



2007 DRAFTING REQUEST

Bill

Received: 04/10/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Scott Newcomer (608) 266-3007

By/Representing: Eric Knight

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - int. rates/loans

Extra Copies: MDK, CTS

Submit via email: YES

Requester's email: Rep.Newcomer@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Use of nonpublic loan information for solicitations; trigger leads

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	agary 04/19/2007	csicilia 04/19/2007	nmatzke 04/19/2007	_____	cduerst 04/19/2007		
/P2	agary 06/25/2007	csicilia 07/05/2007	rschluet 07/05/2007	_____	lparisi 07/05/2007		
/1	agary 08/16/2007	csicilia 08/16/2007	nmatzke 08/16/2007	_____	cduerst 08/16/2007	cduerst 09/04/2007	

FE Sent For:

~~None~~

<END>

10-01-2007
(1/1)

Oked by
LRB chief
& Rep. Newcomer's office

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/P2	agary 06/25/2007	csicilia 07/05/2007	rschluet 07/05/2007	_____	lparisi 07/05/2007		

FE Sent For:

/ 1 gjs 8/16 nwm
 07 8/16 nwm/sh
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/?							
/P1	agary 04/19/2007	csicilia 04/19/2007	nnatzke 04/19/2007		cduerst 04/19/2007		

FE Sent For:

Handwritten notes:
/P2
ajs
7/5
07
[Signature]
<END>

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/?	agary	/Pl gjs 4/19 07	nwn 4/19	nwn/rs 4/19			

FE Sent For:

<END>

Gary, Aaron

From: Knight, Eric
Sent: Tuesday, April 10, 2007 10:38 AM
To: Gary, Aaron
Subject: Trigger Lead Legislation

Attachments: Trigger Lead legislation in other states.doc



Trigger Lead
legislation in ot...

Aaron: This is a summary of what some of the other states are doing in regards to trigger leads. We are looking at using the language from Alabama in section 4b. with the addition of an "opt in". So in other word,s a customers information would be open to sale and use if the customer decided they wanted it to be available. We are strictly looking at the use of these trigger leads not the sale of the trigger leads.

Our three main points would be to 1.) Prohibit use 2.) Give it some teeth 3.) Keep current client info available for use.

Please give me a call for clarification if you have any questions.

Thanks,

Eric Knight
Office of Rep. Scott Newcomer
608-266-3007
888-529-0033
Eric.Knight@legis.wi.gov

Wisconsin Bankers Association
 Trigger Leads
 Potential Legislation
 3/29/2007

Language	CONNECTICUT	ALABAMA	MASSACHUSETTS	MINNESOTA
<p>§ 1327-A. <i>Solicitation using prescreened trigger lead information from consumer report</i></p> <p>No lender or loan broker shall utilize unfair or deceptive practices when using prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a loan with another lender or loan broker. Without limitation, it shall be unfair or deceptive to:</p> <p>A. fail to state in the initial phase of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied;</p> <p>B. fail in the initial solicitation to conform to state and federal law relating to prescreening solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;</p> <p>C. knowingly or negligently utilize information regarding consumers who have opted out of prescreened offers of credit or who have placed their contact information on the federal "do not call" list; or</p> <p>D. solicit consumers with offers of certain rates, terms, and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment.</p>	<p>To limit the use of lender information, including loan numbers, loan amounts or other specific loan information, or a trade name, in solicitations for services or products without the specific consent of the lender.</p> <p>BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:</p> <p>Section 1. For purposes of this act, the following terms shall have the following meanings:</p> <p>(1) LENDER. A bank, industrial bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker, loan originator or holder of the loan, or other person who makes loans in this state, and any affiliate thereof, or any third party operating with the consent of the lender. A person shall not be considered a lender based on the person's former employment with the lender.</p> <p>(2) PERSON. Any individual, firm, corporation, partnership, organization, association, or other legal entity.</p> <p>Section 2. (a) A person other than the lender may not use the trade name or trademark of the lender or a trade name or trademark confusingly similar to that of the lender in a solicitation for the offering</p>	<p>SECTION 1: Section 51 of Chapter 93 of the General Laws as appearing in the 2004 Official Edition is hereby amended by inserting after (b), (2), the following new subparagraph (3):</p> <p>(3) a consumer reporting agency shall not engage in or offer any service whereby the agency sells or otherwise makes available to a third party any information pertaining to a loan application a consumer has made with a bank or credit union as defined in Chapter 167, a mortgage company as defined in Chapter 255E or an entity subject to section 96 of Chapter 140.</p>	<p>SECTION 1: Section 51 of Chapter 93 of the General Laws as appearing in the 2004 Official Edition is hereby amended by inserting after (b), (2), the following new subparagraph (3):</p> <p>(3) a consumer reporting agency shall not engage in or offer any service whereby the agency sells or otherwise makes available to a third party any information pertaining to a loan application a consumer has made with a bank or credit union as defined in Chapter 167, a mortgage company as defined in Chapter 255E or an entity subject to section 96 of Chapter 140.</p>	<p>85th Legislative Session (2007-2008) Posted on Mar 19, 2007</p> <p>A bill for an act relating to mortgage lending; prohibiting sale of certain information arising from a mortgage loan application; amending Minnesota Statutes 2006, section 13C.01, by adding a subdivision.</p> <p>BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:</p> <p>Section 1. Minnesota Statutes 2006, section 13C.01, is amended by adding a subdivision to read:</p> <p><u>Subd. 3. Sale of certain information prohibited.</u> A consumer reporting agency or any other business entity may not sell to, or exchange with, a third party, unless the third party holds an existing mortgage loan on the property, the existence of a credit inquiry arising from a consumer mortgage loan application. This subdivision does not apply to information provided by a mortgage originator or servicer to a third party providing services in connection with the mortgage loan origination or servicing; a proposed or actual securitization; secondary market sale, including sales of servicing rights; or similar transaction related to the consumer mortgage loan. For purposes of this subdivision, "third party" does not include an affiliate of the consumer reporting agency or other business entity.</p>

of services or products without the consent of the lender unless the solicitation clearly and conspicuously states in bold-face type on the front page of the correspondence containing the solicitation all of the following:

- (1) The name, address, and telephone number of the person making the solicitation.
- (2) That the person making the solicitation is not affiliated with the lender.
- (3) That the solicitation is not authorized or sponsored by the lender.
- (4) That the loan information referenced was not provided by the lender.
- (b) A person may not use a loan number, loan amount, or other specific loan information that is not publicly available in a solicitation for the purchase of services or products. Notwithstanding the foregoing, the prohibition does not apply to communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender.
- (c)(1) A person other than the lender may not use a loan number, loan amount, or, other than the existence of the loan, any loan specific information that is publicly available in a solicitation for the purchase of services or products unless the communication clearly and conspicuously states in bold-faced type on the front page of the correspondence containing the solicitation all of the following:

- a. The name, address, and telephone number of the person making the solicitation.
- b. That the person making the solicitation is not affiliated with the lender.
- c. That the solicitation is not authorized or sponsored by the lender.
- d. That the loan information used was not provided by the lender.
- (2) The prohibition in subdivision (1) does not apply to communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender.
- (d) Any reference to an existing lender without the consent of the lender and any reference to a loan number, loan amount, or, other than the existence of the loan, any loan specific information appearing on the outside of an envelop, visible through the envelop window, or on a postcard, in connection with any written communication that includes or contains a solicitation for services or products is prohibited.
- (e) It is not a violation of this section for a person to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.
- (f) A lender or owner of a trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the trade name, trademark, or loan information. The

Need to add	Opt-in language	<p>person seeking the injunction shall not be required to prove actual damage as a result of the violation. Irreparable harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages. The prevailing party in any action brought pursuant to this section is entitled to recover costs associated with the action and reasonable attorney fees from the other party.</p> <p>Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.</p>	Opt-in language	Opt-in language
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Soon

in 4/19

cjs

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

Gen cat

1 AN ACT...; relating to: the use of nonpublic loan information in solicitations and
2 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits, with two exceptions, any person from using any loan number, loan amount, or other specific loan information that is not generally available to the public (loan identification information) in any solicitation for the purchase of any service or product. This prohibition does not apply to any communication by a lender to any present or former customer of the lender or to any solicitation directed to a person who has authorized the use of his or her loan identification information. Any person who violates this prohibition may be required to forfeit not less than \$100 nor more than \$1,000 for each violation. In addition, any person whose loan identification information is used in violation of this prohibition, or any lender that made the loan from which this information is derived, may bring a civil action for twice the amount of actual damages caused by the violation or \$500, whichever is greater.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 100.55 of the statutes is created to read:
4 **100.55 Use of nonpublic loan information in solicitations.** (1) In this
5 section:

1 (a) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

2 (b) "Lender" means any of the following:

3 1. A financial institution, as defined in s. 214.01 (1) (jn). ✓

4 2. A finance company licensed under ss. 138.09 or 218.0101 to 218.0163. ✓

5 3. A mortgage banker, loan originator, or mortgage broker registered under s.
6 224.72. ✓

7 4. Any other person, not identified in subds. 1. to 3., the primary business of
8 which is to make loans or engage in lending activities in this state. ✓

9 5. Any person that controls, is controlled by, or is under common control with
10 a lender described in subds. 1. to 4. ✓

11 (c) "Loan identification information" means any loan number, loan amount, or
12 other specific loan information that is not generally available to the public, including
13 such information obtained from a consumer reporting agency.

14 (2) (a) Except as provided in pars. (b) and (c), no person may use loan
15 identification information in any solicitation for the purchase of any service or
16 product.

17 (b) This subsection does not apply to any communication by a lender to any
18 present or former customer of the lender. (a)

19 (c) This subsection does not apply to any solicitation directed to a person who
20 has authorized the use of loan identification information in solicitations of that
21 person. (a)

22 (3) (a) Any person who violates sub. (2) (a) may be required to forfeit not less
23 than \$100 nor more than \$1,000 for each violation.

24 (b) The department shall investigate violations of this section. The department
25 or any district attorney may on behalf of the state: ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2410/P1dn

ARG: /:....

gjs

ATTN: Eric Knight

Please review the attached draft carefully to ensure that it is consistent with your intent.

As requested, the draft is patterned on language that appears to originate from an Alabama bill. I also reviewed the language from what I understand is proposed legislation in Connecticut, Massachusetts, and Minnesota.

It is unclear to me how the "opt-in" provision will work. The proposed legislation in Connecticut, Massachusetts, and Minnesota keys off the credit reporting agencies, but the provisions of this bill (and the Alabama legislation) are broader. Under this bill, a person would not "opt-in" by providing notice to a credit reporting agency, so who will the person be notifying to "opt-in"? In the bill I have not attempted to answer this question. In addition, even if the bill were narrowed and a person could "opt-in" by providing notice to the credit reporting agency, it is unclear to what extent the credit reporting agency would be obligated to take any action on this "opt-in" notice.

Portions of the language in the Alabama and Connecticut legislation are similar, but I read this similar language as having very different meanings. I read the "in a solicitation" language of the Alabama legislation to mean that this loan identification information cannot appear in the printed solicitation material. However, I read the "to solicit" language in the Connecticut legislation to mean that a person cannot base the decision whether to make a solicitation on this loan identification information.

I note that "lender" in the attached draft includes federally-chartered financial institutions. It is possible that application of the bill's provisions to federally-chartered financial institutions could be found to be preempted by federal law.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2410/P1dn
ARG:cjs:nwn

April 19, 2007

ATTN: Eric Knight

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Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Mtbr 5/15

Gary, Aaron

From: Knight, Eric *X Rep. Newcomer*
Sent: Tuesday, May 08, 2007 10:10 AM
To: *erin* 'Mike Semmann'; 'Jeremy Shepherd'; 'Amy L. Boyer'; 'Tim Elverman'; + Dan Byce?
 'ekrueger@ekgmail.com'; Jenkins, Janet A - DATCP; Gary, Aaron
Cc: Pagel, Matt; Sen Sullivan; Templeton, Carrie E - DFI
Subject: Trigger Lead Meeting *Mike Mach*
Attachments: 07-2410P1.pdf *by Matt*

Rep. Scott Newcomer would like to invite you to join us to discuss our draft legislation for Trigger Leads. The meeting will take place on Tuesday, May 15, 2007 at 11:00 am in RM 19N. Please let me know if you are able to attend. Thanks.



07-2410P1.pdf (13 KB)

Eric Knight
 Office of Rep. Scott Newcomer
 608-266-3007
 888-529-0033
 Eric.Knight@legis.wi.gov

5/15

Mike -
~~WISA~~

- phone calls
- credit bureau : how do they get the info.

• opt-in

- preemption : credit bureaus

- prohibit sale to CRA ?
prohibit use ?

Janet : do not call list

Mike - DFI

- maybe two different points in time
 1. loan application
 2. after you close the loan

- CRAs sell products & services : insurance

FCRA : solicitation

CT : deceptive

- firm offer of credit - solicitation

Cole v. US Capital - 7th Cir.
03-3331

CT: define firm offer
define deceptive practices

- prevent info. from being sold
 - "trigger lead" companies

- matter of how they are used →
banks do purchase trigger leads
but use them differently

- Credit unions: selling the info.?

- must focus on ~~and~~ CRAs

· opt out - 10 days - but they
sell it w/in the 10 days

* * 1. · cannot sell ^{lead} until they process
the opt out or max. of 10 days

→ also define ^{2.} the firm offer (17th Cir.)
3. & deceptive practices (teeth)
4. investigation authority

· problem is both telephone calls & mail

· said it was from same co. - lie

1681s - 3

1681t

1681u

not following CT, but similar
prescreened frozen lead

• application triggers the sale of it:

• automatic transfer

• when pers - submits credit
pull based on appl.
for loan or refi.

casual loan

• banks : objection - use of
name & deceptive practices

Gary, Aaron

From: Gary, Aaron
Sent: Wednesday, May 23, 2007 4:47 PM
To: Knight, Eric
Subject: RE: Trigger Lead Meeting

Hi Eric,

At the meeting last week on this trigger lead legislation, the group was concerned about the potential federal preemption of this legislation and decided to take an indirect, narrow approach to the problem of trigger leads. The group characterized these trigger leads as prescreened lists and decided that the next draft of LRB-2410 should include four main items: (1) the consumer reporting agency cannot sell the trigger lead until it has processed the "opt-out" for prescreened solicitations containing firm offers of credit (at the meeting it was believed that the opt-out had to be processed within 10 days, but actually it's 5); (2) include a more restrictive definition of "firm offer of credit" for these prescreened offers of credit; (3) make sure deceptive practices are adequately covered - that the law has "teeth"; and (4) make sure there is appropriate investigative authority.

Since the meeting, I have spent some time reviewing the guiding federal law as it relates to the factual scenario discussed at the meeting and this proposed legislation. I should say up front that the federal law is not only very complex but its interpretation is still unfolding. Based upon my research, I believe it is highly unlikely that the consumer reporting agencies consider these trigger leads to be prescreened lists. If they are, the whole trigger lead process seems to violate a number of provisions of federal law. More importantly, if they are prescreened lists, then there is not much the state can do about it. There are two approaches to federal preemption under the Fair Credit Reporting Act (FCRA). For most provisions in the FCRA, the state can enact additional, related provisions if they are not inconsistent with the federal provisions. However, there are certain areas where the entire subject area is preempted, and prescreened lists is one of those areas. In addition, a state specifically cannot alter the definition of firm offer of credit under the FCRA. (The case mentioned in the meeting, *Cole v. U.S. Capital*, supports this conclusion.)

Historically the operations of consumer reporting agencies have been divided into three categories: (1) consumer reports, as we ordinarily think of them; (2) prescreened lists; and (3) direct marketing lists. Consumer reporting agencies have in the past maintained divisions that produce marketing lists used for solicitations. For years, the consumer reporting agencies believed that they could produce such marketing lists without abiding by the FCRA because the marketing lists were not consumer reports, as they did not directly screen for creditworthiness. However, in the past few years, the FTC has taken a contrary position and attempted to put a stop to the use of these marketing lists. As a consequence, there has been much litigation recently over these marketing lists. The FTC, which regulates consumer reporting agencies on the federal level, has brought enforcement actions to enjoin consumer reporting agencies from selling their direct marketing lists to telemarketers, retailers, fund-raisers, and other end-users. The FTC settled its enforcement action against Experian (then TRW) and federal courts found against Trans Union in a series of cases. The FTC successfully argued that the direct marketing lists were actually "consumer reports" under the statutory definition because of the "implicit" screening used to generate the marketing lists.

My best guess is that the consumer reporting agencies do not consider these trigger leads to be prescreened lists under the FCRA, but rather are "flying below the radar" by considering these trigger leads to NOT be "consumer reports" at all under the FCRA. While this is certainly a gray area considering all the Trans Union litigation, I believe the consumer reporting agencies would probably argue that trigger leads, which involve an AUTOMATIC transfer of information, unfiltered and unscreened by any "credit" or other FCRA-listed criteria, and not collected for purposes of assembling a consumer report, do NOT satisfy the definition of a "consumer report" under the FCRA. Under this theory, while these trigger leads would not be prohibited under the FCRA, state legislation would also not be preempted by the FCRA. Accordingly, while I believe the indirect, narrow approach to this draft outlined at the meeting would be preempted by federal law (and further miss the target of what these trigger leads really are), I believe that a direct, head-on approach to impose legislation on consumer reporting agencies relating to these trigger leads would NOT be preempted by federal law.

There is one more layer of complexity. Assuming that these trigger leads are not "consumer reports" under that definition in the FCRA, that does not mean that they are unregulated by federal law. Under the Gramm-Leach-Bliley Act (GLBA) and FTC rules promulgated under its authority, a consumer reporting agency is considered a financial institution for purposes of GLBA and is subject to limitations on the distribution of nonpublic personal information, which presumably these trigger leads would be. However, our focus here is on the potential for federal preemption, and unlike the FCRA, the GLBA authorizes states to enact legislation providing greater consumer privacy protections than is provided under the federal law. So even if the GLBA imposes restrictions on trigger leads, that does not prevent the state from imposing greater restrictions.

It is unclear to me exactly how the consumer reporting agencies are providing trigger leads without violating either the FCRA or the GLBA. The FTC has devoted significant resources to litigation and rule-making with respect to consumer reporting agencies in the last several years. It may be worthwhile to contact the FTC to ascertain whether the FTC has a position on trigger leads. Knowing the FTC's view on whether trigger leads are covered by the FCRA would certainly help in crafting this legislation. If you would like me to, I would be happy to attempt this contact.

Given the foregoing, do you want me to proceed with this draft as outlined at our meeting last week? An alternative approach might be to try to define a "trigger lead" and then to prohibit consumer reporting agencies from selling them or to directly impose other restrictions.

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Knight, Eric
Sent: Tuesday, May 08, 2007 10:10 AM
To: 'Mike Semmann'; 'Jeremy Shepherd'; 'Amy L. Boyer'; 'Tim Elverman'; 'ekrueger@ekgmail.com'; Jenkins, Janet A - DATCP; Gary, Aaron
Cc: Pagel, Matt; Sen.Sullivan; Templeton, Carrie E - DFI
Subject: Trigger Lead Meeting

Rep. Scott Newcomer would like to invite you to join us to discuss our draft legislation for Trigger Leads. The meeting will take place on Tuesday, May 15, 2007 at 11:00 am in RM 19N. Please let me know if you are able to attend. Thanks.
<< File: 07-2410P1.pdf >>

Eric Knight
Office of Rep. Scott Newcomer
608-266-3007
888-529-0033
Eric.Knight@legis.wi.gov

19N

5/31

Mtg w/ Eric

- trigger leads -

- contact FTC -

- if prescreened - CT

- no entity

CT → OK if there are
consumer reports

FTC - not consumer report

- prohibit sale for marketing use ad/or solicitation
- can use re existing customers

Gary, Aaron

From: Knight, Eric
Sent: Thursday, June 07, 2007 2:41 PM
To: Gary, Aaron
Subject: RE: Trigger Lead Meeting

Thanks Aaron, go ahead with it and if you hear anything let me know. No rush, take your time on this. Thanks!

Eric Knight
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888-529-0033
Eric.Knight@legis.wi.gov

6/7 sent him
letter by inter-D

From: Gary, Aaron
Sent: Thursday, June 07, 2007 2:39 PM
To: Knight, Eric
Subject: RE: Trigger Lead Meeting

Eric,
Following up on our last "trigger lead" meeting, I have repeatedly attempted to reach someone at the FTC who can discuss with me the FTC's policy toward trigger leads. My attempts have been unsuccessful. As a last ditch effort, I have written a letter to the FTC. I am not hopeful that I will receive a response, but there seems nothing else to do. I am sending you a hard-copy of that letter via inter-D mail.
In the meantime, I will go ahead with the draft without input from the FTC. I have gleaned enough from their web site to determine that they do not have any significant enforcement initiative against trigger leads. I think I can adequately prepare the draft without FTC input, though I'm not exactly sure when ... right now I'm having to spend most of my time on the budget.

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Knight, Eric
Sent: Tuesday, May 08, 2007 10:10 AM
To: 'Mike Semmann'; 'Jeremey Shepherd'; 'Amy L. Boyer'; 'Tim Elverman'; 'ekrueger@ekgmail.com'; Jenkins, Janet A - DATCP; Gary, Aaron
Cc: Pagel, Matt; Sen.Sullivan; Templeton, Carrie E - DFI
Subject: Trigger Lead Meeting

Rep. Scott Newcomer would like to invite you to join us to discuss our draft legislation for Trigger Leads. The meeting will take place on Tuesday, May 15, 2007 at 11:00 am in RM 19N. Please let me know if you are able to attend. Thanks.
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Stephen R. Miller
Chief

June 7, 2007

Ms. Lydia B. Parnes
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Mr. William Blumenthal
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Mr. C. Steven Baker, Director
Midwest Region
Federal Trade Commission
55 West Monroe Street, suite 1825
Chicago, IL 60603

Re: Trigger lead reports by CRAs

Dear Sirs and Madam

I am a legislative attorney employed by the state of Wisconsin. Based upon numerous complaints from state residents, we are examining potential state legislation related to lender "trigger leads" provided by consumer reporting agencies and other personal data sellers. It is my understanding that, when mortgage loan application information is submitted to a consumer reporting agency for a credit pull, the consumer reporting agency will, for a fee, automatically and electronically transfer information from that application to paying recipients (generally lending institutions and others affiliated with the home loan or real estate industry) without the consent of the loan applicant. The information provided includes the telephone number of the applicant, the loan amount and loan number of the mortgage loan applied for, and other nonpublic person information about the loan applicant. These reports have become known as "trigger leads" and an internet search of "trigger lead" will reveal their prevalence. As the result of the purchase of the "trigger lead" originating from the consumer reporting agency, the loan applicant may receive a great number of unwanted solicitations, typically by telephone and sometimes involving deceptive ploys by other lenders attempting to usurp the loan business before the original loan applied for can actually close.

I have attempted to contact the FTC by telephone but have been unable to reach the appropriate personnel. Would you please have the appropriate personnel at FTC contact me to discuss:

1. Whether the FTC ever considers these "trigger leads" to not be "consumer reports" under the FCRA (when, for example, they are automatically generated and not screened for creditworthiness or other factors specified in 15 USC 1681a (d)).
2. If these trigger leads are prescreened consumer reports not initiated by the consumer, why these "trigger leads" would not violate 15 USC 1681b (c) (1) (B), (2), and (3), or whether the FTC considers that they do violate these provisions related to prescreened reports and firm offers of credit.
3. Whether the FTC has brought enforcement actions related to "trigger leads," has enforcement policies in effect, or has prepared any other analysis of "trigger leads" under the FCRA or GLBA that may assist this state in examining potential state legislation.

I would greatly appreciate your assistance in this matter. Please feel free to contact me by telephone, mail, or e-mail.



Aaron Gary
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