Consumer Data Industry Association
1090 Vermont Ave., NW, Suite 200
Washington, D.C. 20005-4905

Writer's email: mcarone@cdiaonline.org
Writer's direct dial: +1 (860) 836-2623

CDIAONLINE.ORG

July 11, 2022

Austin Stowers, Director
Florida Department of Financial Services
Office of Legislative Affairs
200 E. Gaines Street
Tallahassee, FL 32399

Dear Austin,

On behalf of the Consumer Data Industry Association (CDIA) and our member companies, thank you for the opportunity to discuss the CFO's interest in mortgage triggers.[1] I am writing to follow up on our discussions and provide some additional resources

As we discussed, a mortgage loan is likely the single largest loan a consumer will ever undertake. Encouraging consumers to consider lower cost loans, enabled through the greater competition afforded by mortgage triggers, can mean saving thousands of dollars and putting discretionary spending back into their hands. In a time when interest rates and housing prices are going up, this can help people afford the right home at the right time. Mortgage triggers are an important service used by mortgage lenders to provide consumers with greater access to right fit lending options while increasing competition in the market.

When a consumer applies for a mortgage or applies to refinance a mortgage, if that consumer fits the criteria requested by someone who subscribes to a mortgage trigger service (a subscriber), a consumer reporting agency will notify the subscriber of the service that the consumer has applied for a mortgage or refinance. The subscriber, which may be a credit union, mortgage broker, a bank, or other financial services company, is then legally obligated to extend to the consumer a firm loan offer. This firm loan offer may, in fact, be on better terms than the consumer had initially hoped to receive, helping the consumer to purchase or afford a home on better financial footing.

These mortgage trigger services are regulated by the federal Fair Credit Reporting Act (FCRA, which was reaffirmed by the Federal Trade Commission (FTC) in a notice to consumers that

[1] The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers' access to financial and other products suited to their unique needs.

"federal law allows [the] practice [of mortgage trigger services] if the offer of credit meets certain legal requirements."[2]

Under the FCRA, a user of a mortgage trigger product (e.g., a credit union, community banker or other lender) must: (a) certify to the consumer reporting agency that it has a permissible purpose to request a credit report; (b) actually make a "firm offer of credit" as defined under the FCRA; (c) actually have the means to honor the offer (i.e. mortgage brokers must have a contract that binds a lender to honor the offer); and (d) provide notice of the consumer's right to opt-out when making written solicitations to consumers. Moreover, the FCRA requires all consumer reporting agencies to verify the identity of a new prospective user and the permissible uses under the FCRA prior to furnishing a consumer report, including any mortgage trigger service.

The FCRA limits the amount of information a lender can receive from a consumer reporting agency as part of a mortgage trigger service. Neither the consumer reporting agency issuing the trigger or the lender making the offer will have access to the consumer's original loan application. The lender will receive contact information such as the consumer's name and address. Telephone numbers can be provided but all lenders are required to comply with state and federal do-not-call lists. Some lenders perform additional research in courthouse public records to learn about the consumer's current mortgage loan (such as the original purchase price or the current value of the home based on tax assessments).

When making a loan offer to a consumer based on a mortgage trigger, a credit union or other type of lender is required to adhere to the FCRA, as well as other federal laws (such as the Equal Credit Opportunity Act, Fair Housing Act, Truth in Lending Act, Real Estate Settlement Procedures Act and Home Mortgage Disclosure Act), as well as federal and state unfair and deceptive and trade practices laws.

Further, credit reporting agencies are highly regulated for their data security practices. The federal Gramm-Leach-Bliley Act ("GLBA") imposes significant and detailed security requirements on financial institutions, including credit reporting agencies, to keep information secure. Additionally, in 2018 the Consumer Financial Protection Bureau (CFPB) announced that it will use its consumer protection authority to supervise and examine the information security practices at the nationwide consumer reporting agencies. As a result, the consumer reporting industry has been subject to CFPB supervision and examination of their companies' data security practices, including security obligations under the FCRA. This is in addition to being subject to enforcement by the FTC.

Consumers also have control over how they receive preapproved offers of credit, including mortgage trigger services. For example, consumers who prefer not to receive offers by telephone can sign up for the FTC's do-not-call list. If a consumer does not want to hear from any lender other

[2] https://www.cdiaonline.org/wp-content/uploads/2022/05/FTC-Consumer-Alert-Feb-2007.pdf

than the one to which they have made application, they can opt out of all such offers by calling 1-888-5-OPT-OUT or by logging on to www.optoutprescreen.com

CDIA members are committed to data privacy and stewarding the information we hold with care so that each consumer is reliably, yet safely, represented in the marketplace. CDIA members also adhere to and are assessed against many other industry and regulatory standards and expectations, including the Payment Card Industry Data Security Standard and the Health Insurance Portability and Accountability Act.

CDIA members are acutely aware that consumers count on them to safeguard their information. Please feel free to reach out with any questions and see our briefing paper on mortgage triggers that is attached to this pdf document.

Sincerely,

Mike Carone

Mike Carone
Manager of Government Relations
Consumer Data Industry Association (CDIA)