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

P 202 371 0910

CDIAONLINE.ORG

Mortgage Triggers Briefing Paper

Executive Summary

Mortgage trigger leads benefit consumers. Consumers benefit because it brings to their doorstep competing mortgage offers that allow for comparison shopping. When a consumer is about to pay for the single most expensive thing ever – a home – they want to save as much money as they can on financing. This is especially important as mortgage rates continue to climb.

States cannot ban mortgage trigger leads under federal law, but they can regulate the offering of services from mortgage trigger leads. Since 2007, at least five states (Connecticut,[1] Kansas,[2] Kentucky,[3] Maine,[4] and Rhode Island[5]) passed laws saying that if a lender or mortgage broker uses information from a mortgage trigger lead, that person must adhere to certain professional standards and ensure that the offers made comply with state and federal lending laws. Short of banning trigger leads, which states cannot do, it is a rational and reasoned approach to help protect consumers from dishonest offers. The National Conference of State Legislatures (NCSL) has a matrix of state laws to address residential mortgage fraud issues, some of which list laws that regulate offers that come from mortgage trigger leads.[6]

This briefing paper is designed to help readers better understand the consumer and lender benefits of mortgage triggers and why the federal Fair Credit Reporting Act already provides consumers with the rights and protections they need. The Federal Trade Commission has carefully evaluated these products and issued the following notice:

> Clearly, some mortgage companies benefit from the practice. But the FTC says consumers can benefit, too: prescreened offers can highlight other available products and make it easier to compare costs while you carefully check out the terms and conditions of any offers you might consider.[7]

[1] Conn. Gen. Stat. Ann. § 36a-498(g).
[2] Kan. Stat. Ann. § 50-626.
[3] Ky. Rev. Stat. Ann. § 286.8-220(4).
[4] Me. Rev. Stat. tit. 10, § 1310(5).
[5] R.I. Gen. Laws Ann. § 19-9-35.
[6] https://www.ncsl.org/research/financial-services-and-commerce/mortgage-fraud-state-statutes-and-resources.aspx.
[7] Attached.

Mortgage Triggers Q&A

What Are Mortgage Triggers?

Not all consumers shop around as much as they should, but every consumer wants to have the very best offer for which he/she can qualify. A mortgage loan is likely the single largest loan a consumer will ever undertake and encouraging consumers to consider lower-cost loans can put hundreds of dollars in discretionary spending back into their hands. Mortgage trigger leads help lenders to compete and to bring potentially better offers to the doorstep of the consumer. A mortgage trigger service is a prescreened offer of credit. It works like this: After a consumer has applied for a mortgage, if that consumer fits the criteria requested by someone who subscribes to a mortgage trigger service, a consumer reporting agency will notify subscribers 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, will then extend to the consumer a firm loan offer. This offer may, in fact, be on better terms than the consumer had initially hoped to receive.

Are Mortgage Triggers Regulated by Federal Law?

Yes. A mortgage trigger service is regulated by the federal Fair Credit Reporting Act (FCRA). The Federal Trade Commission issued a notice to consumers that "federal law allows [the] practice [of mortgage trigger services] if the offer of credit meets certain legal requirements."[8]

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.

The FCRA limits the amount of information a lender can receive from a consumer reporting agency. 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 do some 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) and federal and state unfair and deceptive and trade practices laws.

---

[8] Attached.

Are Consumers Protected by Federal Law?

Yes. Consumers have an absolute say in whether they will receive offers from other lenders to which they have not made an application for a loan. For example, consumers who wish to prevent lenders from calling them with loan offers can simply sign up for the Federal Trade Commission's do-not-call list. In this case the consumer will still receive an offer in the mail and may welcome these, since they may be for better rates and thus consumers save money. Some consumers may not want to hear from any lender other than the one to which they have made application. In this case the consumer can opt out of all such offers by calling 1-888-5-OPT-OUT or by logging on to www.optoutprescreen.com.

Consumers also have a right to see their consumer credit report disclosure whenever they wish and can do so annually for free (www.annualcreditreport.com). When consumers look over their free disclosure, they can see which credit unions, community banks or other lenders have had access to their information.[9]

Do Mortgage Trigger Offers Help Consumers?

Yes. Simply put, mortgage trigger services offer consumers the opportunity to save substantial sums of money. Take a hypothetical consumer who puts 10% down on a $300,000 home. The difference between a 6.25% mortgage and a 6% mortgage is $49 per month or $19,000 over the life of the 30-year mortgage. The FTC noted that

> Clearly, some mortgage companies benefit from the practice….[C]onsumers can benefit, too: prescreened offers can highlight other available products and make it easier to compare costs while you carefully check out the terms and conditions of any offers you might consider.[10]

Studies have shown the gap between interest rates paid by Black and Hispanic borrowers, as compared to White borrowers.[11] Mortgage or refinance offers from a community bank, broker, or credit union due to a mortgage trigger service could very well reduce the percentage of "high-cost" loans paid by any consumer, and particularly minority populations. A story in the Washington Post in 2006, *The Fleecing of Black Borrowers* noted that "[y]ears of denials [of credit against minority consumers] may lead minorities to look for 'guaranteed approvals' instead of the lowest price" and that these borrowers, especially African-Americans frequently underestimate their creditworthiness. In fact, it was noted by a spokesperson for the American Bankers Association that "[p]eople shop more for a

---

[9] When a consumer requests a copy of his or her credit report, the consumer reporting agency must disclose to the consumer, among other things, all persons that requested the consumer's credit report in the preceding year (15 U.S.C. § 1681g(a)(3)). Consumer reporting agencies are under a federal obligation to maintain reasonable procedures to ensure maximum possible accuracy. *Id.*, § 1681e(b). Non-consumer-initiated inquiries, including mortgage trigger services cannot, by law, impact a consumer's credit score.

[10] http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt171.shtm.

[11] "[A]s in earlier years, Black and Hispanic White borrowers were more likely to have higher-priced conventional and nonconventional loans in 2019. … For refinance loans, 7.0 percent of loans to Black borrowers and 6.0 percent of loans to Hispanic White borrowers were higher-priced, in contrast to 3.4 percent for non-Hispanic Whites." Cons. Fin. Protection Bureau, https://files.consumerfinance.gov/f/documents/cfpb_2019-mortgage-market-activity-trends_report.pdf (at p. 47).

loaf of bread than they do for a mortgage."[12] Just a point on a mortgage can mean a savings of tens of thousands of dollars on the life of a 30-year mortgage. Offers provided to minority borrowers from mortgage trigger services have the potential to reverse the unfortunate reality of minority home lending.

Mortgage trigger services are uniquely positioned to assist consumers when shopping for a mortgage because the offers from such services arrive on the consumer's doorstep just when they need the information the most.

A 2018 story in the Wall Street Journal said that "[b]orrowers who finance the purchase of cars or homes without soliciting quotes from multiple lenders often pay more than their financial peers."[13] The article adds that "in the absence of that competitive pressure, lenders have no incentive to offer similar borrowers comparable rates." According to research by the CFPB, in a 2017 paper, "[t]he average spread on home mortgages among all borrowers is a half percentage point. Paying 4% interest on a $400,000 mortgage instead of 3.5% amounts to an extra $114 in monthly payments."[14] By contrast, "[t]he average difference in car loans is 1.3 percentage points," as studied by researchers at MIT and Brigham Young University. For the typical car loan, the difference would be like paying $1,300 more on the purchase price."[15]

Can a State Ban on Mortgage Triggers?

No. Mortgage trigger services, which are made available by consumer reporting agencies cannot be banned in the states. The federal Fair Credit Reporting Act (FCRA) regulates consumer reporting agencies, and this law prohibits any state from imposing any requirement or prohibition with respect to any subject matter regulated under 15 U.S.C. § 1681b(c). This was the conclusion reached by the Connecticut Office of Legislative Research and by the Maine Office of Consumer Credit Regulation and by several court decisions discussed below.[16]

---

[12] Lauren E. Willis, *The Fleecing of Black Borrowers*, Wash. Post, Oct. 8, 2006.

[13] Jo Craven, McGinty, *The Costs of Getting Just One Rate Quote: Studies show financial peers can pay widely different amounts on home and car loans*, Wall Street Journal, March 30, 2018, https://www.wsj.com/articles/the-costs-of-getting-just-one-rate-quote-1522414800.

[14] Alexandrov, Alexei and Koulayev, Sergei, No Shopping in the U.S. Mortgage Market: Direct and Strategic Effects of Providing Information (March 14, 2017). Consumer Financial Protection Bureau Office of Research Working Paper No. 2017-01. Available at SSRN: https://ssrn.com/abstract=2948491 or http://dx.doi.org/10.2139/ssrn.2948491.

[15] Argyle, Bronson and Nadauld, Taylor and Palmer, Christopher, Real Effects of Search Frictions in Consumer Credit Markets (October 18, 2017). MIT Sloan Research Paper No. 5242-17. Available at SSRN: https://ssrn.com/abstract=3044889 or http://dx.doi.org/10.2139/ssrn.3044889.

[16] Connecticut. "Connecticut is most likely preempted from passing any sweeping legislation affecting mortgage lead triggers." Connecticut General Assembly, Office of Legislative Research, Report No. 2007-R-0072, "Mortgage Trigger Leads," January 24, 2007, http://www.cga.ct.gov/2007/rpt/2007-R-0072.htm.

Maine. "While the federal preemptive language…prevents a state from prohibiting or severely restricting legitimate use of such trigger leads…it is within a state's prerogative to require that such information be utilized in a way that conforms with federal law and that is not misleading to consumers." State of Maine, Office of Consumer Credit Regulation, "Legislative Proposals to Address Predatory Lending Practices in Maine," December 8, 2006, pp. 2-4, 23, http://www.maine.gov/tools/whatsnew/attach.php?id=26818&an=1.

The most comprehensive judicial review of mortgage triggers was made by the U.S. District Court in Minnesota in 2007 when CDIA successfully challenged that state's ban on mortgage triggers. This decision was followed by federal courts in New York and in New Jersey which also sided with CDIA and its members.

In 2007, a federal court struck down the first state law that banned mortgage triggers – Minnesota – because that law was preempted by the FCRA. The court, in looking specifically at the subject matter preemption of 15 U.S.C. § 1681t(b)(1)(A), found that "the preemptive reach of FCRA is both broad and explicit" and held that the "'subject matter' of mortgage-trigger lists is unquestionably regulated by [the FCRA]". Thus, "neither Minnesota nor any other state may prohibit or regulate their sale." *Consumer Data Indus. Ass'n. v. Swanson*, No. 07-CV-3376 (PJS/JJG), 2007 WL 2219389 (D. Minn., July 30, 2007), at 7-8. The state did not appeal this ruling and on Aug. 21, 2007, a final order was entered "find[ing] and declare[ing] that [the Minnesota ban on mortgage triggers] is preempted in its entirety by 15 U.S.C. § 1681t(b) of the FCRA and is not enforceable, directly or indirectly, by [the state]." *Consumer Data Indus. Ass'n. v. Swanson*, No. 07-CV-3376 (PJS/JJG), (D. Minn., Aug. 21, 2007), amended consent order, at 2.

The U.S. District Court for the Western District of New York followed the holding of the federal court in Minnesota and found that the FCRA "pre-empts both statutory and common law prohibitions or restrictions on the practice of prescreening…" *Premium Mortgage Corp. v. Equifax,* U.S.D.C. (W.D.N.Y. No. 6:07-cv-06349-MAT) (Sept. 30, 2008).

The most recent court to find in favor of preemption and against state regulation of mortgage triggers was the U.S. District Court for New Jersey. New Jersey became the second state to pass a ban on mortgage triggers when it did so in January 2009. Shortly thereafter, the court issued a preliminary injunction which was followed quickly by the legislature's repeal of the law. *CDIA v. Milgram*, No. 09-CV-01270 (MLC).

Summary and Conclusion

Mortgage trigger services offered by consumer reporting agencies are commonly used, offer consumers the possibility of substantial financial savings, and allow for consumer protection. Mortgage trigger services are uniquely positioned to assist consumers when shopping for a mortgage because they arrive on the consumer's doorstep just when they need the information the most. While states cannot ban mortgage trigger leads from consumer reporting agencies to others, it can regulate or ban fraudulent or deceptive offers by offerors to consumers.

About the Consumer Data Industry Association

The Consumer Data Industry Association (CDIA) 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

---

New Jersey. "[T]he regulation of [mortgage triggers] by credit agencies is governed through, and state regulation preempted by, federal law." New Jersey Office of Legislative Services statement accompanying A. 3821/S. 2720 (213th Legislature, 2009).

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.

May 2022

FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Division of Consumer & Business Education

Shopping For a Mortgage?
Your Application May Trigger Competing Offers

If you apply for a mortgage, your inbox, answering machine, and mailbox may fill up quickly with competing offers from other mortgage companies. It's not that the company you applied to is selling or sharing your information. Rather, it's that creditors – including mortgage companies – are taking advantage of a federal law that allows them to identify potential customers for the products they offer, and then market to them. The Federal Trade Commission, the nation's consumer protection agency, wants you to know why your application for a mortgage may trigger competing offers, how you can use them to your benefit, and how to stop getting them if that's your choice.

The unsolicited calls, emails, and letters about competing offers often are called "prescreened" or "pre-approved" offers of credit. They are based on information in your credit report that suggests you meet criteria set by the creditor making the offer – for example, you live in a certain zip code, you have a certain number of credit cards, or you have a certain credit score. Credit bureaus and other consumer reporting companies sell lists of consumers who meet the criteria to insurance companies, lenders, and other creditors.

When you apply for a mortgage, the lender usually gets a copy of your credit report. At that point, an "inquiry" appears on your report showing that the lender has looked at it. The inquiry indicates you're in the market for a loan. That's why mortgage companies buy lists of consumers who have a recent inquiry from a mortgage company on their credit report. Federal law allows this practice if the offer of credit meets certain legal requirements.

Clearly, some mortgage companies benefit from the practice. But the FTC says consumers can benefit, too: prescreened offers can highlight other available products and make it easier to compare costs while you carefully check out the terms and conditions of any offers you might consider.

Still, some people may prefer not to receive prescreened offers of credit and insurance at all. Here's how to stop them:

1. Call 1-888-5-OPTOUT (1-888-567-8688) or visit www.optoutprescreen.com. When you call this toll-free number or visit the website, you will be asked to provide certain personal information, including your home telephone number, name, Social Security number, and date of birth. The information you provide is confidential, and will be used only to process your request to opt out. Don't enter any personal information until you have checked for indicators that the site is secure – a lock icon on your browser or a web address that begins *https*.

Opting out of prescreened offers does not affect your ability to apply for credit or to get it. Your opt out request will be processed within five days, but it may take up to 60 days before the prescreened offers stop coming. If you have a joint mortgage, both parties need to opt out to stop the prescreened offers. If or when you want to opt back in, use the same telephone number or website.

2. Put your phone number on the federal government's National Do Not Call Registry to reduce the telemarketing calls you get at home. To register your phone number or to get information about the registry, visit **www.donotcall.gov, or call 1-888-382-1222** from the phone number you want to register. You will get fewer telemarketing calls within 31 days of registering your number. Your number stays on the registry for five years, until it is disconnected, or until you take it off the registry.

That said, the FTC wants you to know that many companies use other tools to identify marketing prospects, and that the Do Not Call Registry won't shield you from all telemarketers – for example, those with which you have a business relationship. Even if you opt out of prescreened offers and put your number on the National Do Not Call Registry, you can expect some unsolicited offers.

For more information about the Fair Credit Reporting Act, the law that spells out the terms under which companies can check credit reports, visit www.ftc.gov/credit.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.