

# Joint Advisory Committee Meeting

November 18, 2020

## Meeting of the CFPB Advisory Committees

The Consumer Financial Protection Bureau's (CFPB) Consumer Advisory Board (CAB), Community Bank Advisory Council (CBAC), and Credit Union Advisory Council (CUAC) met via WebEx at 1 p.m. Eastern on November 18, 2020.

<b>Advisory committee members present</b>	<b>CFPB staff present</b>
<b>Consumer Advisory Board</b>	Former Director Kathleen L. Kraninger
Chair Eric Kaplan	Kristine Andreassen
Joaquin Altoro	Elena Babinecz
Nikitra Bailey	Max Bentovim
Lorray Brown	Desmond Brown
Nadine Cohen	Karen Chang
David Ehrich	Alan Ellison
Mae Watson Grote	Manny Mañón
Timothy Lampkin	Barbara Maurice
Leigh Phillips	Mark McArdle
Jean Setzfand	Bryce McNitt
Rebecca Steele	Per Olstad
Timothy A. Welsh	Jessica Russell
<b>Community Bank Advisory Council</b>	Gary Stein
Chair Valerie Quiett	William Wade-Gery
John Buhrmaster	Zachary Wong
Patrick Ervin	
Shan Hanes	

Ronette Hauser-Jones	
Bruce Ocko	
Kristina Schaefer	
Brad Williamson	
<b>Credit Union Advisory Council</b>	
Chair Racardo McLaughlin	
Monica Davis	
Rick Durante	
Michelle Dwyer	
Doe Gregersen	
Brian Holst	
Jose Iregui	
Jeremiah Kossen	

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Welcome

**Kathleen L. Kraninger, Former Director**

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

**Eric Kaplan, Chair, Consumer Advisory Board, Chair**

CFPB Section for Advisory Board and Councils Staff Director Manny Mañón convened the joint advisory committee meeting and welcomed committee members and members of the public. He provided a brief overview of the meeting's agenda and introduced CFPB Director, Kathleen Kraninger. Director Kraninger provided remarks on the Bureau's priorities, focusing on Section 1071 of the Dodd-Frank Act, Section 1033 of the Dodd-Frank Act, and trends in the mortgage markets during the pandemic. Following Director Kraninger's remarks, CAB Chair Eric Kaplan welcomed attendees and explained the advisory committees' mission and expressed his appreciation for being able to serve as Chair of the CAB.

## Implementing Dodd-Frank Act Section 1071

**Kristine Andreassen, Senior Counsel, Office of Regulations**

**Elena Babinecz, Managing Counsel, Office of Regulations**

**Alan Ellison, Small Business Program Manager, Office of Markets**

Staff from the Office of Markets and Office of Regulations presented on the Bureau's implementation of Section 1071 of the Dodd Frank Act, governing small business lending data collection. Staff provided an overview and background information on Section 1071, noting that its data collection and reporting requirements are similar to those of the Home Mortgage Disclosure Act (HMDA) for mortgage lending. Section 1071's statutory purposes are to "facilitate enforcement of fair lending laws" and "enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses." Staff discussed the data collection and reporting requirements under consideration for applications for credit made by small businesses, including those that are women-owned and minority-owned. Statutory data points under the rule include: whether the applicant is a women-owned, minority-owned, and/or small business; application number and date received; action taken by the institution and date of such action;

type and purpose of the loan or credit; gross annual revenue in last fiscal year; race, sex and ethnicity of the principal owners; census tract of the applicant's principal place of business; amount of credit or credit limit applied for; and amount of the credit transaction or credit limit approved. Staff also detailed key considerations for this rulemaking; for example, reducing the burden from implementation and ongoing data collection. Additionally, staff provided insight into the rulemaking roadmap including completed and future milestones.

Committee members provided feedback following the presentation. Members discussed considerations related to minority and women-owned small businesses, noting the need to explore the financial inclusion of such businesses. A member applauded the Bureau's efforts to flag differences and unintentional patterns of racial and gender inequalities for small businesses. Another member noted that Black and Brown women business owners don't always have many lending and credit opportunities available to them.

Members discussed potential regulatory burden associated with this rulemaking. Several discussed concerns specifically related to credit unions, noting that implementation would be difficult and costly. A member said that the compliance date should be set far enough in the future as not to distract the immediate focus of credit unions to help their members. Another member said that a two-year timeline for implementation is not long enough to accommodate the work that needs to be done by vendors and then by institutions. A member added that credit unions often rely on multiple vendors that need to work together to provide one service. A member said that credit unions support the goal of the provision; however, they are concerned about the unintended consequences of having to collect and report this additional data. Other members also shared that they believe the rule will disproportionately burden credit unions and deter them from providing services to small businesses. A member noted that comparable data collections have proven to be extremely burdensome to credit unions.

Members shared additional feedback on regulatory burden. Some discussed the reporting threshold, noting that if the threshold is too low, there will be a dramatic decrease in the amount of credit available in rural areas. Some said that the exemption threshold for depository institutions should be raised to \$1 billion in assets. A member supported the Bureau's hybrid approach that would consider both an asset size threshold and a loan volume threshold. Another member said the Bureau should adopt only a loan volume threshold. Members said that based on the costly and labor-intensive implementation of recent HMDA changes, community bankers

fear the implementation of 1071 and believe it will have a disproportionate effect on small institutions. Several said that administrative burdens will deter them from lending in the small business space and/or that this may result in limited credit availability or credit obtained at a significantly higher cost. They added that many small and rural institutions exited the mortgage lending market due to TRID and HMDA rules, so the focus should be on minimizing unintended consequences. Members also discussed challenges with indirect lending and auto lending, noting that requirements should be put on dealers rather than the institutions acquiring the loans. Some said that if indirect lending is covered by this rulemaking, banks will not have the ability to get the data from the dealers with whom they work. Some members said that community banks, MDIs and CDFIs should be exempted from this rule so that their resources can be poured back into the community.

Members also discussed the definition of “small business,” which they called a key part of the rulemaking. Members recommended that the Bureau adopt a definition that is straightforward and consistent. A member suggested that the Bureau include both employer and non-employer firms, because many businesses in underserved communities do not have employees. A member said that the scope of what is a “small business” may change over time so the Bureau should frequently monitor and adjust the definition as necessary. Another member said that both non-depository and depository lenders should be required to comply with the rule. Several members said that merchant cash advances should be included as a covered product, as they are frequently used by underserved markets. A member also said that factoring and leasing should be included as covered products. Further a member highlighted the definition of an “application” as an area of concern, noting that his institution needs a definition that will allow them to continue counseling prospective applicants. A member suggested that the definition should be simple and narrowly tailored.

Members provided further commentary on the rulemaking. Members discussed privacy concerns regarding disclosure of 1071 data, with one illustrating concerns related to small businesses in small towns. Several members discussed anticipated difficulties in implementing the statute’s “firewall” requirement. A member said that only data points that were in the original law should be collected.

## Dodd-Frank Act Section 1033 ANPR: Consumer Access to Financial Records

**Gary Stein, Deputy Assistant Director, Office of Markets**

**William Wade-Gery, Senior Advisor, Office of Innovation**

**Max Bentovim, Financial Analyst, Office of Markets**

**Zachary Wong, Director's Financial Analyst, Office of the Innovation**

Staff from the Office of Innovation and Office of Consumer Credit, Payments, and Deposits Markets presented on the Bureau's advance notice of proposed rulemaking (ANPR) regarding section 1033 of the Dodd Frank Act, which provides for consumer access to financial records (85 FR 71003). Staff gave an overview of market practices relating to consumer-authorized financial data access and financial data aggregation and shared examples of use cases for consumer data. Additionally, staff discussed potential market issues and risks, including: scope of data access; access reliability and technical burdens; data security; consumer control and privacy; application of existing laws and regulations; and data accuracy. Staff also summarized Bureau activity relating to consumer-authorized data access prior to the issuance of the ANPR. Along with frequent market monitoring and outreach, the Bureau published a Request for Information (RFI) in the Federal Register in November 2016 (81 FR 83806) and published "Consumer Protection Principles" and Stakeholder Insights in 2017 (<https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-principles-consumer-authorized-financial-data-sharing-and-aggregation/>). In February 2020, the Bureau hosted a symposium on "Consumer Access to Financial Records," which included panels on consumer interests, market developments, and regulator roles (<https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-consumer-access-financial-records/>). In October 2020 the Bureau published the ANPR in order to solicit information that will assist the Bureau in developing regulation under section 1033. Comments were due by February 4<sup>th</sup>, 2021.

Committee members provided feedback following the presentation. Several members discussed concerns with data security. A member noted that small institutions' success is attributable to trust with customers. The member asked what happens to the data once it goes outside of the institution. A member expressed the need for safeguards in place for compliance. A member said that credit unions are held to high standards compared to larger institutions regarding compliance and data security. The member added that there needs to be a standard approach

across the board for any institution or fintech company that will access permissioned data. A member said that standardized expectations regarding data security would be useful because consumers don't often understand that a third party has access and have concerns about the safety of their data. Members said that changes induced by the pandemic should be at the forefront of this discussion. Additionally, members discussed concerns about financial institutions being held accountable for providing secure systems to protect from data breaches. They added that when there is a breach, consumers come back to their small institutions.

Several members discussed considerations related to competition. A member highlighted potential bilateral access agreements with large banks and aggregators and said that small institutions want to be part of new developments. A member said there is a need for a balanced, fair approach. Members discussed the need for broader accessibility of application programming interfaces (API). A member said that smaller institutions provide community services, often to underrepresented consumers; however, they are effectively locked out of innovations. The member said that small institutions don't have the budget or technological sophistication to create APIs. The member added that if smaller institutions are left behind, consumers may be forced to choose from a small number of large banks if they want to access services and innovations. A member noted that consumer-authorized data access can reduce the cost of access to fair credit and create more credit opportunity for groups that have been left out of traditional credit sources. The member said the Bureau should consider the operational challenges of developing and implementing new technologies. A member said that concerns with section 1071 and section 1033 are a function of the antiquated and inflexible systems that financial institutions rely upon.

Members discussed financial education and consumer understanding related to data access. Members highlighted the importance of transparency and easy-to-understand information on the use of financial data. Members also said that it is important that consumers understand the access they are providing. A member said that disclosures are important and that consumers need to understand the process, risks, and liability associated with information being shared with a third party. A member said that section 1033 should incorporate a standardized form laying out the parameters of access and explaining expectations around granting access. A member shared that due to connectivity issues with access to data, consumers may have a poor experience because they are unaware of the details of data sharing. A member noted the time



and energy it takes to resolve a negative customer experience and that the institution's reputation and trust come from customers believing their information is kept secure.

Members discussed potential benefits of section 1033 to consumers. A member recommended that the Bureau apply the consumer protection rights included in the Fair Credit Reporting Act to data access governed by section 1033. Another member suggested that access to data is an asset because there is an enumeration and an advantage in return. A member said that the Bureau should consider how participating in this financial data ecosystem allows consumers to access lower-cost and more-efficient products and services. The member also said that the Bureau should consider strategies to position consumers' data in a way that ultimately works for them. A member noted that there is a connection with these data access issues and small business lending concerns due to infrastructure and technology. The member added that obstacles to increasing equity in small business lending stem from these issues. Members said that access to consumer data will benefit consumers and has the potential to create better financial products and services for the underserved. However, the current state of the industry does create challenges for consumers and providers.

Members discussed the Bureau's role in this space. Some members said that this is an opportunity for the Bureau to encourage the market to provide these benefits for consumers in a safe manner. Another member said that the Bureau should provide leadership and clarity rather than reliability and supervision of this rule. The member asked who will supervise the companies that have access to this data and who will have the ability to monitor, regulate, improve the process, and issue penalties. A member said that rulemaking should consider individual rights, coupled with consent and education. A member said that there is a need for a federal framework or reform regarding data privacy, data security, and data access. The member said that sectoral approaches can be costly and can take these institutions to the point of data security gridlock. A member asked if the Bureau thinks that data aggregators should be supervised, and should they be supervised in the same way that the Bureau supervises credit reporting agencies. Members said that this marketplace requires leadership and clarification.

## Mortgage Trends and Themes Discussion

**Mark McArdle, Assistant Director, Office of Markets**

**Jessica Russell, Mortgage Data Assets Program Manager, Office of Markets**

**Karen Chang, Originations Program Manager, Office of Markets**

**Barbara Maurice, Senior Product and Strategy Advisor, Office of Consumer Response**

**Desmond Brown, Assistant Director, Office of Consumer Education**

**Per Olstad, Senior Advisor, Office of Consumer Education**

This session began with a presentation from the Office of Mortgage Markets on trends in the mortgage markets. Under the CARES Act, consumers who have federally backed mortgages and are experiencing financial hardship during the COVID-19 outbreak may request a forbearance on their mortgage payments. This forbearance is for up to 180 days and may be extended for an additional 180 days. That covers about 70% of the market, and mortgage servicers are providing forbearance for many privately held loans as well. The Bureau is also monitoring how consumers are faring as the exit forbearance. While most borrowers who exited forbearance are back on track, a portion are delinquent or still in the loss mitigation process. The Bureau has collaborated with industry and nonprofits on a campaign to reach out to borrowers who are delinquent and urge them to contact their servicers about their options. Additionally, regarding home prices, limited inventory and strong demand have caused a surge in home prices. Furthermore, origination volume has largely recovered from early disruptions due to COVID-19, but access to credit remains an issue for many borrower segments. Staff also noted that during the COVID-19 pandemic, the GSE market share has increased, but access to credit for non-agency financing and lower credit GSE and government borrowers remains tight.

Following the mortgage markets presentation staff from the Office of Consumer Response provided an overview on trends in mortgage complaints. Mortgage complaints represent approximately 5.9% of complaints in 2020. The top issues in mortgage complaints included: trouble during payment process; struggling to pay mortgage; applying for a mortgage or refinancing an existing mortgage; closing on a mortgage; and incorrect information on a report. Staff also described themes among consumers' mortgage complaints.

During the last presentation on the mortgage trends and themes discussion, the Office of Consumer Education provided an overview of the Bureau's COVID-19 response to homeowners. The Bureau has a website dedicated to getting consumers mortgage help if they are struggling and to act if they are in forbearance. Staff discussed the Bureau's forbearance outreach initiative to help homeowners protect their homes such as three forbearance consumer guides that cover facts about forbearance; next steps if forbearance is ending; and how to start forbearance.

Committee members provided feedback following the presentation. Members commended the Bureau for its consumer education resources and noted that financial institutions and consumer groups use these resources. A member said its best to proactively reach out to homebuyers and homeowners. A member said to focus on how the message is communicated to the consumer when they're coming out of forbearance. A member said that financial literacy among consumers is better than it was during the last mortgage crisis. A member suggested that it may be helpful if the Bureau were to engage with other agencies regarding consumer resources perhaps via think tanks.

Members discussed concerns related to forbearance. A member said that forbearance options have been very helpful. Another member said that consumers were facing pressure because, along with forbearance, student loan forgiveness, credit card forgiveness were coming to an end [at the time of this meeting]. A member said that private and government backed loans should be included in forbearance and forbearance amount should be applied to the end of loan. A member said that many consumers have disconnected completely with lenders since the start of the pandemic. A member said that many borrowers are concerned about making mortgage payments and are not aware of their options.

Members discussed observed trends from the mortgage market. A member said that they have not seen a drop off in mortgage origination since the start of the pandemic. A member expressed challenges dealing with escrow applications. A member said that many consumers of color are not aware of protections provided by the CARES Act, such as the mortgage relief options that are available to them. A member added that more must be done to provide affordable loans to underserved consumers during this time. A member asked if the Bureau will go back to reporting on HMDA on a quarterly basis. Another member asked, considering self-employed borrowers, is too much information being requested on GSE loans? A member highlighted that in Michigan there is a high level of evictions and many are facing foreclosure; noting that communities of color are the most affected. A member expressed surprise with the mortgage report complaint analytics and the high number of complaints received in 2020, especially as it pertains to the mortgage industry. A member shared that they have seen more consumers taking advantage of lower rates for purchasing of homes, some even 2nd homes, or refinancing and improving on an existing home. Regarding the government's

response to homeowners, a member said that we must look at what has worked and what has not worked. The member said that many consumers applied for mortgage relief that didn't need to, making it harder for those that did or still do need assistance. A member said that there may need to be a more aggressive stance to deter from a mortgage crisis.

## Adjournment

Staff Director Manny Mañón adjourned the meeting of the CFPB advisory committees on November 18, 2020 at approximately 4:30 p.m. Eastern.

## Certification

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



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Manny Mañón  
Staff Director, Advisory Board and Councils  
Section  
Consumer Financial Protection Bureau



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Eric Kaplan  
Chair, Consumer Advisory Board



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Valerie Quiett  
Chair, Community Bank Advisory Council



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Racardo McLaughlin  
Chair, Credit Union Advisory Council