MAY 2013

Consumer Advisory Board meeting minutes

MAY 15-16, 2013

Consumer Financial Protection Bureau

Third meeting of the Consumer Advisory Board

The Consumer Advisory Board (CAB) of the Consumer Financial Protection Bureau (CFPB) convened for its third meeting at 9:00 a.m. on May 15, 2013. The CAB met at the Japanese American National Museum, 100 North Central Avenue, Los Angeles, California 90012.

CAB members present:

Jose Quiñonez, Chair
Bill Bynum, Vice Chair
Gary Acosta
Jo Ann Barefoot
Don Baylor
Maeve Brown
Steve Carlson
Laura Castro de Cortes
Elizabeth Costle
Prentiss Cox
Patricia Garcia Duarte
Patricia Hasson
Adam Levitin
Jennifer Mishory
William Nelson
Michelle Peluso
Dory Rand
Annette Rizzo
Ellen Seidman
Josh Silverman
Robert Stoll
Donna Tanoue
Jane Thompson
Jonathan Zinman

Present from the CFPB:

Director, Richard Cordray
Deputy Director, Steve Antonakes
Margaret Anderson
Delicia Hand
Gail Hillebrand
Skip Humphrey
Peter Jackson
Zixta Martinez
James Miner
Patrick Orr
Dan Quan
Katherine Samolyk
David Silberman
Corey Stone

DAY ONE

Welcome and meeting overview

Jose Quiñonez, CAB chair
Delicia Hand, CAB Staff director

The CAB meeting was called to order at 9:17 a.m. PDT by CAB Chair, Jose Quiñonez, who, with the Staff Director, Delicia Hand, reviewed the two-day meeting goals.
Meeting goals and topics to be discussed included: new Americans in the financial marketplace, consumer engagement tools, a review of the recently issued payday report, an update on the recently finalized remittance rule, and the first in person CAB committee meetings.

After an overview of the agenda, CFPB staff provided Committee members with an update on Project Catalyst. Following this welcome and overview, the CAB members divided into their respective committees.

CAB committee meetings

The first in-person committee meetings engaged key Bureau staff and committee members shared a variety of perspectives on issues with the CFPB. A summary of each committee discussion follows below.

Mortgages committee

Kelly Cochran, assistant director of Regulations
Lisa Applegate, mortgage implementation lead, Research, Markets, and Regulations
Richard Horn, Senior Counsel & Special Advisor, Regulations Office

The Mortgage Committee meeting began with staff providing an overview of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and the Bureau's ongoing rulemaking. Specifically: the Dodd-Frank Act mandated the integration of these forms in order to address the duplicative information on both of the disclosures, as well as adding additional disclosures with the intention of reducing the amount of paperwork overall.
The goal of the new disclosures is to aid consumer understanding of the mortgage loan transaction by utilizing readily understandable language to simplify the technical nature of the

transaction and facilitate industry compliance with TILA/RESPA disclosure requirements.

The TILA/RESPA proposed rules were published in the Federal Register on August 23, 2012, and the public comment period was open until November 6, 2012. The CFPB performed qualitative and usability testing of the proposed forms, beginning with 10 rounds in 9 cities, with 92 consumer participants from a variety of backgrounds and 22 industry participants. The agency also posted prototypes online and obtained 27,000 individual comments on the prototype. The 90-minute interview tests aimed to determine whether consumers could compare different loan products and identify estimated and final costs. After the initial round, the prototype was changed and retested, and included two rounds of Spanish language testing. The testing found different issues for different disclosures, such as consumers understanding risk of payment and interest rate changing, as well as with the closing disclosure comparison of the estimated and final. The agency also collaborated with experts in communication and signage, and worked with a private firm to conduct surveys and research.

Bureau staff also provided an update on implementation of the recently issued mortgage rules. The mortgage rules implementation is a four-step process:

1. Explain
    a. Since publication of the rules, the Bureau has worked to increase comprehension of the rule contents by creating a number of plain language content guides, making information available on consumerfinance.gov, creating an industry email list to provide regular updates, and developing a video series explanation of the rules.
2. Interpret
    a. The Bureau is available to answer any questions. The Bureau will take requests by email and phone for meetings with subject matter attorneys. The Bureau aims to ensure that inquiries receive consistent responses.
3. Implement
    a. In the period after the rule has taken effect, the CFPB supervision team will prepare to begin examinations of covered entities under the mortgage rules.
4. Supervise
    a. Bureau staff discussed tools such as manuals, supervisory bulletins, and published reports as means of additional guidance after implementation.

Mortgage committee comments and questions

- Committee members expressed concerns for new American consumers, as different consumer groups handle mortgages differently. The members agreed that early education and disclosure could lead to more successful outcomes. The current form is in quantitative, baseline testing with approximately 850 consumers, and the target date for the final rule is fall 2013.
- CAB members recommended the development of a primer, such as a video tutorial that is specific to jurisdiction or territory, and explains the standard language, guidelines, expectations, and/or processes. The purpose of this primer would be to increase consumer understanding and industry compliance with regulations.
- A CAB member inquired about the potential cost impact on lenders. CFPB staff explained that impact analyses of implementation cost are ongoing, and it was determined that the benefits outweigh the costs with the proposed rules. Furthermore, integrating these disclosures could lead to estimated compliance savings.
- The CAB members discussed the importance of supervision versus enforcement for when the rule first goes into effect. The CFPB plans to draw a distinction in the early stages between supervision and enforcement, and is continuing to put energy in the formal process and public comment on rulemaking.
- CAB members with relevant professional experiences said that the overall reaction from lenders is a positive appreciation of the transparency of the new process and the increased ease of explaining to consumers, leading to an increase in market competition and a potential decrease in litigation costs.
- Several CAB members also suggested new data collection elements to improve the user experience to make the process less costly and cumbersome.
- The members also encouraged frequent updates as feedback evolves.

Small dollar lending and installment lending committee

Richard Hackett, assistant director of Installment Lending Markets

Maureen Downes, financial analyst, Installment and Liquidity Lending Markets Office

Staff began the discussion with an overview of private student lending and its economic spillover effect, while also addressing generic issues of servicing. Though federal loans have repayment options to assist consumers through the process of getting full employment and full education development, private loans have a fixed, indefinite repayment schedule.

Staff summarized of comments on the follow-on impact of student debt. One of the key themes that emerged from the comments was that once there is a student loan default of any significance on a consumer's credit record, it could potentially inhibit participation in the economy, such as the housing and credit markets, and could affect employment opportunities. CFPB staff explained that an examination of current statistics reveals that the current default environment for student loans appears to be on an upward trajectory.

CAB comments and questions

The members suggested options to tackle this market situation. They included:

1. Create the ability to refinance private loans at favorable rates; no market for this currently exists.
2. Define which loan servicers would be subject to examination, and possibly providing for enhanced consumer protection via intermediaries.
3. Collaborate with academic institutions to obtain voluntarily released information for students to compare debt loads.
4. Increase the number of students who file a Free Application for Federal Student Aid (FAFSA) through pilot programs and aggressive marketing, in collaboration with the Department of Education and the Department of the Treasury.
    a. This will hopefully address the fundamental problem of inadequate numbers of students and their parents applying for more protected loans on the on the erroneous assumption that they made too much money to get subsidized aid.

5. Increase awareness and usage of CFPB's online financial aid shopping tool and federal aid loans by finding effective methods to reach these young consumers.
    a. Other, more vulnerable student consumer groups include new Americans, low-income families, and older students, who may be taking on the loan process without parental or other guidance.
6. Target of the overlap of credit card debt with student loan debt, and addressing the reality that a certain amount of education lending is being put on credit cards

The committee also discussed a recently issued auto bulletin concerning indirect auto transactions and loan originator discretion, which CFPB has found disproportionally, affects particular racial and ethnic demographics. There are some policies that curb this practice but it is still an area of concern. The next steps are to understand price dispersion and the realities of charging procedures by gathering additional data.

CAB comments and questions

- A CAB member emphasized that it is essential to increase the amount of information available to consumer to enable vulnerable consumers to understand the choices they are making and steer clear of bad or irrational.
- CAB members suggested that the CFPB address consumers who are stuck in deep debt with the loans that they currently have. Students need to understand options and make better decisions. This could be accomplished by:

    1. By using consumer data to assess the problem to determine which borrowers are truly struggling. Potential data sources include:

        a. The cohort of students who are taking deferments or are seriously delinquent, and calculating how many of these consumers would be current or less delinquent if they had utilized an available, flexible option other than a private loan payment plan
        b. Credit profiles of successful and unsuccessful student loan borrowers, which plans they utilized, and what types of differences were present

2. A CAB member suggested that the Bureau evaluate college savings disparities across family income levels. While the CFPB cannot compel savings, advocating for increased consumer education about savings for college could reduce the debt burden.
3. A CAB member suggested that the Bureau collaborate with private lenders around loan restructuring. Some lenders are concerned about heightened competition with refinancing and restructuring as it applies to repayment

Credit reporting, debt collection, and deposits

Corey Stone, assistant director of Deposits, Cash, Collections and Reporting Markets

The meeting began with an overview by CFPB staff of common themes and current trends in credit reporting. CAB members discussed a list of entities that utilize credit reporting, which included reporting agencies, entities collecting consumer data, downstream debt buyers, government bodies, and the healthcare industry.

The committee also discussed a current trend of employers looking at prospective employees' credit checks in the hiring process, and determined that this was an area in need of consumer protection. This trend may also disproportionately affect certain consumers who may not have credit, resulting in an increased need for transparency in the credit reporting process.

The conversation then turned to the dispute resolution process between consumers and credit reporting agencies. CFPB staff informed the committee that data and metrics are being gathered and developed to analyze complaints concerning frequently observed debts, such as debts in collection and medical debt.

The future topics for discussion by this committee are:

1. decrease the number of unethical purveyors of consumer information,
2. error correction, especially with medical debts, and
3. resources available to disparately impacted groups, such as women immigrants, seniors, and those with limited English proficiency.

CAB comments and questions

- Several CAB members recommended that the CFPB develop policies that ensure that companies that do look at credit reports in the hiring process truly understand the extensiveness of the reporting process.
  - The purpose of this is to ensure that a "full picture" of financial history is developed, as credit reports can be interpreted in various ways.
- A CAB member recommended an initiative that encourages people to request their credit score during an annual event, such as when a consumer is filing his taxes, because their information has already been verified in that process. Increased self-awareness of credit scores will lead to fewer disputes and improved financial responsibility.
- About concerns surrounding the collection of big data, several CAB members stated that data could be more accurate if consumers had heightened ownership or knowledge of its usage.
- A CAB member suggested the possibility of consumers receiving a monthly report of outgoing data at the same time it is received by agencies, as data can potentially be made more accurate if consumers make corrections with more frequency. However, CFPB staff disputed the practicality of this suggestion's usefulness.

Card and payments

Marla Blow, assistant director of Card & Payment Markets

Dan Quan, financial analyst, Card Markets Office

The Card & Payments committee discussed factors surrounding prepaid or reloadable card options. The committee wanted more clarity on mobile usage and the increased options available in the market. Furthermore, the committee wanted to know how this trend relates to privacy and big data to protect consumers' privacy online. This discussion is summarized below.

Currently, consumers seek prepaid or reloadable cards that can be used in stores, to obtain cash or as debit cards and that can be used to pay bills online. These cards move money fluidly in the event that a consumer does not use or have access to a bank or online resources. Increasing the access and variety of cards and payment methods to consumers, however, could escalate potential consumer risk. The type of consumer that utilizes this card is not limited to a particular income or demographic set; the members noted that the ability to manage money is not necessarily related to income level, and that all consumers need to be protected.

There is a need to consider the scale of this issue and consider more data. Analyzing income and cash flow over specific time will allow for the development of better consumer products with more protection and less risk. The data is collected primarily by obtaining payment history data, and evaluating the frequency with which consumers open and close accounts, as well as the lifespan by type of prepaid card. The members also discussed the degree of data tracking, such as a retailer's ability to track purchases and determine specific qualities about the consumer. Currently, there are consumer protections for debit accounts, particularly for fraud under Regulation E. If a consumer suspects fraud on the debit based account:

1. The consumer contacts the financial institution, which will provide provisional credit to cover the fraudulent charges within 10 days.
2. After an investigation by the institution, if no fraud is identified, the institution can retake the provisional credit.

If fraud was committed, the consumer retains the initial provisional credit provided.

CAB comments and questions

- Committee members evaluated the variables that characterize the quality of a reloadable card. This includes qualities such as prepaid cards with name embossment, which have higher life spans of use, and the functionality of certain cards (e.g., use for bill pay), as well as how the cards differ from traditional checking accounts.
- A CAB member suggested developing the concept of prepaid cards as a means for the consumer to develop credit, and that the CFPB should collaborate **with issuers and regulators** to apply protections to this method in order to protect vulnerable consumers from risk.
- Several CAB members agreed that emergency cash flow would be a better option for overdraft protection than prepaid cards, as checking accounts are conventionally accompanied by the option of a savings account
- Several CAB members recommended holding consumer focus groups to complement the information and data received from larger organizations in order to gain firsthand data regarding the behaviors of using prepaid cards, purchasing, and fraud situations.

Ultimately, the committee agreed that CFPB should collaborate with other agencies to develop less risky "alternative to checking" card that offers a safe transaction account and does not allow for accumulation of debt.

Working lunch: CFPB Remittances Rule

David Silberman, associate director of Research, Markets, and Regulations
Dubis Correal, strategic partnership and outreach coordinator, Consumer Education and Engagement
Eric Goldberg, counsel, Regulations Office

The working lunch began with a high-level overview of the recently finalized Remittance rule. The rule, which will take effect in the fall of 2013, will establish for the first time federal regulation of foreign remittances. The two key elements of the regime consist are:

1. A rule designed to bring transparency to remittances. The rule will require that remittance service providers provide the client with a written statement of fees, the exchange rate, the amount the consumer is giving, and the currency amount that will

reach the foreign country. All this information will be included on the receipt, as well as an inclusion of error resolution rights and CFPB contact information.

The statement will be provided to the consumer in the language in which the remittance provider advertised to attract consumer's business. One purpose of this is to give the consumer easier access to compare alternative options, and to determine the actual amount, contingent on fees and exchange rates, that will reach the recipient account.

2. If the recipient does not receive the amount of money the recipient was supposed to receive at the time designated, the sender has the right to go back to inform the remittance provider of the error, at which point the remittance provider is required to investigate and rectify the discrepancy.

Because all of these provisions are a part of the Electronic Funds Transfer Act, any violation of these rules can include public enforcement and private rights of action with a minimum amount of damages. The move toward implementation brought three additional changes to the rule.

1. The removal of the requirement for the remittance provider to disclose foreign taxes. The rule originally required the remittance provider to disclose the exact amount of any foreign taxes at the national and sub-national levels. Such charges are uncommon and are small where they exist. Exact charges cannot be consistently verified due to a lack of authoritative sources and the difficulty for providers to ascertain current information. The burden this requirement placed on the remittance provider was not justified by the incremental benefit to consumers; the benefits were marginal and the costs were significant. Therefore, the rule was amended to say that foreign taxes are not required to be disclosed.
2. The removal of the requirement for the remittance provider to disclose recipient fees charged by the receiving institution in the case of account-to-account transfers. Because charges vary based on criteria such as account types or day-to-day factors, requiring the remittance provider to supply this information would have high costs while yielding small benefits. The remittance provider is not required to disclose the fees for a recipient institution that is an outside provider.

3. An amendment regarding errors made by the consumer, such as the sender writing the incorrect recipient account information. If the US remittance provider makes a reasonable attempt to verify the information before sending, and attempts to collect the incorrectly sent funds from the recipient institution, then the provider is not liable for the loss and it becomes the consumer's responsibility. It is required that this procedure be appropriately disclosed to the consumer upfront. The purpose of this amendment is to reduce the compliance burden while preserving consumer protections

With the above amendments, the rule will move toward implementation and consumer education of these new rights. The reformatting will keep the basic benefits of the rule in tact while also avoiding the risk of disruption to the current system.

CFPB Remittances Rule: CAB comments and questions

- A CAB member asked why using estimation of average charges was not a resource for foreign tax disclosure. CFPB staff considered estimation, but the risk of misestimating was high as there is no reliable source.
- A CAB member asked for clarification regarding recipient foreign institutions and whether the fees apply if the consumer sends a transfer from a US--based institution to another US-based institution located abroad. CFPB staff explained that the amendment does not apply if the receiving institution is an agent of the sender's institution; an affiliate of an agent is still considered a part of the agent.
- A CAB member inquired about the specific quantities of remittances that the rule covers. CFPB staff explained that the statute covers entities that provide remittance transfers in the "normal course of business," which refers to a quantitative amount of remittance transfers conducted by institutions. Though data was sought, there is currently no completely comprehensive data regarding remittances and standing remittance transactions. In order to observe the effects of the rule, the CFPB plans to conduct a baseline survey of a representative sample of institutions in the future. Additionally, the Consumer Education division is organizing outreach efforts for this survey, and has identified the following main components of study:

  1. Partnerships with community experts

2. Increased access to consumer education

CFPB en Español: website preview

CAB members had the opportunity to preview the CFPB in Español website in advance of the public hearing. CAB members paired with each other at computer stations and reviewed the site. During the Public session of the CAB meeting, the CFPB in Español website was launched.

CAB public meeting: financial services and new American communities

Richard Cordray, director
Steve Antonakes, deputy director
Jose Quiñonez, CAB chair
Peter Jackson, assistant director of Consumer Engagement

During the public meeting of the CAB, Director Cordray addressed the CAB, panelists, and members of the public, speaking about the Bureau's focus on serving all consumers, and new Americans in particular. After Director Cordray's remarks, Assistant Director for Consumer Engagement Peter Jackson provided an overview and demonstration of the Bureau's latest initiative – CFPB en Español – a new Bureau Spanish language site. Following this demonstration, the Bureau's Acting Deputy Director, Steve Antonakes, facilitated a conversation about new American immigrant communities and their experiences in the marketplace. A livestream video of the session and verbatim transcript of the session is available on consumerfinance.gov

CAB public session debrief

Immediately following the public session, the CAB resumed its meeting in closed session with a debrief on the public session.

CAB public session debrief: CAB comments and questions

- A CAB member commented that, because lenders and tax preparers increasingly offer newer and more specialized products, often characterized by an increase in aggressive marketing, the CFPB should explore the possibility of starting a savings account initiative that offers consumers messaging and advice.

- Several CAB members noted that there appears to be a lack of consumer awareness of access to alterative products to payday loans.
- The CAB members had concerns regarding bank branches closing in underserved communities, and recommended that the CFPB observe and renovate lending practices to have all consumers' needs met by the banking system. The suggestions included:
  1. Incentives for banks to provide smaller-a smaller dollar loans in order to avoid high payday lending interest rates and short payback terms.
  2. Mandates that payday lenders provide easy-to-read disclosures. The disclosure would delineate the risks and costs associated with the small dollar loan.
  3. Establishment of a registry of payday lenders and a user cap
  4. Non-English disclosures. The CAB members discussed the theme of informing the consumer of the details of a product in the language that brought the consumer to seek the product. Currently the language specifications are only present in the Remittance**.**

- Several CAB members agreed that initiatives such as CFPB en Español should be extended to additional languages.
- A CAB member relayed in an anecdote that consumer education in a variety of languages has become more relevant of an issue.
- All of the CAB members agreed that it is essential to maintain successful communication with consumers and indicated to the CFPB that this work should be continually expanded.

Day Two

CAB committee reports

Jose Quiñonez, CAB chair

Delicia Hand, CAB staff director

After welcoming the CAB back, CFPB Staff Director and CAB Chair Quiñonez reconvened the meeting with reports from the CAB committees. The Committee Chairs reported to the larger CAB on the previous day's committee discussions and provided opportunity for the CAB to provide feedback, ask clarifying questions, and make recommendations for future agenda items.

CAB mortgage committee report out and discussion:

a. CAB members asked about the extent to which the CFPB can reprimand and enforce the actions of servicers, as defined in the proposed rulemaking. CFPB staff indicated that there is some leeway concerning enforcement, as new implementations call for some adjustment time for servicers.
    i. This enforcement potential should extend to loan officer compensation at mortgage banks, which are not regulated
b. CAB members urged CFPB staff to keep those with limited access to credit in mind when drafting and testing potential rulemakings.
c. CFPB staff explained that the TILA/RESPA uniform disclosures are in aggressive field-testing. The CAB recommended developing a video primer that explains the process and particular target areas.
d. CAB members urged that certain demographics, such as older consumers and new Americans, might have difficulty trusting and utilizing electronic forms.
e. A CAB member shared her recent experience with the mortgage forms, noting the sheer volume of paperwork and how daunting the process seemed.

CAB cards and payments committee report out and discussion:

a. Over the coming period, the committee plans to focus on the following types of cards and how they relate to payment:
    i. Prepaid
    ii. Mobile, including the adoption of wallets
    iii. Credit
        1. The committee also plans to discuss big data and privacy
b. Discussion on prepaid included the following:
    i. CFPB staff explained Regulation E and how it relates to hliability protection.
    ii. Several CAB members who are involved in the cards and payments field discussed the Regulation E implications for a non-personalized card and fraud protection, including suggestions to advocate for personalized cards and protecting banks from fraud with prepaid cards.
    iii. CAB members suggested that CFPB staff think of ways prepaid cards could have linked access or. This could include working with banks to serve consumers without a lot of income with a low-cost transaction account that works for them. A CAB member with related professional experience stated that mobile technology would assist in this goal, as well.
    iv. Several CAB members asked CFPB staff to look into prepaid as an alternative to checking.
c. A CAB member noted that from a consumer advocate angle, there is a need in the market for a safe transactional product that provides a pathway to credit.
d. Several CAB members informed CFPB staff that there is a need to make consumers easily aware of the protections and risks associated with different types of cards.

CAB small dollar and installment lending committee report out and discussion:

a. The current focus has been on student lending and what role the CFPB can play in this area.
b. A CAB member suggested collaborating with other government agencies for increased access to resources.
c. A CAB member noted that the current lending system might drag down some individual borrowers as well as some parts of the market and economy.
d. CAB members relayed to CFPB staff that it is necessary to increase the understanding of the private versus the federal student loan market and the interplay between the two.
    i. Committee members suggested implementing voluntary programs CFPB can initiate to install flexibility for borrowers
e. CFPB staff explained affected demographics
    i. Currently, low-income students, first generation students, and older students should be targeted with different approaches, such as earlier planning.
f. A CAB member noted that the large scope of the existing private student loan problems also relates to credit card debt
g. The committee heard a briefing on auto lending and the role of financial institutions and markup differential.
    i. CAB members suggested that CFPB resolve the lack of transparency in the way dealers can markup rates.

CAB credit reporting, debt collection, and deposits committee report out and discussion:

a. The committee agreed upon three critical themes:
    i. The use of alternative data sources to give new and young Americans a starting point on which to build credit.
    ii. The vitality of current and future data accuracy.
    iii. Consumer ownership of data

2. Consumer reporting agencies should have an obligation to provide the credit score rather than obligating the consumer's sole responsibility to obtain the credit score.it
    a. A CAB member suggested implementing an initiative that combines learning one's credit score with the annual tax date to encourage consumer knowledge.
    b. Initiatives such as these can also encourage consumers to checking their savings accounts.

b. Several CAB members discussed the floor set of debt collection minimum standards.
c. A CAB member suggested CFPB staff address the need for verification of data at all stages of the life cycle of a debt and a means of awareness before a debt is sold to a debt buyer.
    i. CAB members suggested that this could be accomplished by using the big data that is currently being collected to include consumers in potentially beneficial opportunities.
d. CFPB staff informed CAB members that third party debt collectors receive limited information
e. CAB asked CFPB staff if debt transfers are covered by consumer protection.
f. The CFPB is collecting data regarding complaints on medical debt and the collection of debt, which are currently the largest complaints in the debt dispute process.

Policy discussion: Payday loans and deposit advance products

Katherine Samolyk, senior economist, Research Office
Stephen Shin, managing counsel, Regulations Office

Senior Economist, Katherine Samolyk provided a briefing on the CFPB's recently issued payday and deposit advance product whitepaper. The focus of the paper was not necessarily on broader outcomes, but a collection of activity data to evaluate the intensity of sustained use, usage fees, and borrower characteristics. The goals are to learn and understand whether and why consumers are chronically using this financial product. Ms. Samolyk noted that the paper did not control for state regulations, which can affect frequency of use.

Payday loans and deposit advance products: CAB comments and questions

- CAB members began a discussion about whether the single payment payday product is a fair product.
- Several CAB members suggested that the Bureau should expand the study to include the spending behavior of deposit advance users and activity outside of the deposit advance checking account.
- CAB members suggested that banks' procedure of automatic withdrawal could serve as a replacement in the case of a lack of overdraft protection.
- In considering the element of product design, the CAB recommended a transparent forum that provides consumers with a tailored variety of choices that delineate potential costs and risks of small dollar loans like payday and DAP.
  - CAB members suggested that this can be accomplished with a further understanding of borrowers' financial situation, and by learning what drives sustained use of high cost loans.
  - It is essential that these options are easy to access and can be adapted to particular account structure in order to curtail consumers' pecuniary mistakes.

Working lunch: Trends and themes discussion

Jonathan Zinman, CAB member
Robert Stoll, CAB member

CAB members Jonathan Zinman and Robert Stoll gave presentations and facilitated discussion on their areas of expertise.

1. Evidence Based Policymaking: Small Dollar Loans

Professor Zinman's presentation began with an overview of approaching small dollar loans with evidence-based policymaking and innovation in a 21st-century agency that focuses on targeted interventions for people who may not be using these small dollar loans well.

E-based policymaking is a methodology that convincingly addresses social science problems and plausibly identified cause and effect. Anecdotal evidence or rigged evaluations are examples of *insufficient* evidence, and do not appreciate the difference between correlation and causality.

When considering payday borrowers, it is essential to evaluate the evidence and determine whether small dollar loans do more harm than good, and whether consumers can forecast that the loans will be repeated. The current evidence from rigorous studies reveals both positive and negative impacts. This can be attributed to heterogeneity in use of products. Some studies may also have flawed methodology.

With intervention and causal factors, such as price perceptions and temptation, it is useful to have an understanding of the effects the products have on consumers, and of how effective solutions**,** such as enforcement costs, would be in changing the behavior of consumers and the entities that will be regulated.

Two broad, complementary strategies rely on behavioral economics. The first is to consider beta testing products through soft launches in order to generate more evidence. The second is to consider the current strategies, identify problems, and target fixes. One current issue is optimism bias. Successful approaches to this issue would be personal, outgoing, and direct social marketing and predictive modeling based on prior behavior. This allows for reaching consumers early on and at the decision point while also preserving access for those consumers who do themselves no harm by using this product. Another current issue is solving for temptation, which can be approached by voluntary cooling off and banning period mechanisms that utilize a comprehensive registry. There is also the possibility to consider products outside of the option of payday lenders.

While regulations and mandates are necessary for consumer protection overall, setting a high evidentiary bar with the expertise of the CFPB staff, soft and hard beta testing, and relying more on marketers, researchers, and product and software developers will allow a 21^{st}-century regulator to move forward with the issue of small dollar lending.

2. Binding Mandatory Arbitration

Robert Stoll began his presentation with a reminder that at prior CAB meetings, the Bureau has received public comment from class action lawyers and consumers regarding their inability to seek legal redress due to arbitration clauses and mandatory arbitration class action waivers. The overview of binding mandatory arbitration began with the case review of *AT&T Mobility v. Concepcion*. This case addressed the mandatory arbitration clause regarding AT&T's advertisement of free phones and adhesion contracts, which do not allow for the negotiation of the terms of the product's contract. The US Supreme Court held that mandatory arbitration and class action waiver provisions of consumer adhesion contracts were generally not unconscionable and should be enforced under the Federal Arbitration Act.

Because of the *Concepcion* case, virtually every consumer contract has a mandatory arbitration clause and class action waiver. Furthermore, the number of consumer class actions filed has greatly diminished, while those that are filed are often dismissed. Thus, consumers are having difficulty-finding attorneys for consumer contract disputes. There is evidence that the increasing use of class action waivers has led to a decline in deterrence of misconduct by large companies. Arbitration is conventionally an informal, non-public process with a private arbitrator or panels of arbitrators for which the claimants and respondents must cover the fees. There is limited to no prehearing discovery and no substantial rights of appeal. The benefits of arbitration include the potential for the arbitrator's specialized knowledge in the area of dispute. Arbitration can also be less expensive and faster than traditional litigation due to fewer procedures. The detriments of arbitration include limited resources for developing evidence and a lack of transparency, since the proceedings are traditionally confidential. Additionally, there is no meaningful appellate review, and the claimant may risk paying the entirety of the costs in the event of a loss.

Class action suits, which must be approved by a judge, vary because the courts closely supervise the process. Class actions are beneficial because they include an economic process that addresses small claims and provides for full discovery, rules of evidence, transparency, and accountability for companies. The detriments of class action are the effects of non-meritorious cases, complexity of class certification, large attorney fees, and exposing company to large damages.

This information is significant as the CFPB is directed to complete a study of mandatory arbitration clauses and has received several thousand pages of comments completed by a wide range of industry and consumer advocates. The Bureau may have statutory authority to prohibit class action waivers and mandatory arbitration in the case of adhesion contracts or deceptive or abusive circumstances. The policy question that the CFPB intends to understand is which consumer protections arise from class action, such as the complaint process and damages distribution.

The CAB members continued with a dialogue about consumer complaints and corresponding regulation and auditing processes. Staff later clarified that the Bureau has not yet issued a study report to Congress regarding binding mandatory arbitration, and that this will be its next step.

Policy discussion: Designations for financial advisers: Reducing consumer confusion and risks, report and recommendations to Congress and the SEC

Skip Humphrey, senior liaison officer, Office of Older Americans
James Miner, older Americans policy analyst, Office of Older Americans

The Bureau staff provided an overview of the Senior Designations report to CAB members in order to obtain guidance and feedback regarding federal and state policymakers' reaction to (and possible adoption of) the report. Now that the report is released, the CFPB hopes to continue playing a vital role in protecting older consumers.

The discussion began with an overview of the Bureau's mandate and recommendations. The Dodd-Frank Act directed the Office for Older Americans to conduct a study and make recommendations based on the following criteria:

1. The sheer number, variety, quality of the senior designations.
    a. The senior designations are specialty financial credentials that financial professionals, such as insurance agents, brokers, investment advisers, and financial planners, use in addition to their existing credentials.
    b. Senior designations represent knowledge in age-focused financial needs, such as retirement or estate planning.

c. It was recommended that financial professionals follow set procedures to obtain and retain senior designations:
    i. Required coursework from an accredited institution
    ii. The ability for a consumer to check the status of the designation
    iii. A reliable and functioning complaint mechanism
    iv. Evident disciplinary oversight
d. The goal of this research and its subsequent recommendations was to assist seniors in easily identifying the financial products that will successfully suit their needs.

2. The current profiles of consumers seeking age focused products
    a. Because a significantly large portion of the population is aging, changes in the retirement landscape will increase demand for professional financial assistance with retirement planning and investing of the post-pension era.
    b. Older retirees have taken more interest in retirement choices.
    c. As referenced in a 2009 AARP study on fraud victims, older consumers are disproportionately vulnerable to fraud, relative to the general population of average investors.
    d. Older consumers have less time to recover from errors, mistakes, and financial loss, and some struggle with a decline in advance cognitive reasoning, which affects complex decision-making.
3. Consumers' demonstration of confusion with titles and professions in financial service industry before senior designations appeared.
    a. It is important to ensure consumers understand the procedures and timelines of the financial products they consider.
    b. Older consumers show an increased tendency to trust senior designations, but have difficulty differentiating real designations from fraudulent ones.
    c. Historically, unscrupulous salespeople with senior designations have targeted consumers in the past with inappropriate and fraudulent products and services

The report, which aims to protect senior consumers with increases in transparency, covered nearly if not all of the available literature. Staff met with regulators, industry experts, and advocates, put out a Request for Information, and held roundtable listening sessions with agencies. The research led to the following recommendations:

1. Education: create a centralized tool that consumers can use to verify financial adviser credentials by establishing baseline comparison tools.
2. Tracking: capture complaints and enforcement actions via data collection, particularly by examining the credentials of advisers who were involved in fraudulent or inappropriate cases.
3. Disclosure: provide additional information to consumers about senior specific qualifications.

Designations for financial advisers: Reducing consumer confusion and risks, report and recommendations to Congress and the SEC: CAB comments and questions:

- CAB members highlighted the need to increase transparency in accessing senior-specific financial advice and commended the Bureau on its work this far.
- The CAB members recommended increased awareness in the procedures of designation qualification and minimum standards of accredited education.
- A CAB member inquired about the possibility of requiring continuing education classes for advisers. CFPB staff stated that while this was a good idea, these classes though could be problematic to maintain record of, as continuing education is not standardized and other markers may be more meaningful.
- Several CAB members also suggested implementation of prohibitions on misuse of senior designations, as well as setting standards around the advertising of senior designations.
- A CAB member recommended establishing a national database registration system in order to keep track and stay ahead of perpetrators.

Policy discussion: Consumer engagement tools

Peter Jackson, assistant director of Consumer Engagement

Assistant Director Peter Jackson provided an overview of the Bureau's consumer engagement work and obtained information and recommendations from the CAB about consumer engagement needs. Assistant Director Jackson first summarized the Bureau's design principles, which are to:

1. Make and test public prototypes: By taking a product to market as quickly as possible, it is easier to find a simple solution with a minimum viable product (MVP). The Bureau can then test these prototypes by asking questions and gaining knowledge in order to develop the test product further.
2. Build on existing behaviors and pay attention to feedback: Staff explained that, when developing consumerfinance.gov, they considered building a text messaging system for consumers to text simple questions and receive a response. The Bureau found, however, that consumers prefer to utilize a search engine to find answers. By understanding this existing behavior, it was possible to focus efforts on providing accurate, unbiased information through currently used means. The goals for this information and the CFPB website are to:
   a. Be accessible and authoritative. It was important that financial literacy not be a barrier to entry to the CFPB website. The information was written at a lay level by experts and then was edited to be understandable. Topics can be browsed through an easily accessible website.
   b. Meet consumers where they are. Generating user traffic creates increased frequency and visibility for CFPB on search engines, and advertising on social media websites, such as Facebook, encourages visits to the website.
   c. Improve over time by having forums for feedback in an intuitive location on the site.
3. Identify users' needs, not by asking what users want, but rather by synthesizing research and identifying commonalities. Oftentimes, the feedback from users who are weak in skill and experience is most helpful as these users notice deficiencies more frequently.

These design principles were applied to a variety of CFPB projects, such as the new TILA/RESPA disclosure forms and a financial aid-shopping sheet. This shopping sheet, which was a collaboration project with the Department of Education, allows prospective students to compare financial aid packages online, and provides a supportive community that allows students to compare with others through every step of the process. The shopping sheet takes in account extenuating factors, such as graduation time, degree type, and payment sources.

Consumer engagement tools: CAB comments and questions

- CAB members noted that CFPB should increase awareness of the online tool.
- CAB members with professional experience in the field shared particular marketing strategies.
- A CAB member shared his experience with a similar marketing issue and suggested CFPB develop a seal in addition to the current logo mark, which can increase credibility.
- CAB members suggested a large-scale campaign in the fall that targets paying for college, as well as reaching students by providing the tool to high school college counselors.
- Several CAB members suggested that CFPB take this financial aid online tool formula and applying it to help consumers chose other financial products, such as loans and general banking services.
- A CAB member suggested that this could potentially move forward by collaboration with third party entities for access to increased data and resources.

Adjournment

CAB members provided feedback on the format and content of the current meeting, and the meeting adjourned at 4:33 p.m. PDT.