July 5, 2023

Rep. John Rose
2238 Rayburn HOB
Washington, DC 20515

Dear Rep. Rose:

The Community Home Lenders of America (CHLA)[1] writes to offer our comments regarding your introduction of H.R. 4198, the *"Protecting Consumers from Abusive Mortgage Leads Act."*

CHLA applauds you for introducing legislation to enhance consumer protections with respect to so-called trigger leads. We hope that your introduction of this bill will lead to more rigorous debate in Congress and among federal regulators regarding the best solution to combat abusive trigger leads when a credit report is pulled in order to obtain a mortgage loan pre-qualification or a mortgage loan.

Last November, CHLA took the unusual step of calling for heightened scrutiny of our own industry - and this practice - in a letter to the Consumer Financial Protection Bureau (the "Bureau"). Our full letter is enclosed as an addendum to this letter. The main points of our letter are:

- Homebuyers starting the mortgage application process - including families doing so for the first time - are commonly and immediately deluged with dozens of abusive calls, texts, and emails.
- The *"opt-out"* process is broken - it does not protect consumers from abusive trigger leads.
- Many mortgage lenders do not comply with legal requirements to provide a *"firm offer of credit."*
- Trigger leads create a heightened risk of identity theft and fraud.
- A solution to this problem should balance consumer protection and enhancing loan competition.

H.R. 4198 seeks to address this last bullet objective by prohibiting trigger leads for mortgages, except if the consumer consents ahead of time to this, or if a *"third party has submitted documentation to such agency certifying . . . a current relationship, relating to credit, servicing or other financial services."*

We recommend revising the standard in your bill for the second exception. As drafted, the language excludes mortgage loan originators that previously originated a loan for that very consumer (including an existing loan, in the case of a refinance) - unless such lender has retained the servicing on that loan.

Given your bill's focus on existing relationships, this does not make sense. Moreover, it discriminates against smaller independent mortgage banks (IMBs) that originate a mortgage loan and either sell it to an aggregator or sell it through the GSE cash window without retaining servicing. Therefore, we ask that your bill be amended to include such mortgage lenders.

Second, we do not understand the bill's broad eligibility allowing <u>any</u> financial firm with a *"current relationship"* with the consumer to receive notice of a credit pull and to do mortgage trigger solicitations.

For example, allowing payday lenders to receive a notification is not going to result in a mortgage loan offer - it merely tips them off that a consumer may be strapped for funds - which could facilitate additional attempts by the payday lender to sell more predatory loans to a borrower.

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[1] CHLA is the only national trade association focused exclusively on small and mid-sized independent mortgage banks (IMBs).

Further, we understand that banks commonly originate mortgage loans. However, we do not understand why a bank should receive notification of the pulling of credit on a prequalification or mortgage loan application just because they have **any** relationship - e.g. a credit card or auto loan - with the consumer.

The trigger lead process enables banks to identify potential mortgage borrowers with high FICO scores, thus facilitating a key bank objective of cross marketing loan products to well-heeled customers, instead of originating mortgage loans to low- and moderate-income families.

Moreover, such a broad eligibility standard would also give an unfair competitive advantage to banks over independent mortgage banks (IMBs), since IMBs only originate mortgage loans and are not going to have the broad types of relationships through other non-mortgage products that banks have.

This is problematic, since IMBs consistently outperform banks with respect to mortgage loan origination for low- and moderate-income, minority, and first-time homebuyers.

For all these reasons, CHLA suggests revising eligibility criteria under H.R. 4198 to include only mortgage loan originators that previously made a loan to the mortgage credit applicant and current mortgage servicers of a loan held by that credit applicant.

Finally, we write regarding the process under which eligibility for trigger leads is implemented regarding consumer **"consent"** under H.R. 4198. As noted in our November letter, the opt-out process simply does not work today. **Notably, if a borrower notifies a mortgage lender they want to opt-out of receiving trigger leads at the time of a loan application, the process takes too long to protect them on that very loan**. Our members can attest to other implementation problems with regard to the opt-out process.

H.R. 4198 implements a consent consideration through a third-party financial firm submitting documentation to the credit reporting agency that it has the required relationship.

Apart from being unwieldy and subject to significant errors, we believe there is a better way to empower consumers - which is to put a consumer in charge of determining whether they want financial firms to know they are pursuing a mortgage loan and to receive trigger lead solicitations.

As we pointed out in our November letter to the Bureau, there is already a separate portal or code for mortgage lenders to submit mortgage credit pulls to credit reporting agencies - separate from submissions for other non-mortgage credit. Thus, the technology to create separate submission portals already exists.

Why not simply require in your legislation that a consumer is in charge - that the consumer decides at the time their credit report is pulled if they want to receive trigger lead solicitations. In fact, this simple step alone could be sufficient to address the problem - without resort to the categories in your bill.

This "opt-in" is a far more consumer friendly (and effective) approach than the current opt-out option. If a consumer decides they don't want to receive a trigger lead solicitation, the consumer would simply notify the lender pulling the credit report. That lender then submits the request to the credit reporting agency through a portal that reads "*Mortgage - No solicitation.*" The credit reporting agencies are then prohibited from selling such information to anyone. The consumer is protected from abusive trigger leads.

Again, in closing, thank you so much for teeing up this critical consumer protection issue. We would look forward to discussing these your legislation and our comments with you and your staff.

Sincerely

COMMUNITY HOME LENDERS OF AMERICA

November 21, 2022

Trigger Leads - Applications for Home Purchase Mortgage Loans

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

The Community Home Lenders of America (CHLA)[1] writes to highlight our significant concerns about the abusive use of "trigger leads" in conjunction with home purchase mortgage loans. We ask the Bureau to undertake a comprehensive review of compliance with the trigger lead requirement for a "Firm Offer of Credit" and to take such enforcement actions as are necessary and appropriate to protect consumers.

A "trigger lead" refers to the practice of a credit bureau selling a borrower's information after a credit report has been pulled as part of an application for some form of credit. Prospective borrowers are subsequently targeted with unsolicited calls, texts, mailings, etc. from other creditors. As this letter explains, this is particularly problematic for mortgage applications for the purchase of a home.

As Director of the Bureau, you have made it a priority to encourage consumers to shop around for the best mortgage rate. That is a laudable objective. However, in practice, trigger leads for home purchase mortgage loans do not promote that objective. Instead, they typically result in:

(1) An invasive, abusive marketing frenzy of lender-represented "offers" by phone, text, and email.

(2) Failure to comply with the "Firm offer of credit" requirement - and instead practices which all too often are merely clickbait to start a bait and switch conversation with the borrower.

(3) A heightened risk of identity theft and fraud, through dissemination of detailed personal financial data among large numbers of financial firms.

Despite the consumer option to opt out of having this information sold, this option is rarely exercised, and even when used, not effective. CHLA member lenders believe consumers generally do not understand they will be deluged with a telemarketing blitz that is disruptive to their lives. Worse, this occurs just as a consumer is embarking on one of the most significant transactions of their life - a home purchase.

Ed Mierzwinski, Senior Director of the consumer group US PIRG, said it well in a 2018 Blog Post ***"How can a less "savvy" consumer be helped by being blitzed by confusing offers, mostly from bottom-feeders?"*** and in a Washington Post article that lenders buying trigger leads are ***"usually the bad guys.***

[1] CHLA is the only national trade association focused exclusively small and mid-sized IMBS. [**See communitylender.org**].

Trigger Leads

Trigger leads are a marketing product created by the national credit bureaus (Experian, TransUnion, and Equifax). After a consumer applies for some form of credit, the lender pulls the borrower's credit report. The credit bureaus then sell the fact the borrower is making a loan application - along with the detailed credit information on the loan application - to a large number of other lenders.

In theory there is a possible value to this, as a borrower is potentially introduced to a better or more competitively priced product. For simple credit transactions, like obtaining a credit card, the good may outweigh the harm, since it is relatively easy to compare basic financial terms among credit card issuers.

However, the impact is much more harmful for mortgage loans for purchase of a home. Such loans represent a large, complicated financial transaction, that provides a disproportionate incentive to use deceptive tactics to induce a borrower (who a lender may have been helping for many months) to switch lenders. The result is usually an avalanche of so-called mortgage loan offers – by phone, by email, and by text – which far exceeds other financial products where credit bureaus sell their financial information.

Unlike simple products like credit cards, comparing rates, costs, and terms of different mortgage loan options can be very complex. This makes it easier for lender solicitations to confuse borrowers or manipulate comparisons of key loan components, such loan amount, loan fees, mortgage rate, LTV, whether there is PMI, whether the loan is fixed or variable rate, and others. This should not be permitted under the Firm Offer of Credit Requirement, but our experience is that it is widely ignored.

We are not saying consumers would not benefit from shopping around for a home purchase mortgage or by comparing terms and rates. However, trigger leads are the wrong way to accomplish this objective.

Although we have similar concerns for mortgage refinance loans, our concerns are somewhat mitigated by the fact that such borrowers are more experienced and conversant with the process, having already previously closed on a mortgage loan. Moreover, shopping for better refi rates is a much simpler task, primarily of comparing mortgage rates and costs. Finally, unlike a mortgage application for a home purchase, the borrower is not stressed about the impending closing of a home they are purchasing.

Trigger Leads Create a Disorienting Deluge of Offers by Mail, Phone, and Text

CHLA members started a discussion of this issue not primarily from their experience as a mortgage lender, but as borrowers in their own right. Following are a few examples of CHLA member experiences:

1. Two verbatim transcripts from a trigger lead solicitation for a mortgage loan (names protected).

   "Hello Xxxxxxx, This is Xxxx with Xxxxxxxxxxx. Give me a call when you are free from work. Xxxxxx is applying a huge lender credit to beat any pricing you may of been offered. I can save you thousands of dollars and get you a better rate. I do not need to pull any credit to show you how much cheaper our pricing is. I look forward to hearing from you."

   *"Hello! Sorry to bother you, my name is Xxxxx and I'm only reaching out to you because the credit bureau we're partnered with notified us that you had your credit pulled by a retail mortgage lender in the past 5 days. Profiles that qualify for a discount wholesale pricing are sent to us as a courtesy to consumers given we offer rates 1/2% lower on average. If you haven't physically closed on a loan, allow me to show you what you can take advantage of by simply providing how much cash you're looking to take out or the purchase price if you're buying. Reply * for an offer and # to opt out of discounting pricing."*

2. A CHLA member received 60 phones, texts, or emails within 48 hours of a mortgage application.

3. Another CHLA member was so inundated that he stopped answering the phone from any number he did not recognize. As a result, he missed an important call about a doctor's appointment for his wife, who was imminently going into labor.

4. At the end of this letter is a screen shot of a CHLA member pursuing a mortgage loan who received 10 marketing calls within 43 minutes as a result of the trigger lead process.

CHLA believes an investigation by the Bureau will confirm that these experiences are common.

Trigger Lead "Firm Offers of Credit" Are Anything But a Firm Offer of Credit

Under FCRA and UDAAP, credit bureaus are responsible to ensure that the so-called "Firm Offer of Credit" meets a number of requirements, i.e., that it is not unfair, deceptive, or abusive, that it is easy to understand, that the offered product is the principal message, and other requirements.

In practice, we believe these requirements are not enforced by the credit bureaus.

Moreover, unlike other products where eligibility and terms can readily be determined from a credit score, we question how mortgage lenders can make informed firm offers of credit for a home purchase mortgage loan tailored to the borrower's needs, based on the data the credit bureau sells them.

Instead, we believe many bad-actor mortgage participants use this opportunity to start a conversation with the borrower, knowing that they do not have enough from the information forwarded by the credit bureau to make an informed firm offer of credit. The mortgage firm then plans to try to convince the borrower to use them for the mortgage under different terms other than the alleged "firm offer of credit."

Based on our experience, borrowers are not familiar the Firm Offer of Credit requirement and even if aware, are unlikely to be able to assess whether it is being complied with. This allows bad actor mortgage lenders to abuse the process, without being held accountable by the consumer.

Therefore, we strongly urge the Bureau to ramp up efforts to make sure consumers are aware that mortgage lenders must make a true firm offer of credit and follow FCRA and UDAAP requirements. The Bureau should also ramp up enforcement efforts to ensure mortgage lenders abide by these requirements.

Opt-Out Option Provides Little to No Consumer Protection

In theory, consumers have control over whether they want to receive offers through trigger leads. In practice, that is effectively not the case.

The experience of our member lenders, when dealing with home buyers seeking mortgage loans, is that they generally have no comprehension of the sheer number of trigger lead offers they will receive, nor of the likely disruption to their lives - even when our lender members warn the consumer of this.

In practice the opt-out option provides little or no protection for specific transactions. Since there is a time lag between a consumer making an opt-out request and it being executed, if the consumer makes an opt-out request at the time a home purchase mortgage application is taken out, it will not take place in time to avoid a torrent of offers coming in for that transaction.

We have concluded there is value to exploring whether to create a requirement for credit bureaus to create a process to allow borrowers to opt-out of receiving trigger leads after a home purchase application through a portal process in which a lender pulls a credit report for the borrower.

Credit report submissions already distinguish between mortgages and other financial transactions, so we assume this would be feasible to implement. We also believe that federal agencies responsible for rules regarding trigger leads should consider requiring an opt-in process instead of an opt-out process for home purchase mortgage applications, in conjunction with this change.

However, we understand this would be a significant undertaking. Therefore, instead, at this time, we are merely asking for the immediate step of a more thorough review of trigger lead practices in conjunction with home purchase mortgage loans, along with appropriate enforcement.

Trigger Leads Create a Heightened Risk of Identify Theft and Fraud

Any policies regarding the widespread dissemination of detailed personal financial information - as is routinely included in mortgage application files - must take into consideration the enhanced risk of a data breach of such information by the credit bureau, and the growing practice of identity theft and fraud associated with dissemination of personal information.

Data breaches are not that common, but when they occur, they have a significant impact. For example, in September 2017, Equifax announced a data breach that exposed the personal information of 147 million individuals. Trans Union and Experian have also experienced data breaches of personal financial information.

We are not claiming that data breaches are linked to trigger leads for home purchase loans. However, trigger leads increase the potential impact of breaches, so consumer privacy risks should be weighed against the limited comparison shopping benefit that trigger leads might provide for home purchase loans.

Trigger Lead Purchasers Sometimes Impersonate the Current Lender

We are also seeing examples of impersonation. Purchasers of trigger leads have for long sent postal mail that impersonated the current mortgage holder, which has long been a UDAAP concern. This practice via postal mail has occurred with public record purchasers as well. Increasingly, however, our members are reporting that trigger lead purchasers are attempting to impersonate the lender with whom the consumer has just placed a mortgage application. Lead purchasers are making direct contact via telephone and employing various techniques to make it seem they are just "following up" on the existing application.

This practice runs directly contrary to UDAAP and runs afoul of general notions of ethics and responsible marketing. Greater enforcement or rulemaking may be needed to curb this deceptive practice.

The sheer numbers of calls our members receive from confused consumers regarding the deluge of trigger leads they experience has only increased since the rate environment changed earlier this year. We expect this trend will only worsen as lenders vie more intensely for market share.

Thank you for consideration of these comments and requests.

Sincerely Yours,

COMMUNITY HOME LENDERS OF AMERICA

12:28

All | Missed | Edit

Recents

DIRECT MTG Canonsburg, PA	12:26 PM
ME OFFICES Mars, PA	12:24 PM
ME OFFICES Aliquippa, PA	12:22 PM
+1 (272) 200-1378 Stroudsburg, PA	12:20 PM
+1 (570) 559-6860 Shohola, PA	12:18 PM
+1 (223) 251-0497 United States	11:56 AM
GLL OFFICES Canonsburg, PA	11:53 AM
+1 (267) 678-2230 Philadelphia, PA	11:44 AM
+1 (724) 633-1046 West Newton, PA	11:43 AM
BRANCH OFFICE West Newton, PA	11:43 AM

Favorites | Recents 2 | Contacts | Keypad | Voicemail