

Consumer Advisory Board Meeting

June 8, 2022



Meeting of the CFPB Consumer Advisory Board

The Consumer Financial Protection Bureau's (CFPB) Consumer Advisory Board (CAB), met via WebEx at 1:00 p.m. EST on June 8, 2022.

| CAB members present | CFPB staff present |
|----------------------------|---------------------------|
| Chair Leigh Phillips | Director Rohit Chopra |
| David Ehrich | Meina Banh |
| Louis Caditz-Peck | Carmen Cruz |
| Stephanie Carroll | Manny Mañón |
| Laurie Goodman | Mark McArdle |
| Margaret Libby | Dan Murphy |
| Andres Navarrete | Thad Peterson |
| Beverly Brown Ruggia | Jessica Russell |
| Faith Schwartz | Elizabeth Spring |
| Ky Tran-Trong | |
| Pete Upton | |

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Welcome

Director, Rohit Chopra

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

Leigh Phillips, Chair, Consumer Advisory Board

CFPB Section for Advisory Board and Councils Staff Director Manny Mañón convened the CAB meeting and welcomed committee members and members of the listening public. He provided a brief overview of the meeting's agenda and introduced Director Rohit Chopra. Director Chopra provided remarks on the CFPB's priorities, focusing on Data Privacy, Housing Market Conditions, and Language Access. Following Director Chopra's remarks, CAB Chair Leigh Phillips welcomed attendees and explained the advisory committee's mission and expressed her appreciation for being able to serve as Chair of the CAB.

Data Privacy

Thad Peterson, Senior Markets and Policy Fellow, Office of Markets

Dan Murphy, Markets and Policy Fellow, Office of Markets

During this session, CFPB staff from the Office of Markets provided a general overview of consumer perspectives around data collection. This included discussion of common concerns that consumers express related to what companies do with their data, how that data is used, and potential risks associated with data sharing. Following the presentation portion of this session, CFPB staff sought to receive input from Board members.

Several members of the advisory board discussed the use of data. One member said that data privacy seeps into many consumer protection areas, including bias in algorithms. The member said that the housing market has come a long way in trying to wring out inefficient costs in the system and help people get access to credit along the way. The member also said that there have been inefficient and nonstandard use cases of how people access that data. As an example, the member explained that if a consumer gives permissions to access their bank account in the course of applying for a loan, that information is used by the underwriter and audited by downstream investors. The member said it can be problematic if a data aggregator continues

looking at a borrower's data if they no longer need those data, but still have access to the borrower's accounts. The member said that it is important to consider issues such as access, use, downstream use, and traceability of data, as well as accountability for lenders and vendors.

A member lauded the CFPB for use of its dormant authority to examine nonbank companies that pose risks to consumers, noting that this is an area where such action could be warranted. The member said that the CFPB can exercise its supervisory authority to ensure best practices in the use of data among third party aggregators and other participants in the marketplace. Another member said that as a nonprofit fintech that uses this data, her organization has wrestled with these questions, and that we should be thinking about the use of aggregate data as well as the use of individual data. Another member said that there are potential harms in how data are used, and that it is important to prevent perpetuating the historical inequities evident in how financial data is used. The member said such harms present a risk when firms do not conduct adequate disparate impact analyses and other fair lending practices. The member said that defining purposes for what data can be used, as under the Fair Credit Reporting Act (FCRA), seems like a promising direction.

A member said that they appreciate that the CFPB is trying to balance the risks and benefits of data use. The member stated their interest in retaining some of the human aspects associated with relationship banking and said that they started a relationship banking type modal in the community development finance industry and in financial technology companies. The member advised trying to find a balance, combining the benefits of both a data-based approach and a relationship-based approach.

A member said that the question of who "owns" data is complicated and queried whether it is for the consumers to do with it as they will. The member said that they have seen clients miss out on benefits they could have received because they were prevented from giving permission for their data to be used. The member also said that consumer advocates have expressed concerns that aggregators may be accessing more data than necessary to deliver consumer financial products and services to consumers. One member expressed that an area of concern would be someone wanting to join their organization to improve their financial health but inadvertently turning over their data in a way that could cause them harm, unbeknownst to them. The member asked how the CFPB is thinking about aggregate data versus individual data. The member said that they use aggregate data to look at the impacts of social policy, that they store

that data to compare one year to the next, and that they find it to be incredibly useful and informative.

Several members discussed Section 1033 of the Dodd-Frank Act - Required Rulemaking on Personal Financial Data Rights. A member said that given the importance of this rulemaking and its objective of giving consumers better control over their data, the CFPB is asking the right questions as to what consumers understand about the data that is collected, used, and what control they have over those data. Another member said there is an alignment with the CFPB and industry around the need to utilize the Personal Financial Data Rights Rule and other authorities to better protect data and give customers control over how their data are used. The member said that there were opportunistic players in the markets, including nascent data aggregators and big tech companies. The member said that those entities tried to make the case that the statute favored untethered open banking, a means to ensure that banks would be compelled to share their data with third parties. This member maintained that the language doesn't support that broad reading of the statute and that consumer control has to be a function of consumer education.

Members also discussed regulation and data security. A member said that knowing the source of the data used for making credit decisions is very important. The member said that banks have long standing frameworks in place, such as the FCRA, Gramm-Leach-Bliley Act, and others, and that the same level of privacy and security doesn't exist in the unregulated marketplace as in the regulated marketplace. This member asserted that once the data leaves the protective environment of the financial institution, the information may no longer be afforded the security or protections that a financial institution would provide. The member said that when nonbanks ask for consumer financial data, they should be required to provide bank-level protection. The member said that the CFPB should bring data aggregators under its direct supervision to ensure consistent outcomes for consumers. The member said leveling the playing field is important, and that while this might require legislative intervention, there are probably areas within the regulatory sphere that could close some of the gaps that exist today. The member also said that financial institutions have data retention requirements and are amassing quite a bit of data that is valuable for identity theft. The member said that guidance on what data can be used to create value may limit the interest firms have in collecting data.

A member said that in terms of other bright-lines with respect to data security, there is interest in bright-line rules for data breach notification from data processors to financial institutions regarding sensitive person information. The member said that the question of when data breach notifications happen is a commonly negotiated part of information security requirements in contracts with data vendors. The member said that financial institutions want faster notification of a breach; however, the vendors want more time to give notification. The member said that the regulatory guidance and standardization could be helpful. For example, the member said vendors could be required to notify the financial institution within 24 hours if they have a reasonable suspicion that a data breach has occurred. The member said that a data breach can be defined as any incident that can be reasonably expected to result in actual harm to the confidentiality, integrity, or availability of personal information.

Several members shared various research studies related to data privacy. A member said that findings shared by CFPB staff were consistent with Visa's research findings from a multi-year effort. The member said that Visa's research has shown that on a global average, 72% of consumers surveyed were either generally concerned, very concerned, or extremely concerned about privacy, and that consumers feel an imbalance between themselves and the companies with whom they share their data. The member said that 68% believed that companies benefit more from using their data than they benefit themselves, and that this has an impact on their willingness to share their data even when it might benefit them. The member said that consumers who do not feel in control of their data were four times more likely to deny permission for data access even if sharing data was a condition of using the service. The member said that 76% of consumers surveyed wanted to take more direct control over how their data is used. The member said that this concern and frustration bolstered by fear of financial loss and limited understanding of how data is being used has created a basic need to feel empowered. Additionally, the member said that the CFPB should consider identifying or developing a traceability solution, and that this kind of solution could eliminate opacity and create transparency on where data goes and how it is being used, which would allow the consumers to see whether these are consistent with the consent that was granted.

A member also shared work that is being conducted at the Massachusetts Institute of Technology (MIT). The member mentioned MIT's [Future of Data, Trust, and Privacy initiative](#), which is developing privacy enhancing tools and research to help shape what data governance might look like. The member said that VISA has recently joined this initiative and recommended

that the CFPB look at an MIT's projects creating a traceability sandbox. The member said they are designing mechanisms that tie together the granular consent provided, an auditing function to verify how data is being used, and access consistent with those consumer privacy choices.

Another member shared information on a recent Clearing House study which researched more precise questions around consumer awareness of what third party aggregators are actually doing with permissioned data. The member said that often, the consumer is offered a free service such as bill payment or consolidation of financial information into a single usable app. The member said that this financial transaction data has tremendous power and appeal to tech companies and that the study found that 80% of consumers were unaware that their data was being used and given to others and 78% of the consumers were unaware that access to personal data can continue even when an app is closed or deleted. Consumers also reported being unaware that credentials are used by aggregators many times a day. The member encouraged the CFPB to use its authority to encourage aggregators to work with banks through more formal means.

A member shared concerns regarding consumer permissions and education and said that the CFPB must ensure that consumers are aware of what occurs when sharing their credentials with third party aggregators. The member said that the CFPB must ensure that consumers are aware that when they release their data to a third party that they are effectively releasing their data from a secure regulated system to a third party that isn't held to the same standards of privacy and security. The member said that the CFPB should require data aggregators and data users to reobtain consumer authorization to share their data on a periodic basis, perhaps at least once a year. Absent proof of that authorization, data aggregators would not be able to continue open ended data sharing. The member said that with the collection of data, large companies can form closed ecosystems, sometimes called walled garden strategies, that can be anti-competitive. The member said that the way the financial services industry is going, it seems there is the potential for development of products that are more personalized than in the past, and thus probably requires more data to be shared between entities. The member expressed that it is very important to educate consumers about how they can get out of data sharing.

Additionally, during this session, the CAB Chair read a statement that a member shared with the CFPB regarding data privacy highlighting various areas of concern, including: (1) What potential consumer harms might result from mass data collection, in particular, how can data-driven steering and manipulation cause financial harm to consumers, (2) Beyond disclosures,

how should consumers' financial lives be protected from technology powered by mass data collection, and (3) What kinds of bright-line rules might the CFPB consider to limit certain types of data collection, along with where the CFPB should exercise caution. The statement ended with a member highlighting the importance that the CFPB has right now, and the opportunity to create a legitimate purpose framework around when and how consumer data is collected, stored, and used.

Housing Market Conditions

Mark McArdle, Assistant Director, Office of Mortgage Markets

Jessica Russell, Program Manager, Office of Mortgage Markets

Elizabeth Springs, Servicing Program Manager, Office of Mortgage Markets

The second session of the day consisted of staff from the Office of Mortgage Markets. During this presentation CFPB staff provided an update on the current state of the mortgage market and future potential risks. This presentation included items such as the effects of rising interest rates and inflation on consumers, loss mitigation, federal assistance available for housing-related expenses, and consumer outreach. Following the presentation portion of this session, CFPB staff sought to receive input from members.

Multiple members discussed their concern with relationship banking. One member said that relationship banking is critical, that consumers can't find the help that they need and that consumers have become more disconnected from financial institutions. The member said that when this occurs either the government or non-profits have to then step in to fill the void when consumers face financial distress. A member said that the deterioration of relationship banking for first generation homeowners, especially consumers of color, is going to continue to leave consumers isolated. A member said that banks are exiting the mortgage market and the lack of oversight for non-banks is an issue.

Several members discussed the importance of outreach and the use of resources. A member said that possibly the CFPB could help with outreach, especially for consumers with reverse mortgages. A member said that in California they are trying to coordinate between servicers and Homeowners Assistance Fund (HAF) programs and that they are having a real issue with resources. The member said that it would be very helpful to have servicers initiate HAF program applications as this could increase the spread. A member reflected on the

extraordinary supply of funds being pushed into the market from their government partners, such as the Department of Housing and Urban Development and the Department of Veterans Affairs, which has allowed people to stay in their homes. The member added that the government has responded very quickly. Another member said that banks and lenders must be required to provide more direct support to customers. The member added that there also needs to be more policy from states and providers and that when the programs are implemented, the full chain of delivery should be considered.

Multiple members expressed their concerns with the racial gap in lending. One member said that their client base mostly deals with low-income individuals and people of color. The member said that they are seeing folks being forced out of their communities by other means and not just direct foreclosures. The member went on to say that during the last financial crisis there was a real problem with second mortgages and that borrowers mistakenly thought they got rid of their second mortgage during bankruptcy. The member added that this second mortgage issue had been dormant but now that housing prices are going up, these consumers are now being presented to pay this amount in full or face foreclosure. The member concluded by saying that this is a very difficult situation, and that communities of color are most affected by this. A member said they are seeing that many consumers can't compete with investors, who are taking the housing stock out of the market and using it as rental properties.

Several members discussed loss mitigation and solutions. A member said that they are seeing consumers who can't find solutions to loss mitigation. A member expressed the need to see the data in order to see where the gaps are with loss mitigation. Another member said that everyone has their processes and that state funding on top of that can be a lifeboat, but it is managed by a third party. The member added that the timing was off, but that it is getting good traction now but that there may not be meaningful reports on how this has helped borrowers. A member said that property taxes are a real problem, and for many there are no solutions. The member added that counseling can get them to a certain point, but then find that they need legal services.

A few members discussed Home Equity Lines of Credit (HELOCs). A member said that HELOCs require a higher credit score. A member said that everyone should be looking at the innovation around unsecured lending or shared equity innovation, not in the form of a HELOC. The member added that they are seeing more and more of this and that it may be hard to track.

A member stated that there has been a pickup in home-equity lending and that the return of the second lien market is coming.

Several members discussed non-banks. A member noted that holding providers and lenders more accountable would then foster engagement with customers on a regular basis. A member stated that non-banks are doing over seventy percent of total lending and in fact have a wider credit box than banks do. The member added that they support these institutions and work to make sure that the risks don't spread to the financial system and urged rethinking the regulatory framework. A member mentioned that banks are exiting the mortgage market and the lack of oversight for non-banks is an issue. A member said that there is a lack of affordable properties available and then there are properties being bought up by investors on Wall Street.

A few members discussed refinancing. A member said that there is a concern that streamlined options for underwriting during refinancing are not available on government-sponsored enterprise loans. The member added that this might be a factor in the lower rates of refinancing and the savings and benefits of that seen in smaller loans, especially with lower income or people of color. The member went on to say that this may not be a concern now as rates rise but may be when rates begin to lower, and folks look to refinance, this could be an issue. A member said that with prices and equity going up, they are seeing many of their clients facing a lot of pressure to sell or get a reverse mortgage, which ultimately leads to displacement.

A member shared concerns around Community Development Financial Institutions (CDFIs). The member noted exemption from the ability to pay standards, or qualified mortgages, and expressed a concern that non-depository mortgage banking companies may be obtaining CDFI status in order to exercise regulatory arbitrage or avoid ability-to-pay underwriting standards.

A member presented a question on foreclosure, asking if it was a successful story of letting people forbear, and putting it on the back end. The member added that the CFPB should rethink the cost of a foreclosure and how that affects communities.

Language Access

Meina Banh, Senior Advisor, Office of Financial Education

Carmen Cruz, Financial Education Program Analyst, Office of Financial Education

The last session of the day consisted of staff from the office of Financial Education. During this presentation CFPB staff provided an overview on the CFPB's work related to Limited English Proficiency (LEP) and language access. During this presentation, CFPB staff shared information on issues facing LEP consumers, engagements with LEP stakeholders, the approach to empowering LEP consumers, and means on how the CFPB can empower multilingual communities. Following the presentation portion of this session, CFPB staff sought to receive input from members.

Multiple advisory committee members discussed the Community Reinvestment Act (CRA). One member said that perhaps the CRA can be used as a tool to make these types of requirements for financial institutions. The member said that this could address the various language barriers throughout diverse communities. A member asked what the CFPB thinks about the possibility of using the CRA in this way. The member added that the CFPB could require financial institutions to provide consumers with resources in their language. A member said that the country is becoming more diverse, and this is the perfect opportunity for CRA reform. A member said that people are relying on resources in their communities that may not be advantageous or regulated and added that these people don't feel comfortable with the services available to them. Another member said that this topic relates to what they are doing with the South Dakota Native Homeownership Coalition. The member added that they are working hard on getting banks to serve Native American communities. A member said that if the language barrier isn't addressed in the CRA reforms, it is going to be another barrier not to serving certain segments of the population. The member added that the CRA was developed to be consistent with safety and soundness banking principles and if you're going to serve a segment of the populations that isn't fluent in English, you're not doing them justice. The member noted that the CRA reform comment period would end on August 2, 2022. A member said that they are highlighting the areas where banks just don't serve Indian country. The member added that their organization added a section in the CRA just for them and that this population isn't being dealt with fairly when it comes to access to credit or fair credit practices. A member suggested developing something that would be similar where the banks are encouraged to provide services to overcome these language barriers.

Several members emphasized the importance of outreach and making resources available. A member said that in addition to written materials, they were advocating for people who speak the language because the U.S. financial system is innovative and being able to discuss and ask

questions with a live person in their own language is important. A member said that given the power of these resources, their organization would love to be helpful in thinking through the kinds of dissemination best suited to make sure CFPB resources get into the hands of organizations that have the trust of immigrant families and those who will most benefit. A member added that there is not enough of this in financial services, and there are not enough resources pointed in these directions. A member said that the industry and nonprofits had an outreach campaign to reach borrowers at risk. The member added that they point them to the CFPB's website and resources. A member said it would be great if the CFPB could update the provisions of financial services to include the key languages of the communities in which they serve. A member said that it is very exciting to see these kinds of resources being developed, and that they really appreciate the CFPB's efforts.

Multiple members expressed their concerns with predatory loans. A member said that by far the most problematic practice they see are the “English-only” contracts coupled with targeting specific communities of color with certain types of financial products. The member added that they appreciate the CFPB’s actions in this space. A member said one of the most predatory types of loans that they are dealing with in California is unscrupulous contractors who are targeting Spanish-speaking communities for financed home energy upgrade programs. The member added that the messaging insinuates that these are free government programs, but these products have hugely inflated prices and high interest rates. A member said that finance companies have apps that contractors use to identify who has equity that they can target. The member added that some consumers have \$100,000.00 tax liens that they need to pay-off. A member said they have seen a particular concentration of terrible loans among Spanish-speaking borrowers. A member said the finance companies that benefit from these contractors’ business models have ignored this language injustice. A member said that the CFPB should look into imposing specific requirements for these transactions. The member added that there should be contracts and customer service assistance available in multiple languages other than English. A member stated the need to develop, engage, and educate LEP consumers and encourage them to file complaints. The member added that people don’t always read the disclosures that are in small print, especially if it’s in a language that they don’t understand.

A few members discussed mortgages and LEP. A member said that the mortgage business has talked about this issue for years without a lot of traction. A member said that the CFPB has a lot of power over the servicing transfer business, and it would be interesting to find a way to

transfer that information to the new servicer. A member asked, how can we get people comfortable with testing, and added that for example, why did they foreclose on this non-English speaking community? They urged getting the industry to examine why they have so many foreclosures in these areas, and what can be done to reverse this trend.

A member shared concern with language barriers impacting immigrant households. A member said the thing that is impacting these families overall is with parents who are limited proficiency English speakers, and that language barriers result in the adults not engaging in the financial services mainstream. The member added that these parents try to navigate the financial system without resources in their language and that the work of translations falls on their children, which can be a challenge for young people. The member said that this is a reality for young people across the country who are predominately Black, Indigenous, and People of Color (in low-income communities). The member concluded that this situation, with the complexity of navigating financial decisions, financial information, and having more visibility into their parents' financial circumstances, can be very challenging for these young people.

Adjournment

Staff Director Manny Mañón adjourned the meeting of the CFPB Consumer Advisory Board on June 8, 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.

Manny Mañón

Manny Mañón, Staff Director
Section for Advisory Board and Councils
Office of Stakeholder Management
Consumer Financial Protection Bureau

Leigh Phillips

Leigh Phillips, Chair
Consumer Advisory Board