Community Bank Advisory Council

October 15, 2014

Consumer Financial Protection Bureau

October 2014

Meeting of the Community Bank Advisory Council

The Community Bank Advisory Council (CBAC) of the Consumer Financial Protection Bureau (CFPB) met in person at 8:30 a.m. on October 15, 2014. The CBAC met at the CFPB Headquarters located at 1275 First Street, NE, Washington, D.C.

Council members present	CFPB staff present
Tyrone Fenderson, CBAC Chair	CFPB Director, Richard Cordray
Guillermo Diaz-Rousselot, CBAC Vice Chair	Michael Byrne
Angela Beilke	Ren Essene
Michael Gallagher	Delicia Hand
Donald Giles	Naomi Karp
Paul Mackin	Joan Kayagil
Sheila Mathews	Thomas Kearney
Jo Ann Merfeld	Jeffrey Langer
Lynda Messick	Jesse Leary
J. David Motley	Zixta Martinez
David Reiling	Gary Stein
Monica Thomas	Brian Webster
Christopher Triplett	
Kathryn Underwood	
Timothy Zimmerman	

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Welcome and meeting overview

Delicia Hand, staff director for Advisory Board and Councils Office
Tyrone Fenderson, CBAC Chair

Chair Tyrone Fenderson called the CBAC meeting to order on October 15, 2014 at 8:30 a.m. EDT in administrative session. He welcomed the members and reviewed the agenda for the day. Chair Fenderson emphasized the importance of learning about the priorities of the Bureau over the next 12 to 18 months as they relate to the CBAC. The Chair and CFPB staff also welcomed new members to the CBAC.

Mortgages Committee: HMDA

Ren Essene, program manager for Mortgages Markets
Joan Kayagil, senior counsel for Regulations
Michael Byrne, HMDA technical operations lead for Technology and Innovation
Thomas Kearney, senior counsel for Regulations

Bureau staff provided an overview of the Home Mortgage Disclosure Act (HMDA) proposal issued on July 24, 2o14. The Bureau extended the comment period to October 29, 2014 due to a printing issue at the Office of Federal Register. Once the comment period closes, the Bureau will review and digest the comments received and reconsider anything included in the initial proposal and adjust the proposal based on feedback received. The Bureau will address the comments and explain how it handles any comments that were particularly significant.

There are four basic categories of changes in the proposal. The Bureau proposed modifications to institutional coverage, transactional coverage, the reporting requirements, and the reporting and release part of HMDA.

CBAC comments and questions

- A CBAC member stated that their bank is not in a Metropolitan Statistical Area (MSA) and is exempt from HMDA. However, what they are hearing from other small community banks is that even though the institution might have a few branches operated predominantly in a rural area, the bank may have one location located in an MSA; this would make the proposed rule applicable to the bank. The CBAC member continued and inquired whether the Bureau would consider this a potential issue. Bureau staff replied that the Bureau did consider these concerns extensively. While the statute defines MSAs, the issue is also similar to one the Bureau encountered with the rural underserved definition for the Truth in Lending Act (TILA).

- A CBAC member explained that the determination of low-income tracts that they have is not adequate to provide most of this information. The CBAC member stated that it comes from other sources, not always HMDA.
- A CBAC member acknowledged that they have data that they already pull together for the Community Reinvestment Act (CRA) reviews for their regulators.
- A CBAC member commented that the threshold for collecting that information for CRA is an intermediate size small bank.
- A CBAC member mentioned the CRA level for large banks, small banks, and intermediate banks increases as the level resets each year.
- A CBAC member asked for clarity about total points and fees versus total discount points. Bureau staff explained that total points and fees are the points and fees calculation that is done for Home Ownership and Equity Protection Act (HOEPA) or Qualified Mortgage (QM); A CBAC member expressed concern that an expectation would be that the payer and data collection points would increase at least by 14, but possibly by more than that. The CBAC member added that part of the opportunity is to figure out a way to make this process more efficient for bankers as well.
- A CBAC member stated that business loans, especially for startups and restaurants, carry higher risk. The CBAC member continued, noting that community banks would typically take all the consumers business assets and inventory into account. The CBAC member added that there could be a second lien on a house and a personal guarantee, which is standard for the underwriting package.
- A CBAC member asked with respect to a situation where a consumer has a commercial loan and a house loan. The member inquired how the debt-to-income ratio would be determined given that there are multiple ways to calculate it. Bureau staff explained that the Bureau is soliciting feedback on how best to address that question.

Consumer Lending Committee - Auto Lending

Jeffrey Langer, assistant director for Installment and Liquidity Lending Markets

Bureau staff provided an overview of the Bureau's recent work in Auto Lending. The Bureau issued fair lending guidance for indirect auto lenders in March 2013. The Bureau has clarified some points relating to that, particularly in relation to a 2013 Ally settlement. One of the principles behind moving into this area is that there should be a level playing field. Banks have always been subject to supervision, whether by federal prudential regulators, state banking regulators or both. The proposed auto finance larger participant rulemaking would bring non-banks with substantial auto financing operations under comprehensive oversight, allowing them to fall under our direct supervision in the same way that large banks are.

Currently, the only dealers that are subject to the Bureau's jurisdiction are those that hold their own financing contracts, largely buy here - pay here dealers that either directly, or through an affiliated company, hold their own contracts.

CBAC comments and questions

- A CBAC member asked whether the Bureau only considers discrimination in the categories of race and nationality. Bureau staff explained that the Equal Credit Opportunity Act has a number of prohibited bases. The Equal Credit Opportunity Act (ECOA), which is implemented by Regulation B, makes it unlawful for "any creditor to discriminate against any applicant with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act."
- A CBAC member stated that credit unions have a tax advantage over banks. The CBAC member went on to say that, credit unions do not have to pay income tax and they adjust their rates more frequently than community banks can.
- A CBAC member said they found that in credit standards, risk appetite is a little different from their competitors. The CBAC member continued and said part of that could be because that a community bank does not typically seek to finance cars for terms of more than five years.

Card, Payments and Deposits Committee: Older Americans – Elder Tool kit

Naomi Karp, policy analyst for Office for Older Americans
Cora Hume, attorney-advisor for Office for Older Americans

Bureau staff provided an overview of the Bureau's recent work on elder financial exploitation as it relates to deposit accounts.

According to Bureau staff, elder financial exploitation is a growing problem in the country. There is a spectrum of perpetrators and types of abuse. The Office for Older Americans views it as any type of illegal or improper use of an older adult's property, funds, or assets. Bureau staff explained that the Bureau has been doing a lot to help stop elder financial exploitation. The Financial Crimes Enforcement Network (FinCen) put out an advisory in 2011 stating that signs of elder financial exploitation are the types of issues that would allow the use of a Suspicious Activity Report (SAR). In addition, if the damage is $5,000 or more, you must file a SAR.

The Office for Older Americans explained that they have heard great concern expressed frequently about privacy and financial institution privacy obligations under Gramm-Leach-Bliley and other privacy laws. When financial institution personnel encounter elder financial abuse, they want to report it. However, some have expressed concerns about violating privacy laws in doing so. The Office for Older Americans spearheaded an initiative, along with the seven other federal regulators who have jurisdiction over Gramm-Leach-Bliley, and the Bureau issued interagency guidance on September 24, 2013. The guidance clarifies that reporting suspected financial abuse of older adults to appropriate local, state, and federal agencies does not generally violate those privacy provisions.

CBAC comments and questions

- A CBAC member commented that they have tried to report an issue to law enforcement and were told that there is typically not enough evidence that a crime has been committed. The CBAC member went on to say that what they really wanted to do was go to family members or someone else who knows that individual, who could help take action and do something about it. The CBAC member added, financial institutions need one more step now to be able to go to who they think are the right people, because they know their customers.

- A CBAC member explained that many times it is the older American who does not want to file a police report against their own son, daughter, grandson, or granddaughter, who might be the ones taking advantage; therefore, law enforcement typically does not get involved.
- A CBAC member stated that what happens in many cases is that their institution will not refund the money taken unless the elder person files charges. The CBAC member continued to say that, when it is a member of the family, the elder person almost never submits a police report.
- A CBAC member stated that Delaware has legislation pending which would indemnify banks and allow them to hold funds for a certain number of days.
- A CBAC member stated that their institution has seen consumers scammed via a cashier's check that the consumer is attempting to deposit. The CBAC member added institutions typically place a hold on the funds for the allowable timeframe whenever possible.
- A CBAC member commented that if they were required to put a hold on cashier's check, it would be easier for their institution to stop elder financial abuse.
- A CBAC member expressed frustration about consumers having and keeping updated emergency contacts. The CBAC member asked other CBAC members, once the customer gives you their emergency contact, what do you do to keep it in place and make sure that that is current. A CBAC member replied and stated that having updated emergency contact information for the consumer is something that they all need to be doing. The CBAC member continued, noting that every time they speak with a customer they go over all of the consumer's contact information to ensure it is accurate.
- A CBAC member expressed concern that in many of these situations, the bank is at the center of the liability and community banks are being asked to identify what the community banks believes is criminal. The CBAC member continued, community banks are also asked to oversee auto lenders, even though we are not selling cars. The CBAC member stated that community banks are put constantly in this position of playing the role of law enforcement. The CBAC member suggested that the Bureau provide some kind of a safe harbor on this issue.
- A CBAC member explained that they use a series of combinations to help prevent fraud: online training at least twice a year for all new employees, especially frontline individual and they also have institution-wide training where they talk about what the latest frauds are, how to spot them and where to report them.

- A CBAC member asked if the Bureau has ever quantified the amount of losses from the elderly on an annual basis. Bureau staff replied that it is very hard to quantify; one study estimated $2.9 billion was lost in 2010.

CFPB Community Bank Advisory Council public meeting

Zixta Martinez, associate director of External Affairs, welcomed audience members to the CBAC public meeting and introduced CBAC members and CFPB staff. Director Cordray addressed the CBAC and members of the public. The Director welcomed the new chair, vice chair, and new CBAC members. Director Cordray provided remarks about the CFPB's role in an information age where many Americans rely on technology, which has implications for the consumer financial marketplace. The Bureau leverages technology to create tools that help consumers navigate in this space. Following Director Cordray's remarks, outgoing CBAC chair, Timothy K. Zimmerman expressed his gratitude for having the opportunity to serve as chair. The incoming chair, Tyrone Fenderson Jr., and vice chair, Guillermo Diaz-Rousselot, provided brief remarks. Program Manager Brian Webster addressed issues surrounding Title XIV and the mortgage industry. Program Manager Gary Stein provided an update on the Bureau's overdraft program inquiry. Section Chief Jesse Leary highlighted the data point that the Office of Research published back in July. The video of the session is available on consumerfinance.gov.

Adjournment

Staff director Delicia Hand thanked CBAC members. CBAC Chair Fenderson adjourned the meeting on October 15, 2014 at 5:15 p.m. EDT