Published on *The National Law Review* https://natlawreview.com

Who Regulates Residential Mortgage Trigger Leads?

Article By:

Joe Wilson

John Thomas Mostellar III

In a bit of a surprise development at the end of 2024, the United States Senate passed the Homebuyers Privacy Protection Act, which amends the Fair Credit Reporting Act (FCRA) to include specific restrictions on the use of trigger leads in the residential mortgage lending space. While industry groups applauded the Senate's passage of the act, the United States House of Representatives has not passed corresponding legislation, so the act is not currently in effect. Regardless, the act draws scrutiny on what many view as an annoying and potentially abusive practice – mortgage lenders' excessive use of trigger leads.

A trigger lead generally refers to information a consumer reporting agency (CRA) compiles on a consumer based on the consumer's application of credit in a particular credit transaction. The FCRA allows CRAs to create these consumer reports without the express consent of the consumer, meaning the consumer does not initiate the creation of a trigger lead. Typically, the consumer report is then sold to a third-party lender that uses it to solicit the consumer for comparable loan products.

Proponents argue that trigger leads benefit consumers by promoting competition amongst lenders and potentially resulting in the consumer receiving more favorable loan terms. However, in practice, trigger leads often result in excessive and unwanted solicitations from third-party lenders that can confuse or overwhelm a typical consumer. In some cases, solicitations from third-party lenders imply an association with the lender that received the consumer's initial application, seemingly attempting to blur the line between the entities and take advantage of potential consumer confusion. Given the potential for this negative consumer impact, several states, and now the federal government, have proposed or enacted legislation that specifically addresses the use of trigger leads.

State Regulation of Trigger Leads

In November 2024, Texas became the most recent state to enact a law regulating a mortgage lender's use of trigger leads. However, going back to at least 2007, other states have also enacted comparable requirements governing the use of trigger leads, including Connecticut, Rhode Island, Maine, Kansas, Kentucky, and Wisconsin.

While each state varies, the laws in these states typically impose two specific consumer protections to counteract abusive trigger lead practices. First, in many of these states, the law requires any lender using trigger leads to clearly include in its initial communication with the consumer the identity of the lender, the lender's practice of using trigger leads, an explanation of trigger leads, and an express statement that the lender is not affiliated with the lender that took the consumer's initial application for credit. Second, many state trigger lead laws also cite the FCRA and expressly adopt the FCRA requirements that (1) a lender cannot contact a consumer who has opted out of inclusion in consumer reports compiled pursuant to the FCRA and (2) the lender must make a firm credit offer if soliciting based on consumer reports provided in compliance with the FCRA.

However, while these states impose clear obligations on lenders using trigger leads, as a practical matter the only way for a borrower to stop receiving trigger lead-based solicitations is to affirmatively take the "opt out" steps defined in the FCRA.

Potential Impact of Federal Homebuyers Privacy Protection Act

The act would largely shift this responsibility back to the CRA and lender and significantly restrain the marketability and use of trigger leads. Specifically, the act would prohibit a CRA from providing a trigger lead to a lender unless (1) the consumer provided consent for the CRA to share his or her information or (2) the lender seeking the trigger lead has some preexisting relationship with the consumer, such as the lender holding a current account of the consumer. This shifting of responsibility has generally been hailed as needed protection for borrowers. And while the proposed act would effectively flip the focus of when trigger leads are permissible, it would seemingly not conflict with the current state regulatory framework for trigger leads.

Regardless of whether the act is ultimately enacted as federal law, mortgage lenders and CRAs should prepare for a continued focus on the use of trigger leads, as this appears to be a practice that both industry experts and regulators view as in need of reform.

Listen to this post

© 2025 Bradley Arant Boult Cummings LLP

National Law Review, Volume XV, Number 23

Source URL:https://natlawreview.com/article/who-regulates-residential-mortgage-trigger-leads