Workshop Discussion Notes: Consumer Finance

Data & Civil Rights
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http://www.datacivilrights.org/

*This document was produced based on notes taken during the Finance workshop of the Data &
Civil Rights conference. This document represents a general summary of the discussion that took
place. Not all attendees were involved in every part of the conversation, nor does this document
necessarily reflect the views and beliefs of individual attendees. All workshop participants
received workshop materials prior to the event to spark discussion. The primer can be found at:
http://www.datacivilrights.org/pubs/2014-1030/Finance.pdf*

Overview

This workshop addressed the connections between big data, the finance industry, and civil
rights, specifically highlighting issues of economic justice, discrimination, consumers' rights,
privacy, transparency, financial literacy, new technologies, alternative banking systems, and
regulation. Participants asked how the financial industry's goals might align with those of civil
rights and what role new technologies might also play in this interaction. On a basic level the
group asked, what should the civil rights agenda be? Stability, fairness, education, and consumer
protection seemed to emerge as key values that are important to this agenda.

One of the main concerns raised was about how new types of data analytics might address
issues of poverty, specifically within the finance industry. Given that low income people, or ("thin
file" or even "no file" individuals), are among the most exploited by financial institutions, the
industry's treatment of these communities requires attention and analysis. A key issue arose about
how to ensure that loans are being given on a fair basis and how to make those decisions clear to
the public. Although total transparency of such decisions may not be in the best interests of
proprietary financial institutions, there was an agreement that they should be made available, and
that in order for the public to understand them, financial literacy and education would additionally
be required.

Further, the group discussed the role of the emerging and evolving tech world and asked if it
could be put into the service to the goals of the Civil Rights agenda. Members of the workshop
asked, how much can new technologies foster alternative and more fair financial products? One of
the challenges to this alignment (between the FinTech industry and the Civil Rights movement) is
the precarious nature of the tech industry characterized at least in part by short-lived start-ups that
test financial long-term stability.

There was some debate about regulating the financial industry and whether this was a good
idea or whether it might hinder positive innovation. One could also ask, that given there are some
workarounds to regulatory measures, if they are, in fact, effective at all?

Themes and Discussion Topics

The Changing Landscape of Lending

Borrowers no longer fall into the binary categories of either eligible or ineligible for loans, as was the case in the 1970s when civil rights legislation was being designed to prevent discrimination on the basis of protected class categories. Contemporarily, many low-income individuals are targeted for predatory or sub-prime loans that they may not be capable of paying back. Moreover, low-income consumers of financial services have been historically exploited by the financial industry, not only by the marginal sectors of the industry, such as payday lenders, but also by mainstream banks through fees and overdraft fines. These consumers are actually targeted for "bad products" (like predatory sub-prime loans) and denied access to "good ones." The group pondered how, or to what extent, Big Data would be able to address both sides of the coin. Further, are there emerging alternatives that could alleviate such discriminatory practices? The group asked, how could financial products be made more fair to those lacking robust credit histories?

Transparency and Privacy

The participants grappled with the question of how to ensure fairness within the financial industry, especially with regards to procedural fairness in granting loans and lines of credit. The group asked if this issue centered on transparency. It was suggested that financial education/literacy also plays an important role in this issue.

Another aspect to consider is that there is a tension between the financial institution's desire for privacy and the public's concern with transparency. One member asked how we might reconcile these two divergent drives. It was pointed out that consumers should have a right to know why they were rejected for a loan, for example, or how any number of other credit decisions are reached. The attendees asked, how can decisions be monitored in a way which ensure that they are made fairly and consistently? How do we devise a solution that bridges the need for transparency with the need to protect proprietary systems? How can a regulator cope with those competing demands? A further question was posed about the possibility of identifying discrimination and some wondered, how can one even identify and define an "adverse outcome"?

Transparency is a double-edged sword, it was noted, and can equate to an invasion of privacy when turned on the consumer/citizen For example, the governor of Maine once published EBT (Electronic Benefit Transfer, also known as welfare or food stamps) users' information online in an attempt to stigmatize them. So, it is important not to privilege "transparency" wholesale, but it needs to be considered within particular contexts.

The issue of transparency is further complicated because it needs to be coupled with financial literacy and data literacy. Financial products and policies made public can only be put into use if consumers can make sense of them. For example, making FICO algorithms transparent is important, but the public also needs to understand how these scores are actually used by the financial system.

A further comment was made that the "not initiated by the consumer" category used by financial institutions to "pre-screen" consumers based on collected information, and then offer

them credit or insurance (for example, when banks send out pre-approved credit cards to individuals) needs greater scrutiny and attention.

Financial Discrimination: Is Regulation the Answer?

There was a minor debate about regulation. One participant asked if the current laws in place are truly adequate for the data-driven economy, and another stated that there was a greater need for further regulation and that too much data is being collected. And while one participant argued that one should not worry about over-regulation, another was concerned about over-regulating the industry in a way that might stifle innovation.

The opinion was expressed that greater change in the industry is likely to come from big players as smaller companies get eaten up and the trend towards monopolization. It is unclear, however, whether such changes would come voluntarily or not.

There was also a divergence of opinion over the efficacy of the FCRA (Fair Credit Reporting Act. While individuals' data is protected under FCRA, if that info is aggregated at the Zip+4 level, or if it is anonymized, then it is not covered under FCRA. So Zip+4 becomes a workaround to the regulations. This raises the question of whether regulations are truly effective if they can be easily bypassed.

At root here is the question, what forms of financial regulation are effective at creating more just opportunities and lines of credit for consumers?

Areas for Further Exploration

Many questions remain unanswered at the end of the day. One large category of questioning sought to identify what it means to have "fair access to credit." Prohibitions against discrimination originate from the exclusion of marginalized populations from access to credit, whereas contemporarily, credit is over-extended to everyone, and can be predatory, particularly when its extended at sub-prime rates, as it often is to lower-income populations. Nor are lending institutions required to create better rates for creditors who are in a lower-income bracket. However, targeted credit offers are marketed at households depending on their zip+4 bracket. One participant suggested that the FCRA could extend to cover zip+4. Generally, the ways that credit-offers are extended in ways that are not initiated by consumers requires closer examination.

One lingering question remained about the ways that data is brokered outside the purview of the FCRA, and how this could potentially affect credit-decisions indirectly, even if the brokered data is not considered "financial." In that sense, could scoring systems like FICO become less important as alternative scoring mechanisms evolve and become more substantial or reliable?

The question of how to insert civil rights goals into the goals and mindset of emerging FinTech companies, such that what they design has an embedded fairness goal, became a topic that merits further exploration, but requires a broader conversation to hash out.

Another line of questioning revolved around new fair and just alternatives to traditional banking. First came the question of what it means to be "alternative" within this context. Does it mean non-regulated or outside? Or does alternative mean innovative? Finally, the topic of financial and data literacy centered on the question of, what is the best way to educate the general public and especially low-income communities about financial matters? And, how can technical

perspectives inform consumers? Embedded in these concerns is the question of measuring and making explicit adverse outcomes, such that consumers have a level of awareness about what "fair" is. Lastly, there was interest in mapping out all the different pieces of the data chain, such that interventions can be staged in a way that targets a narrow link, but is effective and disruptive to a set of practices that are unfair overall.