Consumer Advisory Board Meeting

November 2, 2022

Consumer Financial Protection Bureau

Meeting of the CFPB Consumer Advisory Board

The Consumer Financial Protection Bureau's (CFPB) Consumer Advisory Board (CAB), met via WebEx at 1 p.m. EST on November 2, 2022.

CAB members present	CFPB staff participants
Chair Leigh Phillips	Director Rohit Chopra
Sharmane Andrews	Deputy Director Zixta Martinez
Lorray Brown	Martin Kleinbard
Louis Caditz-Peck	Manny Mañón
Stephanie Carroll	Daniel Murphy
David Ehrich	Leslie Parrish
Mae Watson Grote	Michael Scherzer
Margaret Libby	Laura Udis
Andres Navarrete	Amy Zirkle
Faith Schwartz	
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

The CFPB's Section for Advisory Board and Councils Staff Director, Manny Mañón, convened the Consumer Advisory Board (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 Personal Financial Data Rights, By Now Pay Later (BNPL), and Peer-to-Peer Payments. 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.

Personal Financial Data Rights Briefing

Director Rohit Chopra

Daniel Murphy, Markets and Policy Fellow, Office of Markets

Michael Scherzer, Senior Counsel, Office of Regulations

The first session of the day began with staff from the Office of Markets and the Office of Regulations presenting on 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's next steps. Following the presentation, CFPB staff sought input from Board members.

Several members discussed data privacy standards. A member said that financial institutions support the use of consumer data for new financial products and services that promote inclusivity and said that access to data must be supported by robust consumer protections, adding that as the Gramm-Leach-Bliley Act applies to banks, it should also apply to third parties, asking that all participants be held to the same standard. Another member said that the sharing of this information is something that is potentially beneficial to consumers, but only if the data is protected by downstream users and recipients, and that there should be accountability to ensure that occurs. This member said that the focus should be on the frequency of access or terms around access or go back to the basic principle that data ought to be shared at the behest and specific request of the consumer. This member said that the issue with some of the aggregator models today is that they use the data multiple times a day for their own benefits and monetize the data in ways that aren't beneficial to the individual consumer. The member said that these dynamics are what application programming interfaces (APIs) and other protections the industry has been putting in place are designed to prevent and said that if data sharing is going to be beneficial to consumers it needs to be directed by the individual consumers in some of these downstream and secondary uses.

Multiple members discussed ways to keep consumers centered in the rulemaking process. A member recommended that the CFPB be explicit about "who" should be at the table and stated that there isn't enough focus on consumers' direct perspectives. The member said that there are many different and varied actors at the table, e.g., depository institutions, financial companies, loan servicers, payment networks, insurance companies, credit reporting agencies, data brokers, fintechs, trade associations, etc., but that the customer should be "center." This member continued that the nature of the questions presented requires the highest degree of direct, unfiltered consumer participation, that this rulemaking will dictate industry evolutions that are going to have tremendous implications, and that the focus should be on the opinions and feedback of the people for whom the implications of this rule will have the most impact. The member said the CFPB should elevate the input of those who stand to gain the most: low- and moderate-income consumers, communities of color, young people, older people, welfare recipients, Black/Brown women, and others. The member said to make sure the Bureau considers how participating in this financial data ecosystem ensures lower costs and more efficient products and services. Another member said that it is important to keep in touch with young consumers because they are often on the cutting edge of the landscape of what is happening with financial services and how financial services are being used by consumers. Another member said that it is difficult for consumers to understand the implications of this rulemaking stating that it seems very abstract, and that there are also language barriers that make it difficult to understand all the implications.

Several members discussed open banking and competition. A member said the Bureau should consider the European experience in implementing open banking. The member said that the

European experience was API (application programming interface) or “portal first”, which they stated was the right approach to address concerns around security, safety and consumer privacy. This member said that in terms of the European experience, the APIs that have been developed are not as robust as needed to allow the access to financial data necessary to support a vibrant consumer financial product and service market and in some cases, there are complicated consent flows. This member continued that in other cases, European APIs have been limited in functionality and that if the CFPB is considering an API-first approach, the Bureau should ensure that the portal is designed with the consumer user experience in mind, thus making sure that the benefits of Section 1033 are realized. The member said that in Europe there is anywhere between a 10 to 30 percentage point difference in the conversion rate on authentication methods between APIs that are less robust and, where necessary, screen scraping is used to enable the requisite information sharing. The member said that when thinking about where to go on screen scraping, there needs to be adequate controls around data security and identifying who is accessing the data. Another member said that how we approach screen scraping, and to consider how long it may take for some players in the financial sector, especially smaller financial institutions, to be able to participate and meet the requirements of the rule, is important, and to also consider whether or not aggregators will be required to support a wide range of institutions, or if they will be able to pick and choose based on their business priorities. Another member touched on the value of pricing data and said that just like in the Section 1071 rulemaking, it is important given the CFPB’s goal of maximizing competition. This member said that being able to have access to what prices consumers are paying is the key to being able to provide better pricing.

A few members discussed use cases, with one member noting the tension between protecting privacy and the unnecessary, excessive use of data on the one hand, and the goal of having this data unlock competition, on the other. This member shared secondary uses aimed at improving existing services, developing new and better services, and intensifying competition between services, and shared examples of secondary uses such as credit modeling, loss forecasting, and internal analysis. The member added that another valuable use would be “nudges” to the consumer around financial health. Another member encouraged the CFPB to collect use cases, either good or bad, and to use this as an opportunity to map the potential impact of the proposed rulemaking so the CFPB can see where regulations are strong and where they might have unintended consequences.

Several members discussed entities potentially covered by the rulemaking, with one member advocating strongly to not have carveouts. This member said that ensuring financial institutions of all sizes are included in a uniform set of rules is important and said that other lenders including Buy Now Pay Later companies should also be included. A member said that if companies provide public benefits such as through electronic benefits transfer (EBT) cards, they should be covered under any Section 1033 rulemaking and strongly encouraged the CFPB to consider this issue seriously for a number of reasons. The member stated that if we create a financial system to benefit all consumers then we must consider the needs of all consumers, including those who receive public benefits to ensure they can manage their household finances, and said that for millions of Americans, public benefits are part of their financial picture. The member noted that the EBT card market is concentrated within a handful of companies who contract with state governments to provide these cards to consumers, and that consumers who rely on these products have no options when it comes to selecting their provider. The member said that this lack of competition means that the services offered to consumers are limited. The member said that there is also a wave of benefit thefts targeting EBT cards and that the victims of this theft often don't have any recourse or means of recovering their benefits. The member said that if public benefits aren't covered, there will be negative consequences for low-income consumers. The member said that it will continue to perpetuate a two-tiered financial system in which high-income consumers with salaried jobs are well-served by the financial sector and millions of other Americans will continue to be poorly served.

Buy Now Pay Later

Laura Udis, Senior Program Manager, Office of Markets
Martin Kleinbard, Senior Fellow Markets and Policy, Office of Markets

For the second session of the day, CFPB staff from the Office of Consumer Credit, Payment, and Deposit Markets presented on BNPL. During this presentation, CFPB staff discussed a recently released report on BNPL Market Trends and Consumer Impacts including the report's key findings and the Bureau's planned next steps. Following the presentation, CFPB staff sought input from members on relevant considerations for the Bureau.

Multiple members voiced their concerns around the lack of regulation in this area. One member voiced concern about disclosures and warnings to consumers. Another member said that the Consumer Bankers Association's and Center for Responsible Lending's petition to consider a larger participant rulemaking in this space was a very good idea. Another member encouraged some form of data reporting and the inclusion of BNPL in the 1033 rulemaking, as this would offer transparency into the consumer's balance sheet. A member said that there is a lack of clarity around terms, dispute processes, and overextension. One member specifically mentioned that there should be "friction" in the process, with an awareness of overextension and a lack of transparency around terms, to ensure consumers are entering into something that makes sense for them. One member mentioned that there continues to be interest in BNPL in other countries and that it has become an expected method of payment. This member said that whatever rulemaking or guidance that the Bureau undertakes in this area should continue to preserve the choices that are available to consumers in the marketplace. A member suggested that there should be the same protections that apply to credit cards, and it is not clear if the exact same protections do apply, or if it is a matter of just looking at the requirements for credit cards to ensure there are disclosures and dispute resolution protections, but not necessarily for everything.

Several members discussed their concerns with how BNPL correlates to the financial insecurities of various consumers. A member said that half of the consumers using BNPL are below the age of 33 and that it would be interesting to see a breakdown of race and income to see who is most actively using these products. Another member shared concerns with what was heard at the Federal Deposit Insurance Corporation's Economic Inclusion meeting, namely that there was disparate access to credit cards among borrowers of color, particularly for Black and Latino heads of households. Another member said that the first concern is that the entire product category focuses on people with financial difficulties who are already struggling. The member went on to say that 31% of BNPL consumers report their financial health is dire and that one-third of BNPL consumers have fallen behind on payments. This member added that more than one-half of BNPL users had their credit card limits decreased in 2020. The member said that the ease of use, or lack of friction, facilitates consumerism and deepens financial insecurity, and that this is a grave concern. This member shared that BNPL companies have a 20% higher conversion rate at checkout according to one report, while another reports found that customers face 80% higher order value and a that third reports 17% larger shopping carts and a 12% uplift in overall sales. Another member said that their organization built a recommendation engine which connects practitioners with fintech products and services that have passed a "seal of inclusivity" and that it is designed to elevate products that build financial security.

Multiple members discussed the risks associated with BNPL and stated these outweigh the rewards for consumers. One member said that BNPL products promote the digital space and in turn the use of that credit across different merchants. This member said that this requires personal accountability from the consumer for managing debt-to-income payments and that overextension is easily possible. Another member said that when BNPL first came out, it seemed to be a positive force for millennials and low-income individuals simply because it allows for the spread of payments. Another member said that unsecured installment loan credit tends to perform very poorly in downturns, that most people are currently expecting a downturn and that 12-, 24-, and 36-month loans are going to perform poorly, which will in turn also have an impact on consumers. This member added that the longer terms aren't a good thing from a consumer perspective. Another member said that the opacity of this market is a problem for lenders of all sizes, and without an adequate look into the credit worthiness or profile of a consumer, this creates massive risk for both the consumer and the institution, and that debt stacking is very significant. Another member said that there are many variants of these products in the marketplace and that there is a need for consumers to be able to compare products. Another member said that foreshadowing what is to come underscores the importance of what BNPL really is and what the risks are for consumers. This member added that there have to be new sources and they will come from monetizing the data and/or at the expense of the consumer.

Peer to Peer Payments

Deputy Director Zixta Martinez
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 complaints. Following the presentation, CFPB staff sought input from members.

Several members expressed concern with fraud and scams, and stressed the importance of educating consumers. One member shared that his organization does not offer P2P services, but the network supports a lot of P2P offerings such as Zelle and Cash App. The member said that they are currently looking at upgrading tools to help providers fight against fraud. The member said that in the United Kingdom there is a voluntary program for financial institutions to provide compensation to fraud victims in the case of scam fraud.   The member said that his organization has been helping out some of these services check for fraud. This member said that there is an increased number of servicers developing confirmation messages and disclosures to prevent against fraud and scams and added that everyone has a role in educating consumers. Another member said that financial institutions are concerned with reputational risks and that scams are real, and it is important to help the victims by offering individual counseling. This member said that there needs to be accountability for fraudulent transactions. The member added that financial institutions are having a hard time with scams such as romance scams, and customers will be adamant on sending funds even when it has been pointed out that it is a scam. A member said that the CFPB should conduct a more robust study in this marketplace especially in the area of fraud and scams and implications for the consumer. The member said that there is a need to look at the difference between a fraud and a scam, and how that affects the consumer. The member said that there needs to be investment in technology to detect fraud and scams that are being conducted by massive criminal enterprises. The member said that fraud and scams start with a spoof call of some kind and that tackling spoofing would be tremendously beneficial in this space and advised working with law enforcement and social media platforms.

Another member stated that there is a need to look at how P2P has had a positive impact on consumers as the majority of transactions go through as intended. This member said that a recent Congressional report found 200-250 million fraudulent transactions, but advised also looking at the positive – namely, 1.5 trillion in transactions that occurred with the Zelle network. This member went on to say that 99.94%of transactions go through as intended and that data points such as these broaden the dialogue.

Another member commented on the nature of P2P payments and the ability of banks to integrate and offer these benefits. This member said that one of the projects that his organization is working on is partnering with minority depository institutions and credit unions to help them address digital modernizations and integrating new digital technologies into their existing tech stacks. This member shared that in speaking with these institutions, they found that one of the top three items included P2P and the ability to integrate with the core processors. This member reported that the cost for a small bank is high and impossible for them to pay. The member said that a slow uptake with smaller intuitions is older populations, and that this population is much less likely to use P2P. The member stated that smaller financial institutions get excluded and left behind and that this is unfair. The member said that this also affects underserved populations who bank with these smaller institutions.

Adjournment

Staff Director Manny Mañón adjourned the meeting of the CFPB Consumer Advisory Board on November 2, 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 Official and Outreach and Engagement Specialist, Section for Advisory Board and Councils, Office of Stakeholder Management, Consumer Financial Protection Bureau

Leigh Phillips

Leigh Phillips, Chair, Consumer Advisory Board