Country, which is because of natural disasters impact insurance.

Consumer Data Reporting Accuracy and Medical Debt on Credit Reports

Director Rohit Chopra

Kiren Gopal, Senior Counsel, Office of Policy, Planning, and Strategy, Director's Front Office

Amy Quester, Senior Counsel, Office of Regulations

The Chair started the discussion specifically related to consumer data reporting accuracy and various members added their comments and concerns. The Chair added that landlords and employers are making important decisions based on reports that often contain false or misleading information about consumers. A member shared that his organization is seeing inaccuracies in credit reports due to a lack of information about tenant rights. The member said that in a step to fix this, his city is requiring landlords to put decisions about rental decisions in writing. The member mentioned that landlords get around this requirement by reporting it is due to a lack of income or history. The member hopes that the CFPB can help in requiring landlords to report which consumer reporting company the information is coming from.

Another member said that there are differences in terms of protections the Fair Credit Reporting Act (FCRA), provides and that on the employment side, you do get a pre-adverse action notice before the potential employer would take adverse action, which must include a copy of the report and a summary of rights. The member added that in contrast, when it comes to the rental space, the only protection is an adverse action notice coming after or with the adverse action, which can even be oral under FCRA.

Kiren Gopal said consumers are entitled under the FCRA to get their credit report for free annually from each of the major consumer reporting companies. There are also hundreds of

companies, which consumers are not always aware of, that provide background screening reports. The CFPB publishes a list of consumer reporting companies that have identified themselves as “consumer reporting agencies.” Consumers are able to review the data that such companies hold about them, though it can be difficult and costly.

Director Chopra said that employment and tenant background reports have little visibility. The CFPB is focusing on accuracy and holding companies accountable for errors.

A member shared that his organization created a program to provide assistance to applicants to cover the cost of credit reports and application fees. The member said that many of their voucher holders have limited income, and oftentimes have to repeatedly apply to apartment complexes to get housing, which quickly depletes their limited resources. The member added that some landlords know they are going to deny applicants but allow them to incur costs and fees anyway. Director Chopra noted that he hopes to learn more about what the CFPB should be doing to address tenant screening issues. People with common last names, often African-American or Latino, can be matched with someone else.

A member stated that some rental companies require 650 and 700 credit scores to be approved, and she suggested a mechanism should be created to allow someone to only apply once and have that serve as the report to multiple properties. The member mentioned that additional fees such as administrative, cash, sewer, and cable, can add up to hundreds of dollars a month in addition to rent.

A member stated that housing is deeply connected to consumers’ financial health and can promote economic mobility for families. The member added that they hope the work by the CFPB, and housing-related agencies continues to happen as their organization is seeing background report fee increases.

Director Chopra said that an enforcement action was taken against TransUnion’s rental screening subsidiary for illegal rental background check and credit reporting practices under the FCRA. He added that the CFPB has a big role, but that the FCRA also has a private right of action, allowing consumers to hold companies accountable. He also added that there must be a meaningful investigation of consumer disputes rather than an algorithmic decision.

A member asked why credit scores are used in rental decisions when they are supposed to be used to determine one's lending risk. The Chair stated that credit scores are flawed and racially biased. Director Chopra added that it is important to make sure that the scoring system is not tilted against people.

Several members discussed concerns related to medical debt on credit reports. The Chair said the Bureau kicked off a rulemaking process last year to restrict medical bill reporting on credit reports. A member added that in Massachusetts, about thirteen percent of residents have medical debt, but Black and Latino borrowers are over-represented in those numbers. He expressed that people that have medical debt will avoid medical care. The member added that because of the complexity of medical billing, including coding issues or timing of billing, sometimes individuals are unjustly charged. A member shared that his organization is a small business lender and nonprofit economic development firm which virtually ignores medical debt on credit applications for small business loans, finding that it has no credibility.

Multiple members discussed issues data broker noncompliance with federal law. The Chair said that the CFPB is planning to propose a rule related to data broker compliance with the FCRA in order to hold such companies accountable for abuse and misuse of people's sensitive and personal data. Director Chopra said in the digital age, there is worry that information being collected can be sold and used for harms outside of people's financial lives. A member said that it is important that federal agencies work together to protect against theft of people's data. Director Chopra added that information crime is real.

Bureau staff described the permissible purpose requirements in the FCRA, which limit when consumer reporting agencies can share the information that they collect on consumers. Director Chopra asked the CAB if the CFPB can be doing more and if the rules need to be updated. He asked the CAB members to share and make suggestions with the Chair and the CFPB on how the CFPB can assist. A suggestion was made by a member to reimagine the current credit system instead of fixing things around the margins, and that more transparency is needed from data brokers about their sources. Director Chopra mentioned the concept of digital permission of financial data. A member further suggested a standardized process that could be required for brokers when it comes to expungements. Amy Quester said background screening companies that report criminal, or eviction record information have to have procedures in place to ensure such information is not reported if it has been expunged or sealed or otherwise legally restricted

from access, as explained in a January advisory opinion.

A member asked if consumers have a right to sue if credit reporting data is inaccurate. Bureau staff said that, for example, the CFPB enforces section 607(b) of the FCRA to make sure that consumer reporting agencies comply with accuracy obligations, and that consumers can also bring private lawsuits to enforce that provision of the law. The Chair added that her organization issued a brief written by Chi Chi Wu entitled "Past Imperfect: How Credit Scores Bake In and Perpetuate Past Discrimination," which has a number of relevant recommendations.

A member encouraged seeking creative solutions to make these markets work fairly for all people.

A member stated that a credit reporting system that emphasizes credit utilization needs to be reimagined and that building credit shouldn't require one to incur debt. The member suggested building credit without incurring debt could be accomplished by a system of shared authorized users.

Closing

Director Rohit Chopra

Sarah Mancini, Chair, Consumer Advisory Board

In closing, Director Chopra thanked the Chair for getting through a lot of topics during the meeting. He said there are severe challenges in mortgages and housing. He said that on the issue of credit reporting background checks, he recognizes the frustration levels are high, and defining a different system may help deal with the current one and thinking up new pathways to address old problems.

The Chair thanked the members and the Director for the discussion.

Adjournment

The meeting adjourned on May 15, 2024, at approximately 1:00 p.m. EDT.

Certification

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

Manny Mañón

Emmanuel Mañón, Staff Director,
Advisory Board and Councils, External Affairs
Division, Consumer Financial Protection
Bureau

Sarah Mancini

Sarah Mancini, Chair
Consumer Advisory Board